4410-31

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2013-02]

Paroling, Recommitting, and Supervising Federal Prisoners:

Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is revising its rules describing the conditions of release set for persons on supervision and the procedures used to impose and modify the conditions. The revision is part of our ongoing effort to make our rules easier to understand for those persons affected by the rules and other interested persons and organizations. We are also adding new procedures for imposing special conditions for sex offenders, and filling a gap left by an earlier rule change in 2003 regarding the administrative appeals that may be filed by District of Columbia offenders on supervised release.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and is applicable beginning July 23, 2014.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, U.S. Parole Commission, 90 K Street, N.E., Washington, D.C. 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION:

Background

In the notice of proposed rulemaking published at 78 FR 11998-12002 (Feb. 21, 2013), we discussed the Parole Commission's authority to impose conditions of release, the purposes and types of release conditions and the procedures we use to impose the conditions. We refer you to the previous publication for a review of this background material. In the notice of proposed rulemaking we encouraged the public to comment on our proposed changes and we received a substantial number of written comments from interested persons and organizations. We discuss that public comment below.

Public Comment from the District of Columbia Public Defender Service (PDS)

PDS recommends that the Commission place restrictions on the current rule allowing a supervision officer to seize prohibited items in plain view when conducting a visit of the releasee's residence or place of employment. This rule was first promulgated in 1984 after the Commission sought and received comment from the public, including 27 federal probation offices. Twenty-four of the probation offices responding favored the current rule on seizing contraband in plain view. Eight years later, in a joint effort with the Probation Committee of the Judicial Conference of the United States, and after a nationwide survey of chief U.S. probation officers on search and seizure practices, we developed a comprehensive search and seizure

policy for federal parolees. No change in the contraband seizure rule was made at that time. The current rule and the proposed revision are consistent with Judicial Conference guidelines on search and seizure practices for U.S. probation officers issued as recently as 2010. PDS has not identified any compelling reason to deviate from a long-standing and judicially-approved policy on permitting a supervision officer to seize prohibited items that are in plain view.

PDS recommends changes to the condition permitting a supervision officer to inform another person, often a prospective employer, of the releasee's criminal history if the officer reasonably believes that the releasee may pose a risk to the other person. One recommendation is that in the condition we include specific guidance to the supervision officer on disclosing a releasee's criminal background to a third person. We believe the details of how a supervision officer should contact and advise other persons about a releasee's criminal record is a matter for officer training, and need not be included in the rule or the release condition. We are continuing the current policy that places the responsibility on the releasee to disclose his criminal background to the other person when necessary. The supervision officer usually acts only if the releasee fails to make the disclosure. The notes on this subject in our Rules and Procedures Manual already advise that the disclosure should be "confidentially made to the third party." PDS also suggests that we limit third-party disclosure to a case when the releasee has been convicted of a crime that requires registration as a sex offender. While the warnings are likely required most frequently for sex offenders, there are other situations when third-party disclosure may be warranted (e.g., convicted embezzler who wants to work in a bank). PDS comments on third-party disclosure have led us to edit the release condition to restrict the disclosure to a releasee's criminal history (as opposed to "personal history").

In discussing the criteria for imposing special conditions for sex offenders, PDS recommends other limitations, such as a restriction on imposing a special condition for sex offender treatment if the basis for the action is not the releasee's current conviction, or if the releasee has previously completed a sex offender treatment program. There are a number of cases in which courts have approved the reliance on sex offense conditions more than 10 years old to impose special sex offender conditions. No hard and fast rule has emerged from the case law. We may consider an "ancient prior record" policy -- such as the instruction used in salient factor scoring -- for using older sex offender convictions in imposing special conditions. But we are not inclined to include such a policy in the rule at this time. PDS reads the statute at 18 U.S.C. 3583(d) to require that a special condition may only be imposed if the condition is reasonably related to the nature and circumstances of the offense and the history and characteristics of the offender. This is a misreading of the statute. See United States v. Ross, 475 F.3d 871 (7th Cir. 2007) (judge did not commit plain error in imposing a sex offender treatment condition in the absence of a current or prior sex offense conviction; evidence of fantasies about crimes against children sufficed to impose sex offender treatment condition), citing, United States v. Prochner, 417 F.3d 54 (1st Cir. 2005) (sex offender treatment condition upheld where defendant had not been convicted or arrested for a sex offense, but defendant's work history, journal entries and expert opinions indicated such treatment may be necessary).

We agree that the releasee's completion of sex offender treatment in the past is a factor that should be carefully weighed in deciding whether there is a need for resumption of sex offender treatment when the offender is paroled or begins supervised release. But the Commission should be free to decide that an earlier treatment program was an insufficient

response to the offender's sexual misconduct, or that repeated treatment is necessary for the releasee.

With regard to the procedures used to impose sex offender special conditions, we disagree with the comments on the production of adverse witnesses. These comments are similar to objections raised by PDS for some time regarding revocation hearings. PDS recommends that we conduct a hearing with the offender before requiring him to undergo a sex offender evaluation. The final rule allows the Commission to require the evaluation after giving the offender a chance to object to the proposed condition in writing. A hearing is required only if the releasee's criminal history does not include a sex offense, and we decide that the evaluation and other information support the imposition of sex offender treatment. The Commission has a legitimate interest in ordering an evaluation without a complicated procedure. On the other hand, PDS argues that the releasee has an interest in avoiding the "sex offender" label until we determine that there is a demonstrated need for the releasee's placement in a sex offender treatment program. We are continuing to explore appropriate procedures and policies in requiring evaluations of offenders for sex offender treatment.

Public Comment from International CURE, Inc. and Other Persons

International CURE objects to the proposed language to be added to 28 CFR 2.40(b) and 2.85(b) which state "in choosing a condition the Commission will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary." CURE states that the language "reasonably necessary" is unclear and does not provide adequate notice to a releasee of the types of potential deprivation of liberty that may occur. The phrase "no greater deprivation of liberty than is reasonably necessary" is derived directly from the applicable

statutes. The imposition of special conditions on D.C. supervised releasees is governed by D.C. Code 24-133(c)(2) (the Parole Commission exercises the same authority as vested in U.S. district courts by paragraphs (d) through (i) of 18 U.S.C. 3583) and 18 U.S.C. 3583(d)(2) requires courts to impose conditions that "involve[ ] no greater deprivation of liberty than is reasonably necessary."

CURE objects to the condition requiring a releasee to "promptly inform the supervision officer of an arrest or questioning . . . within two days." In CURE's view the term "questioning" is overbroad because it could require a releasee to report any type of questioning which is in no way related to an investigation or alleged violation of law. This language is not new; the current version of § 2.204(a)(4)(ii) already requires the releasee to "notify the supervision officer within two days of an arrest or questioning by a law-enforcement officer." We have not received complaints that the rule is being applied by supervision officers an oppressive fashion, or that releasees are having their supervision terms revoked for failing to report incidental contacts with law-enforcement officers.

Like PDS, CURE objects to the condition allowing a supervision officer to seize contraband in plain view of the officer, asking that the basis for an officer's "reasonable belief" that items are contraband should be subjected to due process procedures. A releasee should not be under any misapprehension as to what items he is prohibited from possessing, as the other conditions of supervision clearly so inform him. CURE's idea of a pre-seizure fact finding procedure is impractical and would defeat the purpose of the condition, which is to promptly and safely remove from the releasee's control items a releasee may not possess.

CURE objects to the condition restricting a releasee from being in a place where drugs are sold or used. Again, this is not a new condition but merely an editing of the previous condition that "the releasee shall not frequent a place where a controlled substance is illegally sold, dispensed, used, or given away." 28 CFR 2.204(a)(5)(iii). The commenter objects that the rule does not contain a scienter requirement and thereby exculpate the person who visits a place in which drugs are used or sold without his knowledge. We have not been presented with evidence of revocations for persons who have unwittingly been frequenting places that turned out to be drug markets.

CURE's objection misunderstands the function of this condition of supervision, and of all of the conditions. They do not exist to try to trap a releasee into behavior that will get him sent back to prison. Rather, the function of this provision and all of the conditions is to promote successful reintegration into society by giving a releasee clear guidance about what activities he must avoid because they do not support a law-abiding lifestyle. One of these things to be avoided is hanging out with other people who are using or selling drugs. The same holds true for another well-accepted general condition, i.e., that a releasee should not associate with a person in criminal activity or who has a criminal record. CURE's opposition to this condition is also without merit, especially in the absence of evidence that releasees are being reimprisoned for incidental or unknowing contact with other felons. Moreover, in response to another concern raised by CURE, this condition has not been enforced to restrict releasees from participating in support groups and therapy sessions in which others with a criminal record may be present.

Like PDS, CURE has objections to the condition that requires disclosure of a person's criminal record in situations in which the supervision officer has determined that the releasee's relationship with a person may pose a risk of harm to this person. But we are confident that

supervision officers have appropriately weighed the need to protect the public safety and the releasee's privacy interest in these situations and have made disclosures, when deemed necessary, using measures that, to the degree possible, maintain the confidentiality of the disclosure.

CURE objects that the language of the proposed rule allowing for an emergency modification of the conditions without providing a 10-day notice and comment period to the releasee leaves the releasee no recourse after imposition of an emergency special condition. This is incorrect. The rules provide the same right to appeal a change in conditions as is the case if the 10-day notice and comment period is permitted.

CURE also comments that the rule on imposing sex offender treatment for a releasee who does not have a conviction for a sex offense does not sufficiently define the terms "current behavior" and "personal history" for purposes of determining whether imposition of sex offender evaluation or treatment is warranted. In using these terms we were attempting to convert the statutory terms ("nature and circumstances of the offense and the history and characteristics of the offender") into plain language. We decided to return to the statutory language in response to the comment.

Emily Crisler wrote to support extending the availability of an administrative appeal of a modification of a condition of parole to D.C. Code offenders on parole and supervised release. She objects to the provision in 28 CFR 2.85(c) that an appeal is not available for the original imposition of conditions upon a D.C. offender's parole release, claiming that this policy forces an offender to abide by "overly prejudicial and/or constitutionally invalid conditions" without recourse. She argues that 28 CFR 2.85(c) (for D.C. parolees) and 2.220 (for D.C. supervised

releasees) should be consistent; both should either permit appeal of original imposition of conditions of supervision, or both should not permit it. But the availability of an administrative appeal is only required for the D.C. supervised releasee; the Commission may decide to offer an appeal to the D.C. parolee as a matter of agency discretion. Recent personnel cuts limit our capacity to offer administrative appeals that are not required by law.

Ms. Crisler also supports other changes to the rules which she views as enhancing the rehabilitative function of supervision, such as conditions to provide training or correctional treatment or medical care. She recommends that the Commission delete reference to "the releasee's history and characteristics" from 28 CFR 2.40 as "overly broad" and "vulnerable to an abuse of discretion." She objects to "characteristics" as potentially discriminatory if imposed based on a characteristic that is unrelated to the releasee's previous crime or propensity to commit future crimes. The language to which Ms. Crisler objects is statutory language.

Ms. Crisler objects to the standard condition that a person not associate with a person having a criminal record as a violation of releasee's First Amendment right to freedom of association. But releasees do not have the same rights of association as held by persons not under lawful supervision. *E.g*., *United States v. Albanese*, 554 F.2d 543 (2d Cir. 1977). She objects to prohibiting individuals from associating with others who may have committed a crime completely unrelated to the offender's crime. This concern is at odds with the earlier expressed concern that rehabilitation should be the primary focus of conditions; the non-association condition is intended to urge a releasee away from anti-social and toward pro-social associates.

Finally, Ms. Crisler objects to the provision allowing a sex offender condition to be imposed in the absence of a conviction for a sex offense. As we noted earlier, courts have held

that sex offender treatment may be appropriate even if the releasee has not been convicted of a sex offense.

Public Comment from the Washington Lawyers Committee (WLC)

WLC argues that the Commission should use the criteria that U.S. district courts must apply in imposing special conditions of supervised release, found at 18 U.S.C. 3583(d), when considering setting release conditions on all D.C. parolees, supervised releasees, and federal parolees. Though the statutory criteria differs for the three groups of offenders, we proposed to adopt, as a matter of policy, the criteria for supervised releasees in setting release conditions for all offenders under the Commission's jurisdiction. That intent is evident from the similar terms used in the proposed language of 28 CFR 2.40(b), 2.85(b), and 2.204(b)(1). Therefore, our proposed rule already met WLC's recommendation that the Section 3583(d) criteria should be the "floor" for considering special conditions for all persons under supervision. But we differ with WLC when they recommend that we can only impose a special condition when all the criteria are satisfied in making a decision for a particular offender. We have already touched on this issue in discussing PDS's claim that the statutory language of Section 3583 prohibits us from imposing a special condition of sex offender treatment for a releasee who has not been convicted of a sex offense. In our view, we may impose a special release condition if the condition is reasonably related to the nature and circumstances of the offense or the history and characteristics of the offender, and any one of the purposes of criminal sentencing listed at 3553(a)(2)(B) (deterrence), (C) protection of the public and (D) (offender rehabilitation). We will also consider in each case whether the condition involves no greater deprivation than is reasonably necessary to meet one of the purposes of criminal sentencing listed in 3553(a)(2)(B)-(D). In each case, we acknowledge that the release condition should have some rational

relationship to the releasee's offense, his history or his characteristics, i.e., the relevant factual background of the offender. But while in many cases a condition may serve several purposes of criminal sentencing, in some cases one purpose may be clearly dominant. The statutory language does not restrict us from using the disjunctive "or" in our recitation of the purposes of imposing release conditions and we adhere to this interpretation. This interpretation is consistent with the practice of the federal courts. United States v. Carter, 463 F.3d 526, 529 (6th Cir. 2006); United States v. Johnson, 998 F.2d 696, 699 (9th Cir. 1993).

WLC also comments that for D.C. supervised releasees the Parole Commission must follow the U.S. Sentencing Commission's policy statements on imposing release conditions, considering the requirement of 18 U.S.C. 3583(d)(3). The Sentencing Commission's policy statements contained in the sentencing guideline at 5D1.3 recommend for the federal judiciary standard and special conditions of supervision (5D1.3(c) and (d)), and note other special conditions that "may be appropriate on a case-by-case basis" (5D1.3(e)). We find these policy statements to be instructive, but at the same time note that these policy statements do not impose mandatory rules on federal judges when they set conditions of supervised release for U.S. Code offenders, or on the Parole Commission in setting supervision conditions on D.C. supervised releasees.

Like the comments of PDS, WLC questions the Commission's authority to impose a sex offender treatment condition for a person who has not been convicted of a sex offense. As noted earlier, we disagree with this comment and point to federal appellate case precedent that allows the condition without the prerequisite of a sex offense condition.

WLC also recommends that we extend an administrative appeal procedure to D.C. offenders regarding the imposition of parole conditions. We addressed this issue in the previous discussion.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulation Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

The rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–Congressional Review Act)

These rule is not a "major rule" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act, now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term "rule" as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U. S. Parole Commission adopts the following amendments to 28 CFR part 2.

PART 2 - [AMENDED]

1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Revise **§** 2.40 to read as follows:

§ 2.40 Conditions of release.

(a)(1) General conditions of release and notice by certificate of release. All persons on supervision must follow the conditions of release described in § 2.204 (a)(3) through (6). These conditions are necessary to satisfy the purposes of release conditions stated in 18 U.S.C. 4209. Your certificate of release informs you of these conditions and special conditions that we have imposed for your supervision.

(2) Refusing to sign the certificate of release. (i) If you have been granted a parole date and you refuse to sign the certificate of release (or any other document necessary to fulfill a condition of release), we will consider your refusal as a withdrawal of your application for parole as of the date of your refusal. You will not be released on parole and you will have to reapply for parole consideration.

(ii) If you are scheduled for release to supervision through good-time deduction and you refuse to sign the certificate of release, you will be released but you still must follow the conditions listed in the certificate.

