



DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2013-01]

Paroling, Recommitting, and Supervising Federal Prisoners:

Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Parole Commission proposes to revise its rules describing the conditions of release set for persons on supervision. The revision is part of our ongoing effort to make our rules easier to understand for those persons affected by the rules and other interested persons and organizations. We also propose to add new procedures for imposing special conditions for sex offenders, and to fill a gap left by an earlier rule change in 2003 regarding the administrative appeals that may be filed by District of Columbia offenders on supervised release.

DATES: Submit comments on or before [insert date 60 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by docket identification number USPC-2013-01 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
2. Mail: Office of the General Counsel, U.S. Parole Commission, attention: USPC Rules Group, 90 K Street, N.E., Washington, D.C. 20530.
3. Fax: (202) 357-1083.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, U.S. Parole Commission, 90 K Street, N.E., Washington, D.C. 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Parole Commission is responsible for paroling those federal and District of Columbia offenders serving parole-eligible sentences and for monitoring the supervision of paroled offenders and D.C. offenders whose sentences require supervised release after serving their prison terms. We impose conditions of release for parolees and releasees pursuant to the authority granted by statutory law. For federal parolees, that authority is found at 18 U.S.C. 4209. For District of Columbia parolees, we are required to comply with the parole laws of the District of Columbia (D.C. Code 24-131(c)), and the parole law at D.C. Code 24-404(a) states that the Commission may parole a prisoner “upon such terms and conditions as the Commission shall from time to time prescribe.” For District of Columbia offenders on supervised release, our authority to impose release conditions is derived from both D.C. and federal law. D.C. Code 24-403.01(b)(6) (referencing 18 U.S.C. 3583(d)-(i)).

Through the conditions of release we provide guides for the offender’s conduct while under supervision. Some conditions are required by law. We impose other conditions based on

policy determinations using the criteria set by the statutes cited above. We impose and enforce the release conditions primarily to protect the public from a recurrence of criminal activity by the offender and to encourage the offender's successful re-entry into the community. The conditions are listed on a certificate of release given to the offender at the outset of the supervision term. If we change the conditions of release while the offender is on parole or supervised release, we advise the offender of the new condition by a notice of action. The offender's supervision officer is responsible for the day-to-day implementation of the release conditions. If the offender violates the release conditions, the consequences may range from an informal reprimand from the supervision officer to the offender's return to prison through the revocation process. Given the serious consequences that may follow from a violation of release conditions and the societal benefit from the offender's successful re-entry into the community, release conditions should give clear directions to the offender of the rules he must follow under supervision. On the other hand, the offender has the responsibility of asking for guidance from his supervision officer when the offender has questions concerning the application of a particular condition to his conduct.

The conditions of release may be divided into three broad categories: (1) conditions that facilitate the monitoring and supervision of the offender; (2) conditions that prohibit certain activities; and (3) conditions that are intended to assist the offender in reintegrating into the community and acting as a law-abiding citizen. Conditions on periodic reporting by the offender to the supervision officer and the reporting of a change of residence or employment fall into the first category. The second category includes warnings not to engage in criminal activity, use illegal drugs or possess a weapon. Examples of conditions in the third category are conditions that the offender must participate in a domestic violence prevention program, work regularly if

able to do so and pay any court-ordered financial obligations. These general conditions of release all meet the requirements of statutory law that the conditions must be reasonably related to the offender's crime or personal history and characteristics, or the need to safeguard the public welfare. In addition to these general conditions of release, we frequently impose one or more special conditions that again must be consistent with our statutory authority. Such a special condition may be a requirement to temporarily reside in a community corrections center, a restriction from certain employment or a requirement that the offender participate in substance abuse treatment. In imposing a special condition for a D.C. supervised releasee, we must consider whether the condition poses no greater deprivation of liberty than is reasonably necessary to satisfy the goals of deterrence, protection of the public and offender rehabilitation. Though this same requirement is not present for setting a special condition of release for parolees, we acknowledge that this analysis is beneficial for these offenders as well.

