



Department of Justice

STATEMENT

OF

ISAAC FULWOOD
CHAIRMAN
UNITED STATES PAROLE COMMISSION

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND
THE DISTRICT OF COLUMBIA

COMMITTEE ON OVERSIGHT AND GOVERNMENTAL REFORM
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

“LOCAL ROLE OF THE U.S. PAROLE COMMISSION”

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Thank you for this opportunity to discuss the policies and operations of the United States Parole Commission. I commend the Subcommittee for holding this hearing.

Let me begin by briefly outlining the history of the Parole Commission and what it does.

The United States Parole Commission was established by bipartisan legislation enacted by Congress in the mid-1970s, when federal sentences were indeterminate.¹ Under that indeterminate system, the sentencing judge imposed a maximum prison term, and for

most offenders the Commission determined the offender's release date using its own decision-making guidelines.

Less than 10 years after the establishment of the Commission, Congress dramatically revised the federal sentencing system. The Sentencing Reform Act of 1984 required federal judges to sentence federal offenders using sentencing guidelines developed by the United States Sentencing Commission.² The Act abolished parole and replaced it with a fixed term of supervised release to be imposed by the sentencing judge and served by the offender after completing the prison term imposed for the crime. The abolition of parole took effect when the initial set of sentencing guidelines took effect – on November 1, 1987.

The Sentencing Reform Act also abolished the Parole Commission. The legislation, however, did not call for the abolition of the Commission to take effect at the same time parole was abolished. Instead, in recognition of the need to handle the cases of offenders convicted of crimes while parole was still in effect, the legislation called for the Commission to be abolished five years after the guidelines took effect, that is, on November 1, 1992. It was expected

that the functions of the Parole Commission – granting parole, determining and modifying the conditions of parole, and revoking parole – would apply to a diminishing class of federal offenders sentenced under the old law.³ For those old-law offenders not released by the Commission before it expired, the legislation, in what is called the “winding-down” provision, directed the Commission to set a release date for each such offender before going out of existence. The legislation, however, made no provision for periodic hearings for such offenders after the Commission went out of business.

The substantial decline in the number of old-law federal offenders that was expected did not materialize. People continued to be convicted of offenses committed before November 1, 1987, and many old-law offenders were not released on parole in the five-year transition period, and with good reason. For many old-law offenders, parole within that five-year period would have resulted in premature release to the community of persons who committed extremely serious crimes or were clearly dangerous. Further, Congress recognized that, by depriving offenders of periodic review of their cases and the

opportunity for an earlier release date, the Sentencing Reform Act raised ex post facto questions under the Constitution.⁴

These considerations led Congress to change the expiration date for the Commission from November 1, 1992 to November 1, 1997.⁵ Since then, Congress has extended the expiration date several times, first to November 1, 2002, next to November 1, 2005, then to November 1, 2008, and most recently to November 1, 2011.⁶

While Congress was, from time to time, extending the life of the Commission, it was also giving the Commission new duties. The most significant new duties concerned offenders convicted in the District of Columbia Superior Court. The National Capital Revitalization and Self-Government Improvement Act of 1997, together with related District of Columbia legislation, instituted reforms in the District of Columbia's sentencing system that in many respects are similar to the reforms in federal law made by the Sentencing Reform Act.

As a result of those legislative efforts, the Parole Commission became the paroling authority for parole-eligible District of Columbia offenders.⁷ The District of Columbia abolished parole effective August 5, 2000 and replaced it with supervised release. The Parole

Commission was given a role in the District of Columbia supervised release process. While the Superior Court of the District of Columbia sets an offender's term of supervised release, the Parole Commission determines and enforces the conditions of supervised release.⁸ The Commission's enforcement authority includes the power to revoke supervised release and send an offender to prison.⁹

There were also other additions to the Parole Commission's duties. Even before 1984, Congress had given the Commission the duty of granting or denying parole for United States citizens convicted of a crime in a foreign country who elected to return to the United States to complete their sentences.¹⁰ Congress subsequently determined that transferred offenders convicted of a foreign offense committed after October 31, 1987 should be treated as if sentenced in this country under the new federal sentencing system and therefore directed the Parole Commission to set release dates for such offenders by applying the sentencing guidelines promulgated by the United States Sentencing Commission.¹¹ This function is appropriately handled by an Executive Branch agency because the transfer treaties forbid judicial

reexamination in the receiving country of the sentence imposed by the country in which the offender was convicted.

The Commission also performs parole-related functions for certain military and state offenders. When the Department of Defense transfers military service personnel convicted under the Uniform Code of Military Justice to the custody of the Federal Bureau of Prisons, the Parole Commission is responsible for making parole-release and revocation decisions for them.¹² Finally, the Sentencing Reform Act gave the Parole Commission decision-making authority over state offenders who are on state probation or parole and are transferred to federal authorities under the witness security program.¹³

In summary, the duties of the Parole Commission today are (1) making parole release and revocation decisions for parole-eligible federal offenders; (2) making parole release and revocation decisions for parole-eligible District of Columbia Code offenders; (3) setting and enforcing the conditions of supervised release for District of Columbia Code offenders; (4) making release decisions for United States citizens convicted of a crime in another country who elect to return to the

United States for service of sentence; and (5) making parole decisions for state prisoners in federal custody.

Most of the Parole Commission's day-to-day work involves District of Columbia offenders. At the end of Fiscal year 2008, nearly 13,000 persons were under Parole Commission jurisdiction; of that number, roughly 70% (9,236) were District of Columbia Code offenders. The Commission conducted 1,842 revocation hearings in FY 2008, and 87 % of them (1,608) were for District of Columbia Code offenders. In the 12 months ending August 31, 2009, roughly 90% of the 2,020 warrants issued by the Commission were for District of Columbia Code offenders.

The Parole Commission is a public safety agency. Under both federal and District of Columbia law, the Commission is charged with the duty of ensuring public safety. For example, the Commission is authorized by the District of Columbia Code to release an offender only if the Commission determines that the person's release "is not incompatible with the welfare of society." The Commission keeps in mind, for all of its decisions, that public safety is paramount.

For that part of the Commission's work involving parole-release decision-making, the Commission uses guidelines that look at the severity of the crime for which the person has been sentenced, the likelihood that the offender will commit another crime if released, and prison conduct and prison program performance. For District of Columbia offenders, the Commission makes parole-release decisions using a modified version of guidelines that were originally developed by the District of Columbia Board of Parole and that focus on the risk of further criminal conduct by the offender. The likelihood that an individual offender will recidivate is determined by use of a risk-prediction instrument that is based principally on the offender's criminal history. The Commission is presently involved in refining that instrument to improve its predictive power.

The part of the Commission's work that is growing is the setting and enforcement of conditions of supervision. In setting those conditions, the Commission considers a wide range of factors. Those factors include the history and characteristics of the offender, the nature and circumstances of the offender's crime, the need to deter criminal

conduct, and the need to provide an offender with educational or vocational training or medical care or other correctional treatment.

The Commission's goals in setting release conditions are, first, to protect the public, and, second, to give an offender an opportunity to become a productive and law-abiding member of the community. Day-to-day supervision of offenders is carried out by the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA). The Commission works closely with CSOSA to ensure that offenders under supervision are carefully monitored and are given an opportunity to acquire skills, and to receive treatment, that will enable them to become good citizens. CSOSA reports regularly to the Commission on each of the offenders it supervises for the Commission, and if it becomes necessary to remove someone from the community, CSOSA will ask the Commission to issue a warrant.

The Commission issues the overwhelming majority of warrants that are requested. We would like to see people under supervision succeed and become good citizens, but we are not reluctant to issue warrants. If a person under supervision has become a risk to the public, we will issue a warrant.

To avoid the need for a warrant by intervening when the behavior of someone under supervision starts to deteriorate, CSOSA and the Commission have established the reprimand hearing program. When CSOSA becomes concerned that an offender's behavior is becoming questionable, a reprimand sanction hearing is scheduled. A Commissioner conducts an informal hearing with the offender, a representative of the Public Defender Service, and the supervision officer to discuss the matter. An improvement plan is worked out for the offender. The goal is to motivate the offender to change whatever behavior has been causing concern before that behavior requires the Commission to act to send the offender to prison.

It has been my experience, both as Chief of Police in the District of Columbia and as a member of the Commission, that a major problem faced by returning offenders is drug and alcohol addiction. Addiction makes it difficult for a returning offender to be law-abiding and to stay out of trouble

The Commission is involved in two programs designed to address the addiction problem in the District of Columbia offender population. The programs offer inpatient addiction treatment in a

secure environment to offenders arrested on a Commission warrant charging relatively minor violations of conditions of supervision. Both programs are voluntary on the part of the offender.

The goal of the programs is that an offender who goes through them will return to the community free of addiction. The District of Columbia Department of Corrections has set up the Residential Substance Abuse Program (RSAT) at the D.C. Jail. CSOSA and the District of Columbia Public Defender Service, along with the Commission, are involved in the RSAT program. CSOSA has established the Secure Residential Treatment Program (SRTP) at the D.C. Correctional Treatment Facility. The District of Columbia Department of Corrections and the Corrections Corporation of America (which operates the Correctional Treatment Facility), along with the Commission, are also involved in the SRTP program.

