

DEPARTMENT OF JUSTICE**Parole Commission****28 CFR Part 2****Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code**

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its rules which govern the hearing process for District of Columbia parolees and supervised releasees who are arrested on warrants charging them with violations which may result in revocation and return to prison. The amended rules implement a consent decree issued by the U.S. District Court for the District of Columbia, in *Long v. Gaines*, Civil Action No. 01-0010 (EGS), dated December 17, 2002. This consent decree obliges the Commission to adopt as final rules the interim rules which the Commission published on January 18, 2002, and requires certain additional provisions relating to District of Columbia parolees who are arrested in jurisdictions outside the District of Columbia. The Commission has decided, in addition, to adopt the same procedures for District of Columbia supervised releasees. These procedures are intended to give the Commission a swift and efficient revocation hearing process which will minimize the Commission's use of the jail housing resources of the District of Columbia Department of Corrections, without impeding the Commission's ability to make a thorough assessment of the charges in each case.

DATES: This final rule will take effect February 24, 2003.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959. Please note that questions about this **Federal Register** publication are welcome, but inquiries concerning individual cases cannot be answered.

SUPPLEMENTARY INFORMATION: In *Long v. Gaines*, 167 F. Supp. 2d 75 (D.D.C. 2001), the U.S. District Court for the District of Columbia held that the Parole Commission's rules governing the revocation process for District of Columbia parolees were unconstitutional with respect to the time deadlines for making determinations of probable cause and completing the revocation process. On

December 17, 2002, the Court vacated its orders and judgment in *Long v. Gaines*, and entered a consent decree by which the Commission has agreed to withdraw its appeal to the U.S. Court of Appeals for the District of Columbia Circuit, and to adopt as final rules the rules which it adopted to carry out the compliance plan which the district court approved on November 21, 2001. The consent decree also includes certain additional provisions regarding DC Code parolees who are arrested in jurisdictions outside the District of Columbia.

Although the revocation hearing process adopted by these amended rules imposes deadlines for making probable cause and final revocation decisions which are shorter than the Commission believes to be required by the Constitution, the Commission believes that this approach makes sense in the context of a municipal correctional system with seriously strained jail housing resources. The shorter the average stay of each arrested parolee prior to a final disposition of the revocation charges, the faster the parolee can either be released or transferred to a Bureau of Prisons facility, thus limiting the total parolee population in the custody of the DC Department of Corrections at any given time. The most important feature of the revocation system which the Commission has developed as a result of *Long v. Gaines* is the rule which requires the scheduling of a fixed date for the revocation hearing as soon as probable cause is found, and which prohibits postponement requests submitted to the Commission less than fifteen days before a scheduled hearing except for compelling reasons. By reducing the possibilities for tactical delays which in the past made the Commission's revocation caseload in the District of Columbia nearly unmanageable, this rule permits the Commission to process a very substantial caseload in an orderly manner. An efficient revocation process also maximizes the Commission's ability to revoke the paroles of high-risk parole violators and expeditiously remove them from the community.

Under these amended rules, an examiner of the Commission will make a determination of probable cause no later than five days from arrest, and will hold a revocation hearing not later than 65 days from arrest. The examiner will also have the authority to order the release of the parolee if no probable cause is found, and to set a date for the revocation hearing if probable cause is found. The Commission will issue a final decision no later than 21 days from

the revocation hearing (*i.e.*, 86 days from arrest). However, in the case of a parolee who admits all charges, waives the right to a local revocation hearing, or is convicted of a new crime, the Commission will conduct an "institutional revocation hearing" as provided in its original rules. The amended rules also require the Commission to ensure that: (1) Each parolee is given notice of the time and purpose of the probable cause hearing and the charged violations; (2) each parolee is provided, prior to the revocation hearing, with disclosure of the evidence to be relied upon by the Commission in determining whether parole was violated and, if so, whether to revoke parole; and (3) each parolee's arguments and evidence are given to the Commission before it renders a final decision.

With respect to parolees arrested outside the District of Columbia, but within the Washington DC Metropolitan Area, and who have not sustained new criminal convictions, the rules provide that an examiner of the Commission will conduct a probable cause hearing within five days of the parolee's arrival at a facility where probable cause hearings are conducted. Normally, the probable cause hearing will be conducted at the DC Jail following the transfer of the parolee from the local jail facility (in Maryland or Virginia) to which the parolee was taken immediately following arrest. The U.S. Marshals Service has issued instructions to all of its U.S. Marshals regarding timely notifications and transfers of parolees for probable cause hearings, which should make it possible for this new procedure to be successful.

Finally, the Commission has decided to extend the revocation procedures set forth in these rules to District of Columbia supervised release cases, even though District of Columbia supervised releasees are not members of the *Long v. Gaines* class and are not covered by the consent decree of December 17, 2002. (Sentences imposed for D.C. Code crimes committed within the District of Columbia since August 5, 2000, no longer include parole, but instead carry terms of supervised release which come under the Commission's jurisdiction.) In the Commission's judgment, these rules provide the most efficient revocation system for both parolees and supervised releasees in the District of Columbia, and correspondingly the best means of protecting the public safety.

Implementation

The Commission's regulations at 28 CFR 2.98 through 2.105, and 28 CFR 2.211 through 2.218, as amended by this