

§ 2.105

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or local revocation hearing, a Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of a Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, a Commissioner may, upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Such subpoenas may also be issued at the discretion of a Commissioner if deemed necessary for the orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district on which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt. 18 U.S.C. 4214 (1976).

[65 FR 45888, July 26, 2000, as amended at 67 FR 2571, Jan. 18, 2002]

§ 2.105 Revocation decisions.

(a) Whenever a parolee is summoned or retaken by the Commission, and the

Commission finds by a preponderance of the evidence that the parolee has violated one or more conditions of parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision, including where appropriate:

(i) Reprimand the parolee;

(ii) Modify the parolee's conditions of release; or

(iii) Refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine whether immediate reparole is warranted or whether parole should be terminated pursuant to D.C. Code 24-406(a). Termination of parole shall return the parolee to prison. If the parolee is returned to prison, the Commission shall also determine a presumptive release date pursuant to § 2.81.

(c) Decisions under this section shall be made by one Commissioner, except that a decision to override an examiner panel recommendation shall require the concurrence of two Commissioners. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the parolee on the parole violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

(d) Pursuant to D.C. Code 24-406(a), a parolee whose parole is revoked by the Commission shall receive no credit toward his sentence for time spent on parole, including any time the parolee may have spent in confinement on other sentences (or in a halfway house as a condition of parole) prior to the execution of the Commission's warrant.

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). This exception from D.C. Code 24-406(a) does not apply to prisoners serving sentences under the

D.C. Youth Rehabilitation Act, to which D.C. Code 24-406(a) is fully applicable.

(f) In determining whether to revoke parole for non-compliance with a condition requiring payment of a fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

(g) A parolee may appeal a decision made under this section to revoke parole, to grant or deny reparole, or to modify the conditions of release. The provisions of §2.26 on the time limits for filing and deciding the appeal, the grounds for appeal, the format of the appeal, the limits regarding the submission of exhibits, and voting requirements apply to an appeal submitted under this paragraph.

[65 FR 45888, July 26, 2000, as amended at 67 FR 2571, Jan. 18, 2002; 68 FR 41531, July 14, 2003; 69 FR 68793, Nov. 26, 2004]

§2.106 Youth Rehabilitation Act.

(a) *Regulations governing YRA offenders and D.C. Code FYCA offenders.* Unless the judgment and commitment order provides otherwise, the provisions of this section shall apply to an offender sentenced under the Youth Rehabilitation Act of 1985 (D.C. Code 24-901 *et seq.*) (YRA) who committed his offense before 5 p.m., August 11, 2000, and a D.C. Code offender sentenced under the former Federal Youth Corrections Act (former 18 U.S.C. 5005 *et seq.*) (FYCA). An offender sentenced under the YRA who committed his offense (or who continued to commit his offense) on or after 5 p.m., August 11, 2000, is not eligible for release on parole, but may be terminated from a term of supervised release before the expiration of the term and receive a certificate setting aside the conviction under §2.208(f). *See* D.C. Code 24-904(c) and 24-906(c).

(b) *Application of this subpart to YRA offenders.* All provisions of this subpart that apply to adult offenders also apply

to YRA offenders unless a specific exception is made for YRA (or youth) offenders.

(c) *No further benefit finding.* If there is a finding that a YRA offender will derive no further benefit from treatment, such prisoner shall be considered for parole, and for any other action, exclusively under the provisions of this subpart that are applicable to adult offenders. Such a finding may be made pursuant to D.C. Code 24-905 by the Department of Corrections or by the Bureau of Prisons, and shall be promptly forwarded to the Commission. However, if the finding is appealed to the sentencing judge, the prisoner will continue to be treated under the provisions pertaining to YRA offenders until the judge makes a final decision denying the appeal.

(d)(1) *Program plans and using program achievement to set the parole date.* At a YRA prisoner's initial parole hearing, a program plan for the prisoner's treatment shall be submitted by institutional staff and reviewed by the hearing examiner. Any proposed modifications to the plan shall be discussed at the hearing, although further relevant information may be presented and considered after the hearing. The plan shall adequately account for the risk implications of the prisoner's current offense and criminal history and shall address the prisoner's need for rehabilitational training. The program plan shall also include an estimated date of completion. The criteria at §2.64(d) for successful response to treatment programs shall be considered by the Commission in determining whether the proposed program plan would effectively reduce the risk to the public welfare.

(2) The youth offender's response to treatment programs and program achievement shall be considered with other relevant factors, such as the offense and parole prognosis, in determining when the youth offender should be conditionally released under supervision. *See* §2.64(e). The guidelines at §2.80(k)-(m) on awarding superior program achievement and the subtraction of any award in determining the total guideline range shall not be used in the decision.