

amendment implements a Department of Defense Instruction that permits the U.S. Parole Commission to place a military prisoner who is released from a Federal civilian prison under "mandatory supervision as if on parole" until the expiration of the sentence imposed, if the Commission determines that such supervision is necessary for the orderly transition of the offender back into community.

DATES: *Effective Date:* April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Former Department of Defense regulations did not permit any military prisoner who was released by operation of law due to good time credits to be subject to supervision in the community for the remainder of the imposed sentence. This was in contrast to the requirement that applies to Federal civilian prisoners who are eligible for but denied parole. Prisoners sentenced by military courts martial and then transferred to a Federal institution come under the exclusive jurisdiction of the U.S. Parole Commission for parole purposes pursuant to 10 U.S.C. 858. Thus, in the absence of any rule authorizing post-release supervision for military mandatory releasees, there was a gap in the Commission's authority to require post-release supervision for military prisoners mandatorily released on good time from institutions operated by the Federal Bureau of Prisons. (The Bureau of Prisons considered former 18 U.S.C. 4164—which authorizes mandatory release supervision for federal civilian prisoners eligible for parole—to be inapplicable to military prisoners who committed their crimes on or after November 1, 1987.) Thus, if the Commission denied parole and continued a military prisoner to the expiration of his sentence, the Commission was not able to supervise the offender. However, if the Commission paroled the military prisoner prior to the mandatory release date, the Commission could supervise the military offender just as any other parolee to the expiration of the prisoner's sentence.

At the request of the Attorney General of the United States, the Department of Defense has amended its regulations regarding the mandatory release of military prisoners, including prisoners in the custody of the Bureau of Prisons.

See DoD Instruction 1325.7, "Administration of Military Correctional Facilities and Clemency and Parole Authority," July 17, 2001. These regulations generally allow for the supervision of military prisoners mandatorily released with good time deductions.¹ In the regulations, the Department of Defense adopted a policy to use mandatory supervision in all cases except where the Service Clemency and Parole Boards find it inappropriate. The regulations also permit the Parole Commission to place military prisoners who are in Federal civilian custody on "mandatory supervision" after they are mandatorily released, if the Commission finds that such supervision is appropriate "to provide an orderly transition to civilian life for released prisoners and to protect the communities into which the prisoners are released." See DoD Instruction 1325.7 (6.20.8). However, the DoD Instruction is silent as to whether the Commission should, as the Department of Defense has done, adopt a general presumption that mandatory supervision is appropriate. Additionally, the new DoD instruction may be applied only to offenders who committed their crimes 30 days or more after the rule change. Therefore, under the terms of the DoD instruction, the Commission can only require supervision if the prisoner committed his crime on or after August 16, 2001.

The Commission is adopting a paragraph at the end of 28 CFR 2.35 so that the Commission's rules will conform to the Department of Defense regulations and policy regarding the mandatory release of military prisoners. Pursuant to the DoD Instruction, the amended rule states that when the Commission orders a military offender continued to expiration, the military prisoner will be placed on "mandatory supervision" until the expiration of his sentence if the Commission finds that the DoD criteria are met. The Commission is adopting this rule in order to give military offenders incarcerated in federal civilian prisons notice that, if the Commission denies the prisoner parole and continues the prisoner to the expiration of the prisoner's sentence, the prisoner may be required to serve a period of mandatory supervision after the prisoner's release. Although the Commission already has the authority under Department of Defense regulations to order mandatory

supervision for military prisoners who committed their offenses on or after August 16, 2001, this rule further clarifies the Commission's authority and explains the Commission's general statement of policy regarding mandatory supervision.

The amended rule also includes the presumption that supervision is appropriate for all military mandatory releasees unless case-specific factors indicate that supervision is not appropriate. See DoD Instruction 1325.7 (6.20.1). The Commission is adopting this presumption for several reasons. First, the presumption in favor of supervision conforms with the presumption in the DoD Instruction. The inclusion of the presumption in favor of supervision after mandatory release will thus result in a uniform application of the Instruction among military offenders released from military and civilian institutions. Most importantly, the Commission agrees with the Department of Defense's general assessment that supervision in the community is, for the majority of cases, a highly effective technique to provide for a transition into the community and to protect the communities into which the prisoners are released. Therefore, the rule states that mandatory supervision shall be presumed unless the Commission finds case-specific factors illustrating that such supervision is inappropriate.

Finally, the final rule makes one change from the interim rule regarding early termination of mandatory supervision. The Commission has refrained from making early termination from supervision decisions for military offenders because it has considered this authority to be vested in the appropriate military clemency board. See Parole Commission Rules and Procedures Manual 2.43-04. Accordingly, the Commission is clarifying the final sentence of the rule, noting that the authority to terminate a military prisoners mandatory supervision rests with the appropriate military clemency board. The rule now makes it clear that a prisoner on "mandatory supervision" will be subject to the conditions of parole at 28 CFR 2.40 unless the appropriate military clemency board takes action terminating the prisoner's supervision or sentence.

Implementation

This final rule will be implemented for any military offender mandatorily released on good time deductions from a Federal civilian prison if the offender committed his offense after August 15, 2001.

¹ Mandatory supervision for military offenders differs from mandatory release for "old law" U.S. Code offenders under 18 U.S.C. 4164 since such supervision runs to the full term without the 180-day reduction that applies to civilian, "old law" mandatory releasees.