(b) Special conditions of release. We may impose a condition of release other than a condition described in § 2.204 (a)(3) through (6) if we determine that imposing the condition is reasonably related to the nature and circumstances of your offense or your history and characteristics, and at least one of the following purposes of criminal sentencing: the need to deter you from criminal

conduct; protection of the public from further crimes; or the need to provide you with training or correctional treatment or medical care. In choosing a condition we will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation. We list some examples of special conditions of release at § 2.204(b)(2).

(c) Participation in a drug-treatment program, If we require your participation in a drug-treatment program, you must submit to a drug test within 15 days of your release and to at least two other drug tests, as determined by your supervision officer. If we decide not to impose the special condition on drug-treatment, because available information indicates you are a low risk for substance abuse, this decision constitutes good cause for suspending the drug testing requirements of 18 U.S.C. 4209(a). You must pass all pre-release drug tests administered by the Bureau of Prisons before you are paroled. If you fail a drug test your parole date may be rescinded.

(d) Changing conditions of release. After your release, we may change or add to the conditions of release if we decide that such action is consistent with the criteria described in paragraph (b) of this section. In making these changes we will use the procedures described in § 2.204(c) and (d). You may appeal our action as provided in §§ 2.26 and 2.220.

(e) Application of release conditions to an absconder. If you abscond from supervision, you will stop the running of your sentence as of the date of your absconding and you will prevent the expiration of your sentence. You will still be bound by the conditions of release while you are an absconder, even after the original expiration date of your sentence. We may revoke your release for a violation of a release condition that you commit before the revised expiration date of your sentence (the original expiration date plus the time you were an absconder).

(f) Revocation for possession of a controlled substance (18 U.S.C. 4214 (f)). If we find after a revocation hearing that you have illegally possessed a controlled substance, we must revoke your release. If you fail a drug test, we must consider whether the availability of appropriate substance abuse programs, or your current or past participation in such programs, justifies an exception from the requirement of mandatory revocation. We will not revoke your release on the basis of a single, unconfirmed positive drug test if you challenge the test result and there is no other violation found by us to support revocation.

(g) Supervision officer guidance. See § 2.204(g).

(h) Definitions. See § 2.204(h).

3. Revise §2.85 to read as follows:

§ 2.85 Conditions of release.

(a)(1) General conditions of release and notice by certificate of release. All persons on supervision must follow the conditions of release described in § 2.204(a)(3) through (6). Your certificate of release informs you of these conditions and other special conditions that we have imposed for your supervision.

(2) Refusing to sign the certificate of release. (i) If you have been granted a parole date and you refuse to sign the certificate of release (or any other document necessary to fulfill a condition of release), we will consider your refusal as a withdrawal of your application for parole as of the date of your refusal. You will not be released on parole and you will have to reapply for parole consideration.

(ii) If you are scheduled for release to supervision through good-time deduction and you refuse to sign the certificate of release, you will be released but you still must follow the conditions listed in the certificate.

(b) Special conditions of release. We may impose a condition of release other than a condition described in § 2.204(a)(3) through (6) if we determine that imposing the condition is reasonably related to the nature and circumstances of your offense or your history and characteristics, and at least one of the following purposes of criminal sentencing: the need to deter you from criminal conduct; protection of the public from further crimes; or the need to provide you with training or correctional treatment or medical care. In choosing a condition we will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation. We list some examples of special conditions of release at § 2.204(b)(2).

(c) Changing conditions of release. We may at any time change or add to the conditions of release if we decide that such action is consistent with the criteria described in paragraph (b) of this section. In making these changes we will use the procedures described in § 2.204(c) and (d). You may not appeal the decision.

(d) Application of release conditions to an absconder. If you abscond from supervision, you will stop the running of your sentence as of the date of your absconding and you will prevent the expiration of your sentence. You will still be bound by the conditions of release while you are an absconder, even after the original expiration date of your sentence. We may revoke your release for a violation of a release condition that you commit before the revised expiration date of your sentence (the original expiration date plus the time you were an absconder).

(e) Supervision officer guidance. See § 2.204(g).

(f) Definitions. See § 2.204(h).

4. Revise § 2.204 to read as follows:

§ 2.204 Conditions of supervised release.

(a)(1) General conditions of release and notice by certificate of release. All persons on supervision must follow the conditions of release described in paragraphs (a)(3) through (6) of this section. These conditions are necessary to satisfy the purposes of release conditions stated in 18 U.S.C. 3583(d) and 3553(a)(2)(B) through (D). Your certificate of release informs you of these conditions and other special conditions that we have imposed for your supervision.

(2) Refusing to sign the certificate of release does not excuse compliance. If you refuse to sign the certificate of release, you must still follow the conditions listed in the certificate.

(3) Report your arrival. After you are released from custody, you must go directly to the district named in the certificate. You must appear in person at the supervision office and report your home address to the supervision officer. If you cannot appear in person at that office within 72 hours of your release because of an emergency, you must report to the nearest CSOSA or U.S. probation office and obey the instructions given by the duty officer. If you were initially released to the custody of another authority, you must follow the procedures described in this paragraph after you are released from the custody of the other authority.

(4) Provide information to and cooperate with the supervision officer—(i) Written reports. Between the first and third day of each month, you must make a written report to the supervision officer on a form provided to you. You must also report to the supervision officer as that officer directs. You must answer the supervision officer completely and truthfully when the officer asks you for information.

(ii) Promptly inform the supervision officer of an arrest or questioning, or a change in your job or address. Within two days of your arrest or questioning by a law-enforcement officer, you must inform your supervision officer of the contact with the law-enforcement officer. You must

also inform your supervision officer of a change in your employment or address within two days of the change.

(iii) Allow visits of the supervision officer. You must allow the supervision officer to visit your home and workplace.

(iv) Allow seizure of prohibited items. You must allow the supervision officer to seize any item that the officer reasonably believes is an item you are prohibited from possessing (for example, an illegal drug or a weapon), and that is in plain view in your possession, including in your home, workplace or vehicle.

(v) Take drug or alcohol tests. You must take a drug or alcohol test whenever your supervision officer orders you to take the test.

(5) Prohibited conduct—(i) Do not violate any law. You must not violate any law and must not associate with any person who is violating any law.

(ii) Do not possess a firearm or dangerous weapon. You must not possess a firearm or other dangerous weapon or ammunition.

(iii) Do not illegally possess or use a controlled substance or drink alcohol to excess.
You must not illegally possess or use a controlled substance and you must not drink alcoholic beverages to excess. You must stay away from a place where a controlled substance is illegally sold, used or given away.

(iv) Do not leave the district of supervision without permission. You must not leave the district of supervision without the written permission of your supervision officer.

(v) Do not associate with a person with a criminal record. You must not associate with a person who has a criminal record without the permission of your supervision officer.

(vi) Do not act as an informant. You must not agree to act as an informant for any law-enforcement officer without the prior approval of the Commission.

(6) Additional conditions—(i) Work. You must make a good faith effort to work regularly, unless excused by your supervision officer. You must support your children and any legal dependent. You must participate in an employment-readiness program if your supervision officer directs you to do so.

(ii) Pay court-ordered obligations. You must make a good faith effort to pay any fine, restitution order, court costs or assessment or court-ordered child support or alimony payment. You must provide financial information relevant to the payment of such a financial obligation when your supervision officer asks for such information. You must cooperate with your supervision officer in setting up an installment plan to pay the obligation.

(iii) Participate in a program for preventing domestic violence. If the term of supervision results from your conviction for a domestic violence crime, and such conviction is your first conviction for such a crime, you must attend, as directed by your supervision officer, an approved offender-rehabilitation program for the prevention of domestic violence if such a program is readily available within 50 miles of your home.

(iv) Register if you are covered by a special offender registration law. You must comply with any applicable special offender registration law, for example, a law that requires you to register as a sex-offender or a gun-offender.

(v) Provide a DNA sample. You must provide a DNA sample, as directed by your supervision officer, if collection of such sample is authorized by the DNA Analysis Backlog Elimination Act of 2000.

(vi) Comply with a graduated sanction. If you are supervised by CSOSA, you must comply with the sanction(s) imposed by the supervision officer and as established by an approved schedule of graduated sanctions. We may decide to begin revocation proceedings for you even if the supervision officer has earlier imposed a graduated sanction for your alleged violation of a release condition.

(vii) Inform another person of your criminal record or personal history as directed by the supervision officer. You must inform a person of your criminal record or personal history if your supervision officer determines that your relationship or contact with this person may pose a risk of harm to this person. The supervision officer may direct you to give this notice and then confirm with the person that you obeyed the officer's direction. The supervision officer may also give the notice directly to the person.

(b)(1) Special conditions of release. We may impose a condition of release other than a condition described in paragraphs (a)(3) through (6) of this section if we determine that imposing the condition is reasonably related to the nature and circumstances of your offense or your history and characteristics, and at least one of the following purposes of criminal sentencing: the need to deter you from criminal conduct; protection of the public from further crimes; or the need to provide you with training or correctional treatment or medical care. In choosing a condition we will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation.

(2) Examples. The following are examples of special conditions that we may impose –

(i) That you reside in and/or participate in a program of a community corrections center for all or part of the period of supervision;

(ii) That you participate in a drug- or alcohol-treatment program, and not use alcohol and other intoxicants at any time;

(iii) That you remain at home during hours you are not working or going to school, and have your compliance with this condition checked by telephone or an electronic signaling device; and

(iv) That you permit a supervision officer to conduct a search of your person, or of any building, vehicle or other area under your control, at such time as that supervision officer decides, and to seize any prohibited items the officer, or a person assisting the officer, may find.

(3) Participation in a drug-treatment program. If we require your participation in a drug-treatment program, you must submit to a drug test within 15 days of your release and to at least two other drug tests, as determined by your supervision officer. If we decide not to impose the special condition on drug-treatment, because available information indicates you are a low risk for substance abuse, this decision constitutes good cause for suspending the drug testing requirements of 18 U.S.C. 3583(d).

(c)(1) Changing conditions of release. After your release, we may change or add to the conditions of release if we decide that such action is consistent with the criteria described in paragraph (b)(1) of this section.

(2) Objecting to the proposed change. (i) We will notify you of the proposed change, the reason for the proposed change and give you 10 days from your receipt of the notice to comment on the proposed change. You can waive the 10-day comment period and agree to the proposed change. You are not entitled to the notice and 10-day comment period if:

(A) You ask for the change;

(B) We make the change as part of a revocation hearing or an expedited revocation decision; or

(C) We find that the change must be made immediately to prevent harm to you or another person.

(ii) We will make a decision on the proposed change within 21 days (excluding holidays) after the 10-day comment period ends, and notify you in writing of the decision. You may appeal our action as provided in §§ 2.26 and 2.220.

(d) Imposing special conditions for a sex offender. (1) If your criminal record includes a conviction for a sex offense, we may impose a special condition that you undergo an evaluation for sex offender treatment, and participate in a sex offender treatment program as directed by your supervision officer. We will impose the sex offender evaluation and treatment conditions using the procedures described in paragraph (c) of this section.

(2)(i) If your criminal record does not include a conviction for a sex offense, we may decide that the nature and circumstances of your offense or your history and characteristics show that you should be evaluated for sex offender treatment. In this case, we may impose a special condition requiring an evaluation for sex offender treatment using the procedures described in paragraph (c) of this section.

(ii) At the conclusion of the evaluation, if sex offender treatment appears warranted and you object to such treatment, we will conduct a hearing to consider whether you should be required to participate in sex offender treatment. You will be given notice of the date and time of the hearing and the subject of the hearing, disclosure of the information supporting the proposed action, the opportunity to testify concerning the proposed action and to present evidence and the testimony of witnesses, the opportunity to be represented by retained or appointed counsel and written findings regarding the decision. You will have the opportunity to confront and cross-examine persons who have given information that is relied on for the proposed action, if you ask

that these witnesses appear at the hearing, unless we find good cause for excusing the appearance of the witness.

(iii) A hearing is not required if we impose the sex offender treatment condition at your request, as part of a revocation hearing or an expedited revocation decision, or if a hearing on the need for sex offender treatment (including a revocation hearing) was conducted within 24 months of the request for the special condition.

(iv) In most cases we expect that a hearing conducted under this paragraph will be held in person with you, especially if you are supervised in the District of Columbia. But we may conduct the hearing by videoconference.

(3) Whether your criminal record includes a conviction for a sex offense or not, if we propose to impose other restrictions on your activities, we will use either the notice and comment procedures of paragraph (c) of this section or the hearing procedures of this paragraph, depending on a case-by-case evaluation of the your interest and the public interest.

(e) Application of release conditions to an absconder. If you abscond from supervision, you will stop the running of your supervised release term as of the date of your absconding and you will prevent the expiration of your supervised release term. But you will still be bound by the conditions of release while you are an absconder, even after the original expiration date of your supervised release term. We may revoke the term of supervised release for a violation of a release condition that you commit before the revised expiration date of the supervised release term (the original expiration date plus the time you were an absconder).

(f) Revocation for certain violations of release conditions. If we find after a revocation hearing that you have possessed a controlled substance, refused to comply with drug testing, possessed a firearm or tested positive for illegal controlled substances more than three times in one year, we

must revoke your supervised release and impose a prison term as provided at § 2.218. When considering mandatory revocation for repeatedly failing a drug test, we must consider whether the availability of appropriate substance abuse programs, or your current or past participation in such programs, justifies an exception from the requirement of mandatory revocation.

(g) Supervision officer guidance. We expect you to understand the conditions of release according to the plain meaning of the conditions. You should ask for guidance from your supervision officer if there are conditions you do not understand and before you take actions that may risk violation of your release conditions. The supervision officer may instruct you to refrain from particular conduct, or to take specific actions or to correct an existing violation of a release condition. If the supervision officer directs you to report on your compliance with an officer's instruction and you fail to do so, we may consider that your failure is itself a release violation.

(h) Definitions. As used for any person under our jurisdiction, the term –

(1) Supervision officer means a community supervision officer of the District of Columbia Court Services and Offender Supervision Agency or a United States probation officer;

(2) Domestic violence crime has the meaning given that term by 18 U.S.C. 3561, except that the term "court of the United States" as used in that definition shall be deemed to include the Superior Court of the District of Columbia;

(3) Approved offender-rehabilitation program means a program that has been approved by CSOSA (or the United States Probation Office) in consultation with a State Coalition Against Domestic Violence or other appropriate experts;

(4) Releasee means a person who has been released to parole supervision, released to supervision through good-time deduction or released to supervised release;

(5) Certificate of release means the certificate of supervised release delivered to the releasee under § 2.203;

(6) Firearm has the meaning given by 18 U.S.C. 921;

(7) Sex offense means any "registration offense" as that term is defined at D.C. Code 22-4001(8) and any "sex offense" as that term is defined at 42 U.S.C. 16911(5); and

(8) Conviction, used with respect to a sex offense, includes an adjudication of delinquency for a juvenile, but only if the offender was 14 years of age or older at the time of the sex offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in 18 U.S.C. 2241), or was an attempt or conspiracy to commit such an offense.

5. Revise § 2.220 to read as follows:

§ 2.220 Appeal.

(a) As a supervised releasee you may appeal a decision to: change or add a special condition of supervised release, revoke supervised release, or impose a term of imprisonment or a new term of supervised release after revocation. You may not appeal one of the general conditions of release.

(b) If we add a special condition to take effect immediately upon your supervised release, you may appeal the imposition of the special condition no later than 30 days after the date you begin your supervised release. If we change or add the special condition sometime after you begin your supervised release, you may appeal within 30 days of the notice of action changing or adding the condition. You must follow the appealed condition until we change the condition in response to your appeal.

(c) You cannot appeal if we made the decision as part of an expedited revocation, or if you asked us to change or add a special condition of release.

(d) You must follow the procedures of § 2.26 in preparing your appeal. We will follow the same rule in voting on and deciding your appeal.

Dated: August 21, 2014 _____

Cranston J. Mitchell

Vice Chairman, U.S. Parole Commission

[FR Doc. 2014-20427 Filed 08/27/2014 at 8:45 am; Publication Date: 08/28/2014]