We may impose a special condition of release before the offender's release from custody or sometime thereafter. In some cases, a change of circumstances or a deterioration of the offender's progress under supervision calls for a modification of release conditions during the supervision period. Unless an immediate implementation of the new condition is required to protect the public or assist the offender, the offender has a 10-day period to object in writing to a special condition requested by the supervision officer and we will postpone implementation of the condition until we consider the objections. In the proposed rules, we provide additional procedures when we are considering special conditions of release for some sex offenders on parole or supervised release. For an offender convicted of a sex offense, we may impose a special condition for sex offender evaluation and treatment after using the notice and 10-day comment period noted above. If the person has not been convicted of a sex offense and there is

information that indicates an evaluation for sex offender treatment is reasonably necessary to protect the public, deter the offender from further crimes or give the offender appropriate care, we may first impose a special condition for sex offender evaluation after using the notice and 10-day comment period procedure. Following the evaluation, if we determine that sex offender treatment may be necessary and the offender objects to the proposed treatment, we will conduct a hearing for the offender to review the need for sex offender treatment. At the hearing, the offender will have the right to counsel, the opportunity to testify and present witnesses and evidence, and, in some cases, the right to confront and cross-examine a person who has given information regarding the proposed imposition of the treatment condition. We will determine whether the opportunity for confrontation and cross-examination should be granted to the offender on a case-by-case basis. In every case, we will expect that the supervision officer who requests the special condition on sex offender treatment, or an appropriate substitute officer, will be present at the hearing for possible questioning. After the hearing, we will make written findings concerning the decision on imposing the treatment condition. There may be other circumstances in which we may follow the same hearing procedure if we intend to impose a particular condition of release for a sex offender.

The proposed rules provide that any offender -- whether on parole or supervised release, or serving a D.C. Code or U.S. Code sentence -- has the right to appeal the modification of release conditions to the Commission within 30 days of the notice of action, with the limits set out in the proposed rules (i.e., appeal is not available if the offender accepted an expedited revocation offer or asked for the modified conditions). The proposed rules thereby expand the availability of an administrative appeal to D.C. parolees regarding post-release modifications of release conditions. The opportunity for this appeal is not required by statutory law. We are

limiting the availability of the appeal for D.C parolees to post-release modifications so that we do not invite more appeals than the Commission can reasonably process. For a D.C. offender on supervised release, the proposed rules clarify that the supervised releasee has the procedural right of appeal that is guaranteed by D.C. Code 24-403.01(b)(6)(A) for imposing or modifying release conditions. This procedural right for a D.C. supervised releasee was not addressed in our last rulemaking on release conditions in 2003.

Executive Order 13132

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

The rules will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–Congressional Review Act)

These rules are not “major rules” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act, now codified at 5 U.S.C. 804(2). The rules will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Proposed Rules

Accordingly, the U. S. Parole Commission proposes to adopt the following amendment to 28 CFR Part 2.

PART 2 - [AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Revise § 2.40 paragraph (b)(1) to read as follows:

§ 2.40 Conditions of Release.

* * * * *

(b) Special conditions of release. (1) The Commission may impose a condition other than a condition described in § 2.204(a)(3)-(6) if it decides that the condition is reasonably related to: the nature and circumstances of the offense and the releasee’s history and characteristics; or the need to deter the releasee from criminal conduct; or the need to protect the public from further crimes; or the need to provide the releasee with training or correctional treatment or medical care. In choosing a condition the Commission will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation.

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3. Revise §2.85 paragraphs (b) and (c) to read as follows:

§ 2.85 Conditions of release.

* * * * *

(b) Special conditions of release. The Commission may impose a condition other than a condition described in § 2.204(a)(3)-(6) if it decides that the condition is reasonably related to: the nature and circumstances of the offense and the releasee’s history and characteristics; or the need to deter the releasee from criminal conduct; or the need to protect the public from further crimes; or the need to provide the releasee with training or correctional treatment or medical care. In choosing a condition the Commission will also consider whether the condition involves

no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation.

(c) Changing conditions of release. The provisions of § 2.204(c) apply to post-release modifications in release conditions, including an appeal under the procedures of § 2.26. Appeal is not available for the original imposition of conditions upon parole release. An appeal of a modification of release conditions as part of a revocation decision is governed by § 2.105(g).

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4. Revise § 2.204 to read as follows:

§ 2.204 Conditions of supervised release.

(a)(1) General conditions of release and notice by certificate of release. All persons on supervision and under our jurisdiction must follow the conditions of release described in paragraphs (a) (3)-(6) of this section. These conditions are necessary to satisfy the purposes of release conditions stated in 18 U.S.C. 3583(d) and 3553(a). Your certificate of release informs you of these conditions and other special conditions that we have imposed for your supervision.

(2) Refusing to sign the certificate of release does not excuse compliance. If you refuse to sign the certificate of release, you must still follow the conditions listed in the certificate.

(3) Report your arrival. After you are released from custody, you must go directly to the district named in the certificate. You must appear in person at the supervision office and report your home address to the supervision officer. If you cannot appear in person at that office within 72 hours of your release because of an emergency, you must report to the nearest CSOSA or U.S. probation office and obey the instructions given by the duty officer. If you were initially

released to the custody of another authority, you must follow the procedures described in this paragraph after you are released from the custody of the other authority.

(4) Provide information to and cooperate with the supervision officer. (i) Written reports.

Between the first and third day of each month, you must make a written report to the supervision officer on a form provided to you. You must also report to the supervision officer as that officer directs. You must answer the supervision officer completely and truthfully when the officer asks you for information.

(ii) Promptly inform the supervision officer of an arrest or questioning, or a change in your job or address. Within two days of your arrest or questioning by a law-enforcement officer, you must inform your supervision officer of the contact with the law-enforcement officer. You must also inform your supervision officer of a change in your employment or address within two days of the change.

(iii) Allow visits of the supervision officer. You must allow the supervision officer to visit your home and workplace.

(iv) Allow seizure of prohibited items. You must allow the supervision officer to seize any item that the officer reasonably believes is an item you are prohibited from possessing (for example, an illegal drug or a weapon), and that is in plain view in your possession, including in your home, workplace or vehicle.

(v) Take drug or alcohol tests. You must take a drug or alcohol test whenever your supervision officer orders you to take the test.

(5) Prohibited conduct. (i) Do not violate any law. You must not violate any law and must not associate with any person who is violating any law.

(ii) Do not possess a firearm or dangerous weapon. You must not possess a firearm or other dangerous weapon or ammunition.

(iii) Do not illegally possess or use a controlled substance or drink alcohol to excess.

You must not illegally possess or use a controlled substance and you must not drink alcoholic beverages to excess. You must stay away from a place where a controlled substance is illegally sold, used or given away.

(iv) Do not leave the district of supervision without permission. You must not leave the district of supervision without the written permission of your supervision officer.

(v) Do not associate with a person with a criminal record. You must not associate with a person who has a criminal record without the permission of your supervision officer.

(vi) Do not act as an informant. You must not agree to act as an informant for any law-enforcement officer without the prior approval of the Commission.

(6) Additional conditions. (i) Work. You must make a good faith effort to work regularly, unless excused by your supervision officer. You must support your children and any legal dependent. You must participate in an employment-readiness program if your supervision officer directs you to do so.

(ii) Pay court-ordered obligations. You must make a good faith effort to pay any fine, restitution order, court costs or assessment or court-ordered child support or alimony payment. You must provide financial information relevant to the payment of such a financial obligation when your supervision officer asks for such information. You must cooperate with your supervision officer in setting up an installment plan to pay the obligation.

(iii) Participate in a program for preventing domestic violence. If the term of supervision results from your conviction for a domestic violence crime, and such conviction is your first conviction

for such a crime, you must attend, as directed by your supervision officer, an approved offender-rehabilitation program for the prevention of domestic violence if such a program is readily available within 50 miles of your home.

(iv) Register if you are covered by a special offender registration law. You must comply with any applicable special offender registration law, for example, a law that requires you to register as a sex-offender or a gun-offender.

(v) Provide a DNA sample. You must provide a DNA sample, as directed by your supervision officer, if collection of such sample is authorized by the DNA Analysis Backlog Elimination Act of 2000.

(vi) Comply with a graduated sanction. If you are supervised by CSOSA, you must comply with the sanction(s) imposed by the supervision officer and as established by an approved schedule of graduated sanctions. We may decide to begin revocation proceedings for you even if the supervision officer has earlier imposed a graduated sanction for your alleged violation of a release condition.

(vii) Inform another person of your criminal record or personal history as directed by the supervision officer. You must inform a person of your criminal record or personal history if your supervision officer determines that your relationship or contact with this person may pose a risk of harm to this person. The supervision officer may direct you to give this notice and then confirm with the person that you obeyed the officer's direction. The supervision officer may also give the notice directly to the person.

(b)(1) Special conditions of release. We may impose a condition of release other than a condition described in paragraphs (a)(3)-(6) of this section if we determine that imposing the condition is reasonably related to: the nature and circumstances of your offense and your history

and characteristics; or the need to deter you from criminal conduct; or the need to protect the public from further crimes; or the need to provide you with training or correctional treatment or medical care. In choosing a condition we will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation.

(2) The following are examples of special conditions that we may impose –

- (i) That you reside in and/or participate in a program of a community corrections center for all or part of the period of supervision;
- (ii) That you participate in a drug- or alcohol-treatment program, and not use alcohol and other intoxicants at any time;
- (iii) That you remain at home during hours you are not working or going to school, and have your compliance with this condition checked by telephone or an electronic signaling device; and
- (iv) That you permit a supervision officer to conduct a search of your person, or of any building, vehicle or other area under your control, at such time as that supervision officer decides, and to seize any prohibited items the officer, or a person assisting the officer, may find.

(3) If we require your participation in a drug-treatment program, you must submit to a drug test within 15 days of your release and to at least two other drug tests, as determined by your supervision officer. If we decide not to impose the special condition on drug-treatment, because available information indicates you are a low risk for substance abuse, this decision constitutes good cause for suspending the drug testing requirements of 18 U.S.C. 3583(d).

(c)(1) Changing conditions of release. We may at any time change or add to the conditions of release if we decide that such action is consistent with the criteria described in paragraph (b)(1) of this section.

(2) Objecting to the proposed change. If we impose a special condition for you upon your release, you may appeal the imposition of the special condition as provided in § 2.220 within 30 days of the date on the notice of action. If we propose to change your conditions after your release, we will notify you of the proposed change, the reason for the proposed change and give you 10 days from your receipt of the notice to comment on the proposed change. You can waive the 10-day comment period and agree to the proposed change. You are not entitled to the notice and 10-day comment period if: (i) you ask for the change; (ii) we make the change as part of a revocation hearing or an expedited revocation decision; or (iii) we find that the change must be made immediately to prevent harm to you or another person. We will make a decision on the proposed change within 21 days (excluding holidays) after the 10-day comment period ends, and notify you in writing of the decision.

(3) Appeal of a change in conditions made after release. You may appeal the change in your conditions as provided in § 2.220 and under the procedures of § 2.26, unless you asked for the change or we make the change as part of an expedited revocation decision.

(d)(1) Imposing special conditions for a sex offender. If your criminal record includes a conviction for a sex offense, we may impose a special condition that you undergo an evaluation for sex offender treatment, and participate in a sex offender treatment program as directed by your supervision officer. We will impose the sex offender evaluation and treatment conditions using the procedures described in paragraph (c) of this section. For purposes of applying the procedures described in this section, we use the definitions of “sex offense” and “convicted” listed at 42 U.S.C. 16911(5) and (8).

(2) (i) If your criminal record does not include a conviction for a sex offense, we may decide that your current behavior or your personal history shows that you should be evaluated for sex

offender treatment. In this case, we may impose a special condition requiring an evaluation for sex offender treatment using the procedures described in paragraph (c) of this section.

(ii) At the conclusion of the evaluation, if sex offender treatment appears warranted and you object to such treatment, we will conduct a hearing to consider whether you should be required to participate in sex offender treatment. You will be given notice of the date and time of the hearing and the subject of the hearing, disclosure of the information supporting the proposed action, the opportunity to testify concerning the proposed action and to present evidence and the testimony of witnesses, the opportunity to be represented by retained or appointed counsel and written findings regarding the decision. You will have the opportunity to confront and cross-examine persons who have given information that is relied on for the proposed action, if you ask that these witnesses appear at the hearing, unless we find good cause for excusing the appearance of the witness.

(iii) A hearing is not required if we impose the sex offender treatment condition at your request, as part of a revocation hearing or an expedited revocation decision, or if a hearing on the need for sex offender treatment (including a revocation hearing) was conducted within 24 months of the request for the special condition.

(iv) In most cases we expect that a hearing conducted under this paragraph will be held in person with you, especially if you are supervised in the District of Columbia. But we may conduct the hearing by videoconference.

(v) You may appeal the imposition of a special condition requiring sex offender treatment as provided in § 2.220 unless you asked for the change or we make the change as part of an expedited revocation decision.

(3) Whether your criminal record includes a conviction for a sex offense or not, if we propose to impose other restrictions on your activities, we will use either the notice and comment procedures of paragraph (c) or the hearing procedures of this paragraph, depending on a case-by-case evaluation of the releasee's interest and the public interest.

(e) Application of release conditions to an absconder. If you abscond from and evade supervision, you will stop the running of your supervised release term as of the date of your absconding and you will prevent the expiration of your supervised release term. But you will still be bound by the conditions of release while you are an absconder, even after the original expiration date of your supervised release term. We may revoke the term of supervised release for a violation of a release condition that you commit before the revised expiration date of the supervised release term (the original expiration date plus the time you were an absconder).

(f) Revocation for certain violations of release conditions. If we find after a revocation hearing that you have illegally possessed a controlled substance, refused to comply with drug testing, possessed a firearm or tested positive for illegal controlled substances more than three times during one year, we must revoke the term of supervised release and impose a prison term as provided at § 2.218. When considering mandatory revocation for repeatedly failing a drug test, we must consider appropriate alternatives to incarceration.

(g) Supervision officer guidance. We expect you to understand the conditions of release according to the plain meaning of the conditions. You should ask for guidance from your supervision officer if there are conditions you do not understand and before you take actions that may risk violation of your release conditions. The supervision officer may instruct you to refrain from particular conduct, or to take specific actions or to correct an existing violation of a release

condition. If the supervision officer directs you to report on your compliance with an officer's instruction and you fail to do so, we may consider that your failure is itself a release violation.

(h) Definitions. As used in this section, the term –

(1) Supervision officer means a community supervision officer of the District of Columbia Court Services and Offender Supervision Agency or a United States probation officer;

(2) Domestic violence crime has the meaning given that term by 18 U.S.C. 3561, except that the term “court of the United States” as used in that definition shall be deemed to include the Superior Court of the District of Columbia;

(3) Approved offender-rehabilitation program means a program that has been approved by CSOSA (or the United States Probation Office) in consultation with a State Coalition Against Domestic Violence or other appropriate experts;

(4) Certificate of release means the certificate of supervised release delivered to the releasee under § 2.203; and

(5) Firearm has the meaning given by 18 U.S.C. 921.

(6) Sex offense means any “registration offense” as that term is defined at D.C. Code 22-4001(8) and any “sex offense” as that term is defined at 42 U.S.C. 16911(5).

5. Revise the first sentence of § 2.220 to read as follows:

§ 2.220 Appeal.

A supervised releasee may appeal a decision to revoke supervised release, impose a term of imprisonment or a new term of supervised release after revocation, or impose or modify a condition of supervised release. * * *

Isaac Fulwood

Chairman, U.S. Parole Commission

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