An offender who enters the RSAT program will remain in jail for 90 days while undergoing inpatient treatment. If the offender successfully completes that treatment, the Commission will dismiss the charges and return the person to supervision. An offender who enters the SRTP program will enter an inpatient program at the Correctional

Treatment Facility for 180 days. If the offender successfully completes that program, the Commission will return the offender to the community without revoking the offender's release. An offender who successfully completes either program is required upon release to follow a treatment regimen determined appropriate by the program staff.

The Commission would like to expand programs the goals of which are to reduce prison overcrowding, lower recidivism rate, promote alternatives to incarceration, and reduce violent crime, especially crime committed with guns or by gangs. The Commission would like to increase the number of offenders referred to the RSAT and SRTP programs mentioned earlier; to expand the reprimand sanction hearing program mentioned earlier; implement new revocation guidelines for District of Columbia Code offenders; and to establish a program to focus on offenders who have committed sex offenses, domestic-violence offenses, child-abuse offenses, and firearms offenses, or who have gang affiliation.

A significant challenge faced by the Commission – and faced by every supervision agency – is the handling of sex offenders. A sex

offender can present a serious risk public safety risk. The Commission's policy is to have sex offenders closely monitored, and the Commission ordinarily imposes a GPS condition on sex offenders.

Probably the most significant challenge facing the Commission is the matter of the Commission's continued existence. The uncertainty about the future makes it difficult to hire and keep highly skilled employees. Each time the question of the continued existence has arisen, Congress has decided on a short-term extension, even though the reason for the extension has been the ongoing nature of the Commission's duties. It has been questioned whether the Parole Commission is the appropriate entity to carry out District of Columbia responsibilities. Indeed, Congress in 2002 asked the Attorney General to establish a committee to evaluate the merits and feasibility or transferring the Commission's supervised release functions to another entity. Attorney General Ashcroft reported to Congress that "there is no District of Columbia or Federal agency, other than the USPC, with the staff, procedures, and infrastructure in place to effectively assume the existing functions of the USPC" The Attorney General also pointed out that "the transfer of the USPC's functions to another entity

potentially would entail significant losses in the effectiveness of supervisory functions.”

¹ An Act to establish an independent and regionalized United States Parole Commission , to provide fair and equitable parole procedures, and for other purposes, Pub. L. No. 94-233, 90 Stat. 219 (1976).

² Pub. L. No. 98-473, title II, ch. II, 98 Stat. 1987. An offender, however, can earn good-time credit of up to 15% of the sentence. See 18 U.S.C. § 3624.

³ Sentencing Reform Act of 1984, Pub. L. No. 98-473, title II, ch. 2, § 235(b)(1)(A), 98 Stat. 2032. See Sen. Rep. No. 98-225, 98th Cong., 1st Sess. 189 (1983) (“Most of those individuals incarcerated under the old system will be released during the five-year period”).

⁴ See H.R. Rep. No. 104-789, 104th Cong., 2d Sess. 3 (1996).

Constitutional requirements, specifically the ex post facto clause, necessitate the extension of the Commission, or the establishment of a similar entity authorized by statute to perform its functions. Otherwise those remaining “old law” offenders will file habeas corpus petitions, seeking release on the grounds that their right to be considered for parole had been unconstitutionally eliminated. If such petitions were successful, public safety may be jeopardized by the release of dangerous criminals.

⁵ See Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 316, 104 Stat. 5115.

⁶ See Parole Commission Phaseout Act of 1996, Pub. L. No. 104-232, 110 Stat. 3005; 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, § 11017, 116 Stat. 1758 (2002); United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. No. 109-76, § 2, 119 Stat. 2035; United States Parole Commission Extension Act of 2008, Pub. L. No. 110-312, 122 Stat. 3013.

⁷ See National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, § 11231, 111 Stat. 746; D.C. Code § 24-131(a)(1).

⁸ See D.C. Code §§ 24-408(a-1), 24-403.01.

⁹ See D.C. Code, §§ 24-403.01(b)(6), 24-133(c)(2).

¹⁰ See An Act to provide for the implementation of treaties for the transfer of offenders to or from foreign countries, Pub. L. No. 95-144, § 1, 91 Stat. 1215 (1977) (enacting 18 U.S.C. § 4103).

¹¹ See Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7101(a), 102 Stat. 4415 (enacting 18 U.S.C. § 4106A).

¹² See 10 U.S.C. § 858(a).

¹³ See Sentencing Reform Act of 1984, Pub. L. No. 98-473, title II, ch. II, § 1208, 98 Stat. 2157 (enacting 18 U.S.C. § 3522).