

## § 2.43

of continuous supervision and annually thereafter. The probation officer shall submit such additional reports as the Commission may direct.

[51 FR 11017, Apr. 1, 1986]

### § 2.43 Early termination.

(a)(1) Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence.

(2) A committed youth offender sentenced to a term of more than one year may not be granted an early termination of jurisdiction earlier than after one year of continuous supervision on parole. When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review will also be conducted whenever early termination is recommended by the supervising probation officer.

(c)(1) Five years after release on supervision, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. Such hearing may be conducted by a hearing examiner or other official designated by the Regional Commissioner. In calculating such five-year period, there shall not be included any period of release on parole prior to the most recent release or any period served in confinement on any other sentence.

(2) If supervision is not terminated under paragraph (c)(1) of this section the parolee may request a hearing annually thereafter, and a hearing shall

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be conducted with respect to termination of supervision not less frequently than biennially.

(3) A parolee may appeal an adverse decision under paragraphs (c)(1) or (c)(2) of this section pursuant to § 2.26 or § 2.27 as applicable.

(d) The Regional Commissioner shall have authority to make decisions under this section pursuant to the guidelines set forth below; except that in the case of a parolee classified under the provisions of § 2.17, an affirmative decision to terminate supervision under paragraph (b) of this section, or a decision to terminate or continue supervision under paragraph (c) of this section shall be made pursuant to the provisions of § 2.17.

(e) *Early termination guidelines.* In determining whether to grant early termination from supervision, the Commission shall apply the following guidelines:

(1) Absent case-specific factors to the contrary, termination of supervision shall be considered indicated when:

(i) A parolee originally classified in the very good risk category (pursuant to § 2.20) has completed two continuous years of supervision free from any indication of new criminal behavior or serious parole violation; and

(ii) A parolee originally classified in other than the very good risk category (pursuant to § 2.20) has completed three continuous years of supervision free from any indication of new criminal behavior or serious parole violation.

NOTE: As used in this section, an indication of new criminal behavior includes a new arrest if supported by substantial evidence of guilt, even if no conviction or parole revocation results.

(2) Decisions to continue the parolee under supervision past the period indicated above may be made where case-specific factors justify a conclusion that continued supervision is needed to protect the public welfare. Such case-specific factors may relate to the current behavior of the parolee (for example, a parolee whose behavior begins to deteriorate as the normally expected time for termination approaches) or to the parolee's background (for example, a parolee with a history of repetitive assaultive conduct or substantial involvement in large scale or organized

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criminal activity). In such cases, an additional period of supervision prior to termination of jurisdiction may be warranted.

(3) Decisions to terminate supervision prior to completion of the three year period specified in paragraph (e)(1)(ii) of this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score as originally calculated. However, termination of supervision prior to the completion of two years of difficulty-free supervision will not be granted unless case-specific factors clearly indicate that continued supervision would be counter-productive.

(4) Cases with pending criminal charge(s) shall not be terminated from supervision until disposition of such charge(s) is known.

(5) After five continuous years of supervision, decisions to terminate will be made in accordance with subsection (c) of this rule.

[46 FR 28649, May 28, 1981, as amended at 46 FR 35639, July 10, 1981; 49 FR 44098, Nov. 2, 1984; 50 FR 36424, Sept. 6, 1985; 68 FR 41530, July 14, 2003]

### § 2.44 Summons to appear or warrant for retaking of parolee.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1) Issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing.

(2) Issue a warrant for the apprehension and return of the offender to custody.

A summons or warrant may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense and awaiting disposition of the charge,

issuance of a summons or warrant may be withheld, a warrant may be issued and held in abeyance, or a warrant may be issued and a detainer may be placed.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. 4164, such summons or warrant may be issued only within the maximum term or terms, less one hundred eighty days. A summons or warrant shall be considered issued when signed and either—

(1) Placed in the mail or

(2) Sent by electronic transmission to the intended authorities.

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to revocation of parole and forfeiture of time pursuant to § 2.52(c).

(e) A summons or warrant issued pursuant to this section shall be accompanied by a statement of the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear for a revocation hearing. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 84055, Dec. 22, 1980; 54 FR 11688, Mar. 21, 1989; 63 FR 25771, May 11, 1998]

### § 2.45 Same; youth offenders.

(a) In addition to the issuance of a summons or warrant pursuant to § 2.44 of this part, the Commission or a member thereof, when of the opinion that a youth offender will be benefited by further treatment in an institution or other facility, may direct his return to custody or issue a warrant for his apprehension and return to custody.

(b) Upon his return to custody, such youth offender shall be scheduled for a revocation hearing.