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3/15/76

ACTION

THE WHITE HOUSE

WASHINGTON

March 12, 1976

Last Day: March 16

APPROVED
MAR 15 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 5727 - Parole Commission and Reorganization Act

Posted
3/16/76

Attached for your consideration is H.R. 5727, sponsored by Representative Kastenmeier and fourteen others, which establishes an independent and regionalized U.S. Parole Commission and authorizes various parole procedures and practices which have already been adopted administratively.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 5727 at Tab B.

To Archives
3/16/76

Pl. 233





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 10 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5727 - Parole Commission and
Reorganization Act
Sponsor - Rep. Kastenmeier (D) Wisconsin and 14 others

Last Day for Action

March 16, 1976 - Tuesday

Purpose

To establish a United States Parole Commission and authorize various parole procedures and practices.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Administrative Office of the United States Courts	Approval
Civil Service Commission	Approval
District of Columbia	No objection (Informally)

Discussion

The enrolled bill establishes an independent and regionalized U.S. Parole Commission and codifies various parole practices and procedures which have already been adopted administratively.

The major provisions of the bill relating to the organization and powers of the Commission are summarized below.

- The U.S. Parole Board would be reconstituted as the U.S. Parole Commission, composed of nine members appointed by the President and confirmed by the Senate, to serve not more than two six-year terms. (The current members of the Board of Parole automatically become Commissioners and are eligible to serve 12

years.) The Commission would be within the Department of Justice for limited administrative purposes, but the Commissioners would be independent of the Attorney General in making parole determinations.

- The Commission is directed to: (1) establish guidelines and procedural rules for parole determinations as are necessary to carry out a national parole policy; (2) set boundaries for a minimum of five parole regions throughout the nation; and (3) submit budget requests to OMB separately from other agencies of the Department of Justice. The Commission's rulemaking authority is made subject to the Administrative Procedure Act (APA). In addition, determinations of granting, denial or revocation of parole are subject to judicial review under the APA.
- The Commission is permitted to delegate its decision-making authorities to regional commissioners, who may adopt the recommendations of hearing examiners. Determinations of the regional commissioners are reviewable by a National Appeals Board, composed of three commissioners appointed by the Chairman.

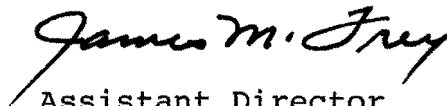
The enrolled bill also provides for due process in parole procedures. Major features are as follows:

- Definite time periods at which the prisoner shall be eligible for parole are provided. A prisoner serving a sentence of more than one year is eligible for parole consideration after having served one-third of his sentence or after serving ten years of a sentence of thirty or more years. The courts are still permitted to direct that the prisoner be eligible for parole at any time up to one-third of the maximum sentence or specify that the Commission shall decide when the prisoner is to be considered for parole. (In cases in which an application for parole has been denied, subsequent parole determinations must be held within eighteen months when sentence is less than seven years or twenty-four months when the sentence is seven years or more. This is a change in current practice but will not cause any significant problems.)
- The Commission is directed to make an initial parole determination on each inmate not later than thirty days before the date of his eligibility for parole in order to assure timely consideration of all cases.



- An inmate is not normally required to prove that he is an acceptable candidate for release, if his record of conduct in prison was unblemished. This shifts the burden of proof to the Commission to make a positive finding that the inmate is not acceptable for release.
- Whenever the grant, denial, or revocation of parole are at issue, formal hearings are required. An inmate must be notified of the time and date of the hearing. A parolee must likewise have been properly summoned to appear or have been taken into custody pursuant to a warrant issued by the Commission. At any such proceeding, the inmate or parolee has the right to appointed counsel or other representation, to testify on his own behalf, and to be advised of any information or evidence to be used against him.
- Determinations of the Commission to grant, deny or revoke parole must be accompanied by specific explanations of the basis for decision.
- Current parole procedures under the Youth Corrections Act are conformed to those of the enrolled bill and the Parole Commission absorbs all functions of the Board of Parole's Youth Division.

The Act would be effective sixty days after enactment, except for the provision regarding eligibility for subsequent parole determinations in cases in which parole has not been first granted, which would be effective after 120 days.


Assistant Director
for Legislative Reference

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 3-15-76

TO: Bob Linder

FROM: Jim Frey

Attached is the D.C. views
letter on H.R. 5727 for
inclusion in the enrolled
bill file. Thanks.

OMB FORM 38
REV AUG 73



THE DISTRICT OF COLUMBIA

WALTER E. WASHINGTON
MAYOR

WASHINGTON, D. C. 20004

March 10, 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in reference to a facsimile of an enrolled enactment of Congress entitled:

H.R. 5727 - To establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes.

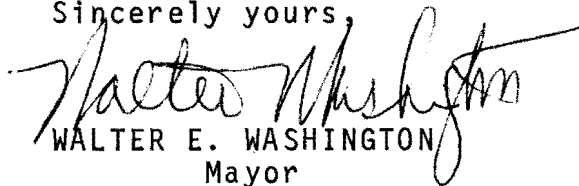
The enrolled bill would create, as an independent agency in the Department of Justice, a new United States Parole Commission to replace the existing United States Parole Board. Among other things, the enrolled bill would expand and strengthen the powers of the Parole Commission; make substantive changes in the parole eligibility criteria, including making a prisoner eligible for parole consideration after serving one-third of his sentence or after serving ten years of a life sentence or a sentence of more than thirty years; authorize the Commission to establish at least five regional centers to carry out its activities; and revise the procedures for handling the release or parole of young adult offenders and juveniles.

The enrolled bill affects the District of Columbia in that the eligibility for parole of persons convicted in the District of offenses against the United States which are not applicable exclusively to the District, and for District prisoners who are confined in Federal penal institutions will be determined hereafter under



the provisions of H.R. 5727. We view the procedural changes involved in the granting, denial, and revocation of parole for such persons as desirable improvements in the parole system. The District Government has no objection to the approval of H.R. 5727.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Walter E. Washington". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

WALTER E. WASHINGTON
Mayor



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

March 9, 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Washington, D.C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the Commission's views on Enrolled H. R. 5727, "To establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes."

This bill would amend title 18 to replace the U. S. Parole Board with an independent and regionalized United States Parole Commission within the Department of Justice.

Our comments are limited to the personnel provisions. New section 4202 of title 18 would provide for a nine member Parole Commission appointed by the President by and with the advice and consent of the Senate, and with compensation at the highest rate for GS-18. This replaces an authority in title 5 of the U. S. Code for eight positions of "Member of the Board of Parole" at GS-17. We have no objection to this.

Under section 4204 of title 18 the Chairman would appoint and fix the compensation of all personnel employed by the Commission, except that (A) the appointment of hearing examiner would be subject to the approval of the Parole Commission and (B) regional Commissioners would appoint and supervise regional personnel at grades up to GS-9. Although we do not object to this provision we would have preferred that the authority for the appointment of regional personnel be left to regulation rather than placed in statute.

Section 4204 also provides for the acceptance of voluntary and uncompensated service and the procurement of experts and consultants under 5 U. S. Code 3109. We have no objection to either provision, although we prefer language spelling out that personnel serving as volunteers will not be considered Federal employees except for injury compensation and tort claims.

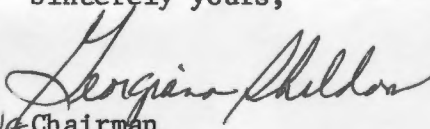


Section 13 of the bill revises an existing authority in section 5108(c)(7) of title 5 which authorizes ten positions of Warden in the Board of Prisons at GS-16. Eliminated in existing section 5108(c)(7) of title 5 would be the authority for eight Members of the Board of Parole at GS-17. We have no objection to this.

From the standpoint of the personnel provisions we recommend that the President sign Enrolled H. R. 5727.

By direction of the Commission:

Sincerely yours,


Active Chairman

Department of Justice
Washington, D.C. 20530

March 8, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 5727, the "Parole Commission and Reorganization Act."

The bill, for the most part, codifies the various parole procedures and practices which have previously been adopted administratively. This legislation does provide a statutory basis for the regionalized organization of Federal parole activities and recognizes the importance of parole guidelines in the exercise of the broad discretion given to the decision-making body. As the Conference Report states:

"The organization of parole decision-making along regional lines, the use of hearing examiners to prepare recommendations for action, and, most importantly, the promulgation of guidelines to make parole less disparate and more understandable has met with such success that this legislation incorporates the system into the statute, removes doubt as to the legality of changes implemented by administrative reorganization and makes the improvements permanent."

The legislation establishes a nine-member U.S. Parole Commission to replace the present Parole Board. The Commission is attached to the Department of Justice solely for administrative purposes. Commissioners serve a term of six years under Presidential appointment by and with the advice and consent of the Senate. The President shall designate one commissioner to serve as Chairman. Commissioners may not serve more than twelve years and are paid at the pay rate of the highest step of G.S. level 18.

While the parole decision-making authority resides in the Commission, the Conference Report clearly indicates that it is contemplated that the Commission will delegate decision-making power to the regional commissioner, and when so delegated, the regional commissioner may adopt the recommendations of the hearing examiners and enter a decision or make a decision of his own. The Commission is expected to provide appropriate review procedures for delegated decision-making, particularly where the regional commissioner's decision deviates from the two-member panel of hearing examiners.

The House-passed bill provided that the parole of once eligible inmates be reviewed each year annually. The present practice and the Senate version allowed specification of time for review of up to three years. The conferees settled upon a formula which directs that subsequent parole determination hearings must be held each 18 months for prisoners serving sentences of less than 7 years and each 24 months for those with longer sentences. This conference version of the time schedule will result in some additional workload for the new Commission, but it will not require any major increase in resources.

The legislation was developed over a number of years in close cooperation between the Department, including particularly the Parole Board, and the committees in the Congress. While some specific provisions in the final version of the legislation were the results of compromise, the bill is a constructive approach to the parole problem. The Department of Justice recommends executive approval of this bill.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

March 5, 1976

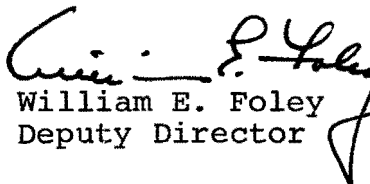
Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Frey:

This will acknowledge receipt of your enrolled bill request of March 3, 1976, requesting views and recommendations on H.R. 5727, an Act "To establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes."

Inasmuch as the Judicial Conference of the United States has commented favorably on substantial portions of the legislation now incorporated in H.R. 5727, Executive approval is recommended.

Sincerely,


William E. Foley
Deputy Director

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 10

Time: 930pm

FOR ACTION: Max Friedersdorf
Dick Parsons
Ken Lazarus ✓

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: March 11

Time: 500pm

SUBJECT:

H.R. 5727 - Payole Commission and
Reorganization Act

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection -- Ken Lazarus 3/11/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
delay in submitting the required material, please
advise the Staff Secretary immediately

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

March 11, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF *M.L.F.*

SUBJECT: H. R. 5727 - Parole Commission and
Reorganization Act

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

To:
 Judy Johnson
 3/10-76



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 10 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5727 - Parole Commission and Reorganization Act
Sponsor - Rep. Kastenmeier (D) Wisconsin and 14 others

Last Day for Action

March 16, 1976 - Tuesday

Purpose

To establish a United States Parole Commission and authorize various parole procedures and practices.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Administrative Office of the United States Courts	Approval
Civil Service Commission	Approval
District of Columbia	No objection (Informal)

Discussion

The enrolled bill establishes an independent and regionalized U.S. Parole Commission and codifies various parole practices and procedures which have already been adopted administratively.

The major provisions of the bill relating to the organization and powers of the Commission are summarized below.

- The U.S. Parole Board would be reconstituted as the U.S. Parole Commission, composed of nine members appointed by the President and confirmed by the Senate, to serve not more than two six-year terms. (The current members of the Board of Parole automatically become Commissioners and are eligible to serve 12

PAROLE REORGANIZATION ACT OF 1975

MAY 1, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 5727]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5727) to amend title 18 of the United States Code to reorganize the United States Board of Parole, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

1. On page 19, line 9, strike "§ 2410" and insert in lieu thereof "§ 4210."
2. On page 27, line 7, strike "4213(c)" and insert in lieu thereof "4213(a)".

PURPOSE OF THE AMENDMENTS

The amendments are corrections of typographical errors.

PURPOSE OF THE AMENDED BILL

H.R. 5727 deals with two major questions:

1. It would reconstitute the U.S. Parole Board as the U.S. Parole Commission, an independent agency within the Department of Justice, organized into five geographic regions with definite statutory powers and obligations.

2. It would provide an infusion of procedural protections into the Federal parole system at the initial determination stage as well as the appellate and revocation levels. The purpose of these changes is to insure a fair and equitable parole process.

BACKGROUND

The Parole Reorganization Act of 1975 is the work product of hundreds of hours of effort by the House Judiciary Committee including: 21 days of public hearings by the Subcommittee on Courts, Civil Lib-

erties, and the Administration of Justice (Serial No. 15, Corrections, Parts VIIA and VIIB, and Serial No. 25, Parole Reorganization Act), 18 days of markup sessions during the 92d and 94th Congresses, and tours of dozens of correctional institutions by Committee members. The legislation was the basis of the administrative reorganization of the U.S. Parole Board and its procedures in 1974. Congress appropriated \$600,000 in June, 1974 (Public Law 93-245), to carry out this reorganization. The Parole Board's efforts to reform its procedures and organization have been modeled after the provisions of the Parole Reorganization Act of 1975. This legislation will codify many of these reforms and provide significant statutory protection for the entire parole process. The legislation was introduced in the 94th Congress with 32 cosponsors on January 29, 1975.

STATEMENT

At the beginning of the 92d Congress the issues of Federal prison policy and corrections generally were assigned to the Subcommittee on Courts, Civil Liberties, and the Administration of Justice. At that time, the Subcommittee began an extensive nationwide review of the problems of the penal system. This review included tours of dozens of institutions and interviews with hundreds of inmates, wardens, judges, defense attorneys, prosecutors, and concerned citizens.

Everywhere the Subcommittee went they found universal dissatisfaction with the parole process. Wardens claimed that it was a major cause of institutional tension. Inmates felt that they were being treated inequitably. Judges felt that discrepancies within the system made a mockery of the sentencing process. The Subcommittee began drafting legislation in 1971.

Initially, the U.S. Parole Board was opposed to congressional action on these problems. However, the Honorable Maurice Sigler was appointed Chairman of the Board on June 2, 1972, and a working relationship developed in which the Board actually adopted administratively many of the Subcommittee's recommendations. The Subcommittee continued hearings on the issue during the last session of Congress. However, due to the unique schedule of the Committee on the Judiciary during the 93d Congress a bill was not reported. Nevertheless, meeting in eight markup sessions this spring, the Subcommittee has refined and perfected this legislation which represents a coherent, well-developed response to the needs of the community at large, the prisoner, and the parolee. The legislation will assist in the management of equitable and efficient corrections institutions.

The bill has two major functions.

First, it reconstitutes the U.S. Board of Parole as the U.S. Parole Commission, an independent agency within the Department of Justice, organized into five geographic regions, with definite statutory powers and obligations.

Second, the bill provides an infusion of due process into Federal parole procedures. The parole system has long been recognized as the single most inequitable, potentially capricious, and uniquely arbitrary corner of the criminal justice map. Sixth Amendment criminal prosecution protections that have been gained through the courts have been hard fought and remain inadequate.

The legislation:

Provides definite time periods at which the prisoner shall be eligible for parole. This eliminates uncertainty and allows the inmate time to prepare himself for his hearing.

Provides that if the record shows the inmate has observed the rules of the institution, he shall no longer be required to prove that he is acceptable for release when his proper time arrives. Rather the bill shifts the burden to the Commission to make a positive finding if an inmate is not acceptable for release.

Spells out the factors to be taken into account when considering parole and allows the inmate access to the information being used at his hearing.

Requires that proper notice be given to the inmate of the time and date of his hearing.

Requires that each inmate be permitted an advocate at his hearing to speak for him and to assist in the preparation of his case. Provision is made for the payment of reasonable expenses incurred by the advocate.

Requires that once released the parolee be given credit against his sentence for the time that he serves as a law abiding citizen on the street.

Permits appeal on the merits to the regional commissioner and the National Appellate Commission.

Establishes a hearing process with complete Sixth Amendment protections for the revocation or modification of parole.

Finally, the legislation makes the Administrative Procedure Act applicable to the Parole Commission, thus requiring the publication of rules and regulations and other public notice features. A complete analysis of the legislation follows:

OVERSIGHT

Oversight of the U.S. Board of Parole is the responsibility of the Committee on the Judiciary of the U.S. House of Representatives. The legislation requires that the newly created U.S. Parole Commission shall submit a report on its activities each year to each House of Congress.

NEW BUDGET AUTHORITY

The bill creates new budget authority for one additional member of the Parole Commission to be paid a salary equal to the maximum rate, as in effect from time to time, for level V of the Executive Schedule of section 5316 of title 5.

STATEMENT OF THE BUDGET COMMITTEE

No statement has been received on the Parole Reorganization Act from the House Committee on the Budget.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No statement has been received on the Parole Reorganization Act from the House Committee on Government Operations.

INFLATION IMPACT STATEMENT

The Parole Reorganization Act will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

COMMITTEE VOTE

The Parole Reorganization Act was reported by voice vote of the Committee on April 15, 1975. Twenty-eight Committee members were present. No record votes were taken.

SECTION-BY-SECTION ANALYSIS

(Sec. 4201 and 4202) U.S. Parole Commission, structure and composition

The U.S. Parole Commission is created as an independent establishment within the Department of Justice, consisting of a national office and five regional offices. Except for administrative purposes, the Commission is to be independent of the Department and its budget requests are to be separate from other such requests from the Department. Nine Commissioners will be appointed by the President, with Senate confirmation, for 6 year terms. The President will designate one of the commissioners as chairman to serve in such capacity for a term of 2 years, but for not more than 3 such terms. Presidential appointment of the chairman will emphasize the Commission's independence from the Department. Members of the U.S. Board of Parole will serve out their terms as commissioners, but no one may serve more than 12 years as a commissioner. The commission is given both the power to reorganize the Federal Parole System, and those powers conventionally reposed in Federal administrative agencies. These include rule-and-policymaking, procuring, utilizing and accepting services, contracting, issuing of subpoenas and collection and dissemination of data. The powers to appoint and provide compensation for hearing officers and to establish policies are made nondelegable. Other agencies are requested to cooperate with the Commission. The agency is to meet not less than quarterly and, except where otherwise provided by law, it operates by majority vote.

(Section 4203) Powers and duties of the chairman

The chairman is to preside at meetings; determine the geographical jurisdiction of the regional offices; direct the Commission's request for funds and the use of funds made available; designate the 3 commissioners who, with him, shall constitute the national office, one to serve as Vice Chairman, one commissioner to serve in each of the five regional offices, appoint and fix the pay of Commission personnel.

(Section 4204(a)) Time periods

Provides that a prisoner serving a definite term or terms of over one hundred and eighty days is eligible for parole consideration after having served one-third of his sentence, or in the case of a prisoner sentenced to life or 30 years or more, after serving 10 years of his sentence.

(Section 4204(b))—Minimum term set by court and "(a)(2)" sentences

Provides that upon conviction the Court may designate a minimum term of imprisonment at the expiration of which the prisoner will be eligible for parole. The minimum may be less, but not more, than one-third of the maximum sentence imposed by the court. Provides that a prisoner to whom no minimum sentence is prescribed and who is given a sentence under 18 U.S.C. 4208(a)(2) wherein the court fixes the maximum sentence is eligible for consideration of parole no later than a total of 150 days after being imprisoned.

(Section 4204) Time periods for revoked parolee

A parole revokee shall have a parole determination hearing no later than ninety days following imprisonment and the regional commissioner must determine the date of this eligibility for parole not later than ninety days following imprisonment and the regional com-

(Section 4204) Criteria and burden of establishing eligibility

Provides that a prisoner who has substantially observed the rules of institution shall be released on parole when eligible unless:

1. There is a reasonable probability that he will not live and remain at liberty without violating any criminal law, or
2. there is a reasonable probability that such release would be incompatible with the welfare of society, or
3. his release would so depreciate the seriousness of his crime as to undermine respect for law.

Importantly, the burden of establishing that a prisoner is not acceptable for release on parole rests with the Commission.

(Section 4205(a)) Suitable for release, but not yet eligible

Provides that if a prisoner has not yet served the minimum required, but (1) there is a reasonable probability that he will live and remain at liberty without violating any criminal law, and (2) there is a reasonable probability that his release would not be incompatible with the welfare of society and (3) that his release would not so depreciate the seriousness of the crime as to undermine respect for the law but he is not yet eligible for release on parole, the Director of the Bureau of Prisons may, in his discretion, apply to the court for a modification of sentence in order to make the prisoner eligible for parole consideration.

(Section 4205(B)) Those not released when first eligible and special offenders

Provides that a prisoner who has not earlier been released on parole, shall be released after having served $\frac{2}{3}$ of his sentence, or after 20 years in the case of a sentence of 30 years or longer, unless it is determined that there is a high likelihood he will engage in conduct violating any criminal law. This provision does not apply to special offenders, as defined by the Organized Crime Control Act.

(Section 4206) Factors and information considered

Provides that in determining whether a prisoner should be released on parole there shall be taken into account the factors established by

the Commission by its rulemaking authority and consideration of the following information:

1. Reports and recommendations of prison staff;
2. Prior criminal record;
3. Pre-sentence investigation report;
4. Recommendation of the sentencing judge;
5. Reports of physical, mental, or psychiatric examinations;
6. Such other additional relevant information as is available, including information submitted by the prisoner.

It is the intent of the Committee that all available information on the efforts that the prisoner may have made to improve his education, skills, or personal attributes be considered by the Commission.

(Section 4207) Parole determination hearing, time

Provides that a parole determination hearing shall be conducted by an examining panel of two hearing examiners. In a case in which the two examiners do not concur, a third hearing examiner shall cast the deciding vote. It is the intent of the Committee that the quality of the parole determination process shall not suffer because a third hearing examiner is required to review a case.

Provides that in the case of a prisoner with a minimum sentence, the hearing shall be held whenever feasible not later than 60 days prior to the expiration of that minimum sentence. In the case of a prisoner with no minimum, the hearing shall be held, whenever feasible, not later than 90 days after imprisonment.

Provides that following the first parole determination hearing, subsequent hearings shall be held annually until the prisoner is released.

(Section 4208(a)) Notice procedure of parole determination hearing

Provides that within 30 days prior to the hearing, the Regional office is to provide the prisoner with written notice of the time and place of the hearing.

(Section 4208(b)) Information used

Provides that the Board shall make available to the prisoner the files used in making the determination. The Board may withhold any file or other document which is:

1. Not relevant;
2. Is a diagnostic opinion which might seriously disrupt a program of rehabilitation;
3. Reveals sources of information which may have been obtained on the promise of confidentiality.

When the Commission does withhold such files, it shall so state and shall provide the prisoner or any advocate of the prisoner with written notice of its findings with reasons. Further it shall provide the substance of any withheld file, except when this would endanger the safety of any person other than the prisoner, or seriously disrupt a program of rehabilitation.

It is the intent of the Committee to permit prisoner access to information used at his parole determination in every case except those specifically stated above. It is the intent of the Committee that the words "endanger the safety of any person" be broadly construed to include mental as well as physical safety of any person.

(Section 4208(c)) Advocate

The prisoner is allowed to consult with an advocate, by mail, or otherwise as provided by the Commission, with any other person, concerning his forthcoming hearing. He can be represented, if he chooses, by an attorney or other qualified person at the hearing. The prisoner is allowed to appear and testify on his own behalf. The Commission is authorized to pay expenses (not fees) of advocates attending hearings. It is the intent of the Committee that the Commission rules shall not unnecessarily restrict the utilization of this right to an advocate.

(Section 4208(d)) Record and notification procedure of parole determination hearing

Provides that a full record of the hearing be kept, and within 14 days after the hearing, the examiner panel shall notify the prisoner in writing of its determination. They shall furnish him with written notice stating with particularity the grounds on which its determination was based, including a summary of the evidence and information supporting the finding that he has not substantially complied with the rules of the institution or that there is a reasonable probability he will not live and remain at liberty without violating any criminal law, or there is a reasonable probability that his release would be incompatible with the welfare of society or would so deprecate the seriousness of his crime as to undermine respect for law. Also, when feasible, the examining panel shall advise the prisoner of what he ought to do to enhance his prospects for parole.

(Section 4209) Conditions of parole

Directs the Commission to impose conditions it deems reasonably necessary to ensure that parolee will lead a law-abiding life or to assist him in doing so. Directs the Commission to impose as a condition that the parolee not commit any criminal offense during his parole.

Authorizes the Commission to set as a condition that the parolee reside in, or participate in the program of, a residential community treatment center or similar public or private facility. In the case of a parolee who is a drug addict or a drug dependent person, the Commission is authorized to set as a condition that the parolee participate in a community supervision program. If the parolee can derive no further benefit from such program or residence, or if his residence or participation adversely affects the rehabilitation of other residents or participants, he may be terminated from it. The Regional Commissioner is authorized to require parolee to pay the costs of his residence.

In imposing conditions of parole, there shall be a reasonable relationship between the condition imposed and both the prisoner's previous conduct and his present capabilities; and the conditions shall be sufficiently specific to serve as a guide for conduct.

Upon release on parole a prisoner is to be given a certificate setting forth in writing the conditions of parole, and a special effort shall be made to make certain that the prisoner understands the conditions of his parole. It is the intent of the Committee that such services as translation to a language other than English shall be made if it would assist in the understanding of conditions of parole.

(Section 4210) Jurisdiction of the Commission

Except as otherwise provided, the jurisdiction of the Commission over the parolee terminates no later than the date on which the individual's maximum term for which he was sentenced expires, except in the case of mandatory releases, 180 days prior to the expiration of the maximum term for which he was sentenced. Parole runs concurrently with any other parole or probation. In the case of a parolee who intentionally refuses or fails to comply with any reasonable request, order, or warrant of the Commission, jurisdiction of the Commission may be extended for the period of his noncompliance.

In the case of any parolee imprisoned pursuant to another sentence during his parole, the jurisdiction of the Commission may be extended for a period equal to the period of his imprisonment.

It is the intent of the Committee that this section shall provide that the parolee be given credit against his sentence for the time he serves on parole.

(Section 4211) Early termination or release from conditions of parole

Upon his own motion or upon petition of the parolee, the regional commissioner is authorized to suspend parole supervision of parolees who no longer need it or release a parolee from any condition of parole.

Two years after each prisoner's release on parole, and at least annually thereafter, the regional commissioner must review the status of the parolee to determine the need for continued supervision but discharge remains in the discretion of the commissioner. However, a parolee shall be discharged from supervision after 5 years of continuous supervision unless it is determined, after a hearing, that he should not be so discharged because there is a likelihood that he will engage in conduct violative of a criminal law.

If parole supervision is continued after 5 years the parolee may request a hearing annually and shall receive a hearing at least biennially, for the purpose of determining the need for further supervision. Any hearing held pursuant to this section shall be in accordance with the procedures set out for a parole revocation hearing.

(Section 4212) Aliens

Provides that the Board is authorized to release an alien prisoner who is subject to deportation when released, on the condition that he be deported and remain outside the United States. Such prisoner, when released is delivered to the immigration officials.

(Section 4213) Parole modification and revocation guidelines

Provides that subject to the due process requirements of sections 4214 and 4215 parole may be modified for good cause when there is sufficient change in circumstances or revoked for a violation of a condition of parole, or a termination of parolee's assignment to a center.

(Section 4214) Retaking of the parolee

Provides procedure to be followed by the regional commissioner when he believes a parolee has violated a condition of his parole or that a parolee's assignment to a center or program should be terminated. In brief, he may order the parolee to appear before him or before a hear-

ing examiner or he may issue a warrant and retake the parolee. If the parolee has been charged with a criminal offense, both these alternatives may be suspended pending disposition.

The order or warrant must provide detailed written notice of the conditions of parole alleged to have been violated, the time, date, place, and circumstances of the violation and of the scheduled hearing, the parolee's rights and the possible consequences of the proceeding. Such order or warrant must be issued by the regional commissioner as early as practicable irrespective of whether the parolee is imprisoned.

(Section 4215) Parole modification and revocation procedure

A warrant is executed by taking the parolee to the custody of the regional commissioner unless he directs that the parolee should be returned to the custody of the Attorney General. In the latter case, however, there must be a determination, after preliminary hearing, that there is probable cause to believe the charges against him and to believe that he will not appear for the hearing on the charges or constitute a danger to himself or others. The preliminary hearing is to be held as soon as possible following the retaking of the parolee and the parolee is to be advised of charges against him and allowed to testify at the hearing. Following the preliminary hearing the regional commissioner may impose interim modifications of the conditions of parole.

If a parolee contests the charges, a hearing is to be held within 30 days after the issuance of the order or date of retaking, whichever is later, at a place near the location of the alleged violation. The hearing shall be conducted by a panel of two hearing examiners, to be augmented by a third, should the two disagree. In the case of a parolee imprisoned at an institution, the hearing shall be conducted at such site and the parolee allowed to participate.

At the hearing the parolee shall be entitled to examine the evidence against him, to be represented by an attorney or other competent person, to appear and testify on his behalf, and compel the appearance of witnesses and their examination and to the maintenance of a complete record.

In the case of a parolee who does not contest the allegations against him or who has been adjudged guilty of a crime, no hearing shall be held under this section unless the parolee so requests.

Within 14 days after the hearing under this section the parolee shall be informed in writing of the panel's decision and the particular reasons therefor.

(Section 4216) Appeals

Provides that adverse action imposing conditions of parole or modifying or denying release or revoking parole, may be appealed not later than 30 days after receiving written notice of such action. The regional commissioner shall decide the appeal within 30 days after receipt of the appellant's papers and shall inform the appellant in writing of his decision and the reasons therefor.

Appeal from an adverse decision on the part of the regional commissioner may be taken to the national office within 30 days of the decision of such regional commissioner and such appeal will be decided within 60 days by a majority vote of the three commissioners on the National Appellate Commission. The National Appellate Com-

mission shall consist of the Chairman and the Vice Chairman of the U.S. Parole Commission and one of the other commissioners assigned to serve in the national office.

(Section 4217) Fixing eligibility at time of sentencing

A court may: (1) designate a minimum term of not more than one-third of the maximum term (in excess of 1 year) at the expiration of which a prisoner shall be eligible for parole. Or, (2) the court may fix the maximum sentence to be served, in which case the court may specify that the prisoner become eligible for parole at such time as the regional commissioner may determine.

Beyond this, the court may commit a parolee to the custody of the Attorney General for study to determine what sentence to impose. The results are to be furnished to the court within 3 months or, if the court grants additional time, within 6 months.

(Section 4218) Young adult offenders

Provides authorization for the court to sentence offenders between the ages of 22 and 25 under the terms of the Youth Corrections Act, if the court finds that they will benefit under the Act.

(Section 4219) Canal Zone offenders

Provides that warrants issued by the Governor of the Canal Zone for retaking a parole violator shall be executed by taking the prisoner and holding him for delivery to a representative of the Governor for return to the Canal Zone.

(Section 4220) Not eligible offenders

Provides that nothing in the bill shall be construed to provide that any prisoner shall be eligible for parole if he is ineligible under any other provision of law.

(Section 4221) Annual report to Congress

Provides that the commission is to report annually to each House of Congress on its activities.

(Section 4222) Applicability of the Administrative Procedure Act

For the purposes of the provisions of Chapter 5 of title 5 U.S.C. the United States Parole Commission is defined as an "agency" with certain exceptions. The provisions of the Administrative Procedure Act which are deemed not to apply to the United States Parole Commission are:

§ 552(a)(4) which requires that an agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

§ 554 of the Administrative Procedure Act, titled "Adjudications," is made not applicable to the United States Parole Commission.

§ 555 of the APA, titled "Ancillary Matters," is made not applicable to the United States Parole Commission.

§ 556 of the APA, titled "Hearings; presiding employees, powers and duties; burden of proof; evidence; record as basis of decision," is made not applicable to the United States Parole Commission.

§ 557 of the APA, titled "Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record," is made not applicable to the United States Parole Commission.

Also, § 553(b)(3)(A) of title 5, relating to rulemaking, shall be deemed not to include the phrase 'general statements of policy'.

(Section 4223) Definition

For the purposes of the Parole Reorganization Act:

The term 'prisoner' means a Federal prisoner other than a juvenile delinquent or a committed youth offender, and

The term 'parolee' means any prisoner released on parole or deemed as if released on parole under section § 4164 (relating to mandatory release).

(Section 2) Conforming amendments

The Parole Re-organization Act contains the following conforming amendments:

(1) Section 5108(c)(7) of title 5, relating to classification of positions at GS-16, 17, and 18, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons;"

(2) Section 3655 of title 18, United States Code, relating to duties of probation officers, is amended by striking out "Attorney General" in the last sentence and inserting in lieu thereof "United States Parole Commission."

(3) Section 5005 of such title, relating to the Youth Correction Division, is amended by striking out "Attorney General" each place it appears and inserting in lieu thereof "Chairman of the United States Parole Commission" and by striking out "Board of Parole" each place it appears and inserting in lieu thereof "United States Parole Commission".

(4) The second sentence of section 5008 of such title, relating to duties of probation officers, is amended by striking out "Attorney General" each place it appears and inserting in lieu thereof "Chairman of the United States Parole Commission".

(5) Section 509(4) of title 28, United States Code, relating to functions of the Attorney General, is amended to read as follows:

"(4) United States Parole Commission".

(d) Clause (B) of section 504(a) of the Labor Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504(a)(B)), prohibiting certain persons from holding offices, is amended by striking out "Board of Parole" and inserting in lieu thereof "United States Parole Commission".

(Section 3) Effective date

The Parole Re-organization Act shall take effect 60 days after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *
Chapter 231.—PROBATION* * * * *
§ 3655. Duties of probation officers.

The probation officer shall furnish to each probationer under his supervision a written statement of the conditions of probation and shall instruct him regarding the same.

He shall keep informed concerning the conduct and condition of each probationer under his supervision and shall report thereon to the court placing such person on probation.

He shall use all suitable methods, not inconsistent with the conditions imposed by the court, to aid probationers and to bring about improvements in their conduct and condition.

He shall keep records of his work; shall keep accurate and complete accounts of all moneys collected from persons under his supervision; shall give receipts therefor, and shall make at least monthly returns thereof; shall make such reports to the Director of the Administrative Office of the United States Courts as he may at any time require; and shall perform such other duties as the court may direct.

Each probation officer shall perform such duties with respect to persons on parole as the [Attorney General] *United States Parole Commission* shall request.

* * * * *
[Chapter 311.—PAROLE

[Sec.

[4201. Board of Parole; members.

[4202. Prisoners eligible.

[4203. Application and release; terms and conditions.

[4204. Aliens.

[4205. Retaking parole violator under warrant; time to serve undiminished.

[4206. Officer executing warrant to retake parole violator.

[4207. Revocation upon retaking parolee.

[4208. Fixing eligibility for parole at time of sentencing.

[4209. Young adult offenders.

[4210. Warrants to retake Canal Zone parole violators.

[§ 4201. Board of Parole; members.

[There is hereby created in the Department of Justice a Board of Parole to consist of eight members to be appointed by the President, by

and with the advice and consent of the Senate. The members of the Board first appointed under this section shall be appointed for terms as follows: Two for two years, two for three years, two for four years, and two for six years, respectively, from the effective date of this section. The term of office of a successor to any member shall expire six years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of his term of office, a member of the Board shall continue to act until his successor shall have been appointed and qualified. The Attorney General shall from time to time designate one of its members to serve as Chairman of said Board and delegate to him the necessary administrative duties and responsibilities.

[§ 4202. Prisoners eligible.

[A Federal prisoner, other than a juvenile delinquent or a committed youth offender, wherever confined and serving a definite term or terms of over one hundred and eighty days, whose record shows that he has observed the rules of the institution in which he is confined, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence of over forty-five years.

[§ 4203. Application and release; terms and conditions.

[(a) If it appears to the Board of Parole from a report by the proper institutional officers or upon application by a prisoner eligible for release on parole, that there is a reasonable probability that such prisoner will live and remain at liberty without violating the laws, and if in the opinion of the Board such release is not incompatible with the welfare of society, the Board may in its discretion authorize the release of such prisoner on parole.

[Such parolee shall be allowed in the discretion of the Board, to return to his home, or to go elsewhere, upon such terms and conditions, including personal reports from such paroled person, as the Board shall prescribe, and to remain, while on parole, in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which he was sentenced.

[The Board may require a parolee or a prisoner released pursuant to section 4164 of this title as conditions of parole or release to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of parole: *Provided*, That the Attorney General certifies that adequate treatment facilities, personnel and programs are available. If the Attorney General determines that the person's residence in the center or participation in its program, or both, should be terminated, because the person can derive no further significant benefits from such residence or participation, or both, or because his such residence or participation adversely affects the rehabilitation of other residents or participants, he shall so notify the Board of Parole, which shall thereupon make such other provision with respect to the person as it deems appropriate.

[A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate.

Each order of parole shall fix the limits of the parolee's residence which may be changed in the discretion of the Board.

The Board may require a parolee, or a prisoner released pursuant to section 4164 of this title, who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), as a condition of parole or release to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole: *Provided*, That the Attorney General certifies a suitable program is available. If the Attorney General determines that the person's participation in the program should be terminated, because the person can derive no further significant benefits from participation or because his participation adversely affects the rehabilitation of other participants, he shall so notify the Board of Parole, which shall thereupon make such other provision with respect to the person as it deems appropriate.

A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate.

Each order of parole shall fix the limits of the parolee's residence which may be changed in the discretion of the Board.

(b) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

§ 4204. Aliens.

When an alien prisoner subject to deportation becomes eligible for parole, the Board of Parole may authorize his release on condition that he be deported and remain outside the United States.

Such prisoner, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

§ 4205. Retaking parole violator under warrant; time to serve undiminished.

A warrant for the retaking of any United States prisoner who has violated his parole, may be issued only by the Board of Parole or a member thereof and within the maximum term or terms for which he was sentenced. The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, and the time the prisoner was on parole shall not diminish the time he was sentenced to serve.

§ 4206. Officer executing warrant to retake parole violator.

Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such prisoner and returning him to the custody of the Attorney General.

§ 4207. Revocation upon retaking parolee.

A prisoner retaken upon a warrant issued by the Board of Parole, shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board.

The Board may then, or at any time in its discretion, revoke the order of parole and terminate such parole or modify the terms and conditions thereof.

If such order of parole shall be revoked and the parole so terminated, the said prisoner may be required to serve all or any part of the remainder of the term for which he was sentenced.

§ 4208. Fixing eligibility for parole at time of sentencing.

(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may become eligible for parole at such time as the Board of Parole may determine.

(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) Place the prisoner on probation as authorized by section 3651 of this title, or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Board of Parole a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Board of Parole may make such other investigation as it may deem necessary.

It shall be the duty of the various probation officers and government bureaus and agencies to furnish the board of parole information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

mission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(7) accept voluntary and uncompensated services notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665(b));

(8) request such information, data, and reports from any Federal agency as the Commission may from time to time require and as may be produced consistent with other law;

(9) arrange with the head of any other Federal agency for the performance of such agency of any function of the Commission, with or without reimbursement;

(10) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the Commission deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations or agencies shall bear excessive caseloads;

(11) (A) issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter with respect to which the Commission or any Commissioner or agent of the Commission is empowered to make a determination under this chapter; such attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States;

(B) if a person to whom a subpoena was issued under subparagraph (A) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Chairman) order such person to appear before the Commission or any Commissioner or agent thereof to produce evidence or to give testimony touching the matter under investigation; any failure to obey such order of the court may be punished by such court as a contempt thereof;

(C) the subpoena of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts;

(D) all process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found;

(E) for purposes of sections 6002 and 6004 of this title (relating to immunity of witnesses) the Commission shall be considered an agency of the United States; and

(12) (A) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process;

(B) disseminate pertinent data and studies to individuals, agencies, and organizations concerned with the parole process;

(C) publish data concerning the parole process;

(D) carry out programs of research to develop effective classification systems through which to describe the various types of offenders who require different styles of supervision and the types of parole officers who can provide them, and to develop theories and practices which can be applied successfully to the different types of parolees;

(E) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in working directly with parolees;

(F) devise and conduct a training program of short-term instruction in the latest proven effective methods of parole for parole personnel and other persons connected with the parole process;

(G) develop technical training programs to aid in the development of training programs within the several States and with the State and local agencies and private and public organizations which work with parolees; and

(H) authorize in its discretion the use of its funds for the reimbursement of expenses reasonably incurred by a prisoner's advocate attending the prisoner's parole determination hearing, as provided in section 4208(c)(2). Such reimbursement shall not include payment of any fee for services rendered.

The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law (including any provision of law which invests any powers or functions in the Commission or in the Board of Parole).

(b) The Commission may delegate to any Commissioner or hearing examiner such of its powers as may be appropriate other than—

(1) the power to appoint and fix the basic pay of hearing examiners, and

(2) the power to establish general policies, guidelines, rules, and factors under subsection (a)(1).

(c) Upon the request of the Commission, each Federal agency is authorized to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Commission in the performing of its functions.

(d) The Commission shall meet not less frequently than quarterly to establish its general policies and rules.

(e) Except as otherwise provided by law, any action taken by the Commission shall be taken by a majority vote of all individuals currently holding office as members of the Commission and it shall maintain and make available for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it.

§ 4203. Powers and duties of Chairman.

The Chairman shall—

(1) preside at meetings of the Commission;

(2) determine the geographical jurisdiction of each regional office, and assign duties among the regional offices, in order to assure efficient administration;

(3) direct (A) the preparation (for purposes of section 4202 (a)(3)) of requests for appropriations for the Commission, and (B) the use of funds made available to the Commission;

(4) designate three Commissioners to serve with him in the national office, one to serve as Vice Chairman (who shall serve at the pleasure of the Chairman, and shall act as Chairman in the absence or disability of the Chairman or in the event of the vacancy of the Chairmanship), and designate one Commissioner to serve in each of the five regional offices;

(5) appoint and fix the basic pay of personnel of the Commission; and

(6) have such other administrative duties and responsibilities as may be necessary.

§ 4204. Time of eligibility for release on parole.

(a) Whenever confined and serving a definite term or terms of over one hundred and eighty days, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years.

(b) (1) Any prisoner whose eligibility for release on parole is fixed under clause (1) of section 4217(a) at the time of sentencing shall be eligible for release on parole on a date as provided in that clause.

(2) The regional office shall determine the date of eligibility of any prisoner sentenced under clause (2) of section 4217(a). Such date shall be not later than sixty days following the date prescribed by section 4207(b) for the prisoner's initial parole determination hearing.

(c) The regional office shall determine the date of eligibility of any prisoner released on parole and subsequently reimprisoned. Such date shall not be later than sixty days following the date prescribed by section 4207(b) for the prisoner's initial parole determination hearing.

§ 4205. Release on parole.

(a) A prisoner shall be released on parole if his record shows that he has substantially observed the rules of the institution in which he is confined on the date of his eligibility for parole, unless it is determined by an examining panel (as provided in section 4207(a)) that he should not be released on such date for one or more of the following reasons:

(1) there is a reasonable probability that such prisoner will not live and remain at liberty without violating any criminal law;

(2) there is a reasonable probability that such release would be incompatible with the welfare of society; or

(3) the prisoner's release on such date would so deprecate the seriousness of his crime as to undermine respect for law.

(b) Any prisoner not earlier released under subsection (a), except a special offender as defined in section 3575(e) of this title, shall be released on parole after he has served two-thirds of his sentence, or after twenty years in the case of a sentence of thirty years or longer (including a life sentence), whichever is earlier, unless it is determined that he should not be so released because there is a high likelihood that he will engage in conduct violating any criminal law.

(c) When by reason of his training and response to the programs of the Bureau of Prisons, it appears that there is a reasonable probability that the prisoner will live and remain at liberty without

violating any criminal law, that his immediate release is not incompatible with the welfare of society, and that his release would not so deprecate the seriousness of his crime as to undermine respect for law, but he is not yet eligible for release on parole under section 4204, the Director of the Bureau of Prisons in his discretion may apply to the court imposing sentence for a modification of his sentence in order to make him so eligible. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

§ 4206. Factors taken into account; information considered.

In making a determination under section 4205 (a) or (b) (relating to release on parole) there shall be taken into account the factors established by the Commission under section 4202(a)(1); and

(1) any reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) any official report of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) any presentence investigation report;

(4) any recommendation regarding the prisoner's parole made at the time of sentencing by the sentencing judge; and

(5) any reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

§ 4207. Parole determination hearing; time.

(a) In making a determination under section 4205 (a) or (b) (relating to release on parole) the regional office shall hold a hearing (referred to in this chapter as a "parole determination hearing") unless it determines on the basis of the prisoner's record that the prisoner will be released on parole. The hearing shall be conducted by an examining panel of two hearing examiners. In any case in which the two examiners do not concur, a third hearing examiner shall cast the deciding vote.

(b) In the case of any prisoner eligible for parole on a date provided by section 4204, an initial parole determination hearing shall be held at a time prescribed by the regional office. Whenever feasible, in the case of a prisoner eligible for parole on a date provided by section 4204 (a) or (b) (1), the time of such hearing shall be not later than sixty days before such date of his eligibility for parole (as provided by such section). Whenever feasible, in the case of a prisoner eligible for parole on a date provided by section 4204 (b) (2) or (c), the time of such hearing shall be not later than ninety days following such prisoner's imprisonment, or reimprisonment, as the case may be.

(c) In any case in which release on parole is not granted within fourteen days after the date of the prisoner's parole determination hearing, subsequent parole determination hearings shall be held not less frequently than annually thereafter.

§ 4208. Procedure of parole determination hearing.

(a) At least thirty days prior to any prisoner's parole determination hearing, the regional office shall (1) provide the prisoner with written

notice of the time and place of the hearing, and (2) make available to the prisoner any file or report or other document to be used in making its determination.

(b) Clause (2) of subsection (a) shall not apply to any portion of any file, report, or other document which—

(1) is not relevant to the parole determination hearing;

(2) is a diagnostic opinion the disclosure of which might seriously disrupt a program of rehabilitation; or

(3) reveals sources of information which may have been obtained on a promise of confidentiality.

Whenever the regional Commissioner or an examining panel finds that this subsection applies to any portion of a file, report, or other document to be used in a parole determination hearing, such finding (including the reasons therefor) shall be stated on the record and shall provide the prisoner, or any advocate of the prisoner referred to in subsection (c) (2), with written notice of such finding and reasons. The regional Commissioner or examining panel shall make available to the prisoner, or any advocate of the prisoner referred to in subsection (c) (2), the substance of any portion of any file, report, or other document not made available by reason of paragraph (2) or (3) of this subsection, except when the disclosure of such substance would endanger, in the opinion of the regional Commissioner or examining panel (as the case may be), the safety of any person other than the prisoner or might seriously disrupt a program of rehabilitation.

(c) (1) At any time prior to the parole determination hearing, a prisoner may consult with an advocate as referred to in paragraph 2, and as provided by the regional Commissioner, he may consult by mail or otherwise, with any person concerning such hearing.

(2) The prisoner shall, if he chooses, be represented at the parole determination hearing by an advocate who qualifies under reasonable rules prescribed by the Commission. Such rules shall not exclude attorneys as a class.

(d) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination hearing.

(e) A full and complete record of the parole determination hearing shall be kept, and not later than fourteen days after the date of the hearing, the examining panel shall (1) notify the prisoner in writing of its determination, and (2) unless he is released on parole, the panel shall furnish the prisoner with a written notice stating with particularity the grounds on which its determination was based, including a summary of the evidence and information supporting the finding that the criteria provided in section 4205 were established as to the prisoner. When feasible, the examining panel shall advise the prisoner as to what steps, in its opinion, may be taken to correct the problems responsible for the denial of release on parole, so as to enhance the chance of being released.

§ 4209. Conditions of parole.

(a) There shall be imposed such conditions of parole as are deemed reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him in doing so. In every case there shall be imposed as a condition of parole that the parolee not commit any criminal offense during his parole.

(b) There may be required as a condition of parole that the parolee reside in or participate in the program of a residential community treatment center, or similar public or private facility, for all or part of the period of parole if the Attorney General (or director in the case of such similar facility) certifies that adequate treatment facilities, personnel, and programs are available. In the case of a parolee who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(g) of the Public Health Service Act, there may be required as a condition of parole that the parolee participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole. If the Attorney General (or director, as the case may be) determines that a parolee's residence in a center, or participation in a program, should be terminated because the parolee can derive no further significant benefits from such residence or participation, or because his residence or participation adversely affects the rehabilitation of other residents or participants, the Attorney General (or director, as the case may be) shall so notify the appropriate regional office, which shall thereupon make such other provision with respect to the parolee as it deems appropriate. A parolee residing in a residential community treatment center may be required to pay such costs incident to residence as the regional office deems appropriate.

(c) In imposing conditions of parole there shall be a reasonable relationship between the conditions imposed and both the prisoner's previous conduct and his present capabilities, and all conditions shall be sufficiently specific to serve as a guide to supervision and conduct.

(d) Upon release on parole, a prisoner shall be given a certificate setting forth the conditions of his parole. Special effort shall be made to make certain that the prisoner understands the conditions of his parole.

§ 2410. Jurisdiction of Commission.

(a) Except as otherwise provided in this section, the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that such jurisdiction shall terminate at an earlier date to the extent provided under section 4164 (relating to mandatory release).

(b) Except as otherwise provided in this section no penalty or condition imposed pursuant to an order of parole modification or revocation shall extend beyond the date of termination of the Commission's jurisdiction over the parolee.

(c) The parole of any parolee shall run concurrently with a period of parole or probation under any other Federal, State, or local sentence.

(d) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.

(e) In the case of any parolee imprisoned under any other sentence, the jurisdiction of the Commission may be extended for a period equal to the period during which such parolee was so imprisoned.

(f) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less

good time allowances provided by sections 4161 through 4165 of this title.

(g) Upon the termination of the jurisdiction of the Commission over any parolee, the regional office shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

§ 4211. Early termination or release from conditions of parole.

(a) Upon his own motion or upon petition of the parolee, the regional commissioner may terminate supervision over a parolee prior to the termination of jurisdiction under section 4210, or the regional commissioner may release a parolee at any time from any condition of parole imposed under section 4209.

(b) Two years after each parolee's release on parole, and at least annually thereafter, the regional commissioner shall review the status of the parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period or release on parole prior to the most recent such release.

(c) (1) Five years after each parolee's release on parole, the regional commissioner shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in subsections (b) and (d) of section 4215, that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law.

(2) If supervision is not terminated under paragraph (1), the parolee may request a hearing annually thereafter, and a hearing, with procedures as provided in paragraph (1) shall be conducted with respect to such termination of supervision not less frequently than biennially.

(3) In calculating the five-year period referred to in paragraph (1), there shall not be included any period of release on parole prior to the most recent such release.

§ 4212. Aliens.

When an alien prisoner subject to deportation becomes eligible for parole, the regional commissioner may authorize his release on condition that he be deported and remain outside the United States. Such prisoner, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

§ 4213. Parole modification or revocation.

(a) Subject to the requirements of sections 4214 and 4215, the parole of any parolee may be modified for good cause when there is sufficient change in circumstances to warrant such a modification.

(b) Subject to the requirements of sections 4214 and 4215, the parole of any parolee may be revoked for:

- (1) a violation of a condition of parole, or
- (2) a termination of parolee's assignment to a center or similar facility or program under section 4209(b).

§ 4214. Order to appear or warrant for retaking of parolee.

(a) If the regional commissioner believes that the parole of any parolee should be modified or revoked, he may—

- (1) order such parolee to appear at a hearing conducted pursuant to section 4215; or

(2) if the parolee fails to comply with said order or otherwise appears unlikely to comply, issue a warrant and retake the parolee as provided in this section.

In the case of any parolee charged with a criminal offense, issuance of an order to appear or the retaking of parolee may be suspended pending disposition of the charge.

(b) Any order or warrant issued pursuant to this section shall provide the parolee with written notice of—

(1) the specific reasons for the proposed modification of his parole as provided under section 4213(a);

(2) the conditions of parole he is alleged to have violated as provided under section 4213(b);

(3) the time, date, place, and circumstances allegedly justifying modification or revocation;

(4) the time, date, and place of the scheduled hearing;

(5) his rights under this chapter, and

(6) the possible action which may be taken by the Commission.

(c) Any order or warrant issued under this section shall be issued by the regional commissioner as soon as practicable. Imprisonment in an institution shall not be deemed grounds for delay of such issuance.

(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the regional commissioner shall so direct.

§ 4215. Parole modification and revocation procedures.

(a) A parolee retaken under section 4214 may be returned to the custody of the Attorney General and imprisoned if the regional commissioner or the hearing examiner designated by him determines, after a preliminary hearing, that there is probable cause to believe that he has violated a condition of his parole or probable cause to support the termination of his assignment to a center or similar facility or program pursuant to section 4209(b), and probable cause to believe that the parolee either—

(1) will not appear for his hearing under subsection (b) when so ordered, or

(2) constitutes a danger to himself or to others.

The preliminary hearing shall be held as soon as possible following the retaking of the parolee, and the parolee shall be advised of the charges against him and shall be allowed to testify at such hearing.

(b) When any parolee is ordered to appear under section 4214 or is retaken by warrant under section 4214, a hearing shall be held not later than thirty days after—

(1) issuance of the order, or

(2) the date of the retaking,

whichever is later. In a case involving an alleged violation of parole or termination of assignment to a center or similar facility or program, the hearing shall be held reasonably near the location where the alleged violation occurred. In a case involving an alleged need to modify parole under section 4214(a), the hearing shall be held reasonably near the residence of the parolee. Special effort shall be made to make certain

that the parolee understands, prior to the date of the hearing, his rights and the procedures under this chapter. Hearings under this section shall be conducted by a hearing panel of two hearing examiners. In any case in which the two hearing examiners do not concur, a third hearing examiner shall cast the deciding vote. In the case of any parolee imprisoned in an institution to whom an order is issued, such hearing shall be conducted at such institution or other site specified by the regional commissioner and the parolee shall be allowed to participate in accordance with subsection (c). If the hearing panel finds by a preponderance of the evidence that the parolee has violated a condition of his parole; that his parole should be modified, or that his assignment to a center or similar facility or program should be terminated, the panel may modify or revoke his parole.

(c) The hearing conducted pursuant to subsection (b) shall include the following procedures:

(1) representation by an attorney (retained by the parolee or appointed pursuant to section 3006a of chapter 201) or such other qualified person as the parolee shall retain, unless the parolee knowingly and intelligently waives such representation;

(2) proper and timely opportunity for the parolee to consult with his representative as provided in paragraph (1) and to examine any information or evidence to be used at such hearing;

(3) opportunity for the parolee to appear and testify on his own behalf;

(4) opportunity for the parolee to compel the appearance of witnesses and to confront and cross examine witnesses; and

(5) maintenance of a full and complete record of the hearing.

(d) No hearing shall be held under subsection (b) in the case of any parolee who is ordered to appear under section 4214 or who is retaken by warrant under section 4214 and who knowingly and intelligently waives his right to such hearing.

(e) Following the preliminary hearing conducted pursuant to subsection (a), the regional commissioner may impose such interim modification of parole as may be necessary, without regard to the provisions of section 4209.

(f) Not more than fourteen days following the hearing under subsection (b), the parolee shall be informed in writing of the finding and disposition of the hearing panel, including with particularity the reasons therefor.

§ 4216. Appeals.

(a) Whenever—

(1) conditions of parole are imposed under section 4209,

(2) parole is modified under section 4213(c), or

(3) a prisoner is denied release on parole under section 4204, or

(4) his parole is revoked.

the prisoner or parolee may appeal such action to the regional commissioner not later than thirty days after receiving written notice thereof. Such appeal shall be decided by the regional commissioner within thirty days after receipt of the appellant's appeal papers and the regional commissioner shall inform the appellant in writing of his decision and the reasons therefor.

(b) Within thirty days of any adverse decision of a regional commissioner a prisoner or parolee may appeal such decision to the National Appellate Commission which shall consist of the Chairman and the Vice Chairman of the United States Parole Commission and one of the other Commissioners assigned to serve in the national office. The National Appellate Commission shall decide such appeal by a majority vote within sixty days after receipt of the appellant's appeal papers, and shall inform the appellant in writing of its decision and the reasons therefor.

§ 4217. Fixing eligibility for parole at time of sentencing.

(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than, one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may become eligible for parole at such time as the regional commissioner may determine.

(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the prisoner on probation as authorized by section 3651 of this title; or (2) affirm the sentence of imprisonment originally imposed, or reduced the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the regional office of the Commission a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The regional office may make such other investigation as it may deem necessary. It shall be the duty of the various probation officers and government bureaus and agencies to furnish the regional office information concerning the prisoner, and, whenever compatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

§ 4218. Young adult offenders.

In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

§ 4219. Warrants to retake Canal Zone parole violators.

An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

§ 4220. Certain prisoners not eligible for parole.

Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

§ 4221. Annual report.

The Commission shall report annually to each House of Congress on the activities of the Commission.

§ 4222. Applicability of Administrative Procedure Act.

(a) For purposes of the provisions of chapter 5 of title 5, other than sections 552(a)(4), 554, 555, 556, and 557, the Commission is an "agency" as defined in such chapter.

(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, relating to rulemaking, shall be deemed not to include the phrase "general statements of policy".

§ 4223. Definitions.

As used in this chapter—

(a) The term "prisoner" means a Federal prisoner other than a juvenile delinquent or a committed youth offender.

(b) The term "parolee" means any prisoner released on parole or deemed as if released on parole under section 4164 (relating to mandatory release).

Chapter 402.—FEDERAL YOUTH CORRECTIONS ACT

§ 5005. Youth Correction Division.

There is created within the [Board of Parole] United States Parole Commission a Youth Correction Division. The [Attorney General] Chairman of the United States Parole Commission shall from time

to time designate members of the [Board of Parole] United States Parole Commission to serve on said Division as the work requires. The [Attorney General] Chairman of the United States Parole Commission shall from time to time designate one of the members of the Division to serve as Chairman and delegate to him such administrative duties and responsibilities as may be required to carry out the purposes of this chapter.

§ 5008. Officers and employees.

The Attorney General shall appoint such supervisory and other officers and employees as may be necessary to carry out the purposes of this chapter. United States probation officers shall perform such duties with respect to youth offenders on conditional release as the [Attorney General] Chairman of the United States Parole Commission shall request.

SECTION 5108(c) (7) OF TITLE 5 OF THE UNITED STATES CODE

§ 5108. Classification of positions at GS-16, 17, and 18.

(a) * * *

(c) In addition to the number of positions authorized by subsection (a), of this section—

(1) * * *

[(7) the Attorney General, without regard to any other provision of this section, may place a total of—

[(A) 10 positions of Warden in the Bureau of Prisons in GS-16; and

[(B) 8 positions of Member of the Board of Parole in GS-17;]

(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons;

SECTION 509 OF TITLE 28 OF THE UNITED STATES CODE

§ 509. Functions of the Attorney General.

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

(1) vested by subchapter II of chapter 5 of title 5 in hearing examiners employed by the Department of Justice;

(2) of the Federal Prison Industries, Inc.;

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.; and

[(4) of the Board of Parole.]

(4) United States Parole Commission.

SECTION 504(a) OF THE LABOR-MANAGEMENT REPORTING AND
DISCLOSURE ACT OF 1959

PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE

SEC. 504. (a) No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, or conspiracy to commit any such crimes, shall serve—

(1) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or

(2) as a labor relations consultant to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee (other than as an employee performing exclusively clerical or custodial duties) of any group or association of employers dealing with any labor organization,

during or for five years after the termination of his membership in the Communist Party, or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the [Board of Parole] *United States Parole Commission* of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No labor organization or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this subsection.



PAROLE COMMISSION AND REORGANIZATION ACT

FEBRUARY 24, 1976.—Ordered to be printed

Mr. BURDICK, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 5727]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5727) to establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Parole Commission and Reorganization Act."

UNITED STATES PAROLE COMMISSION; PAROLE PROCEDURES, CONDITIONS,
ETC.

SECTION 2. Title 18 of the United States Code is amended by repealing chapter 311 (relating to parole) and inserting in lieu thereof the following new chapter to read as follows:

"CHAPTER 311—PAROLE

"Sec.

- "4201. Definitions.
- "4202. Parole commission created.
- "4203. Powers and duties of the Commission.
- "4204. Powers and duties of the Chairman.
- "4205. Time of eligibility for release on parole.
- "4206. Parole determination criteria.
- "4207. Information considered.
- "4208. Parole determination proceeding; time.
- "4209. Conditions of parole.
- "4210. Jurisdiction of Commission.
- "4211. Early termination of parole.
- "4212. Aliens.
- "4213. Summons to appear or warrant for retaking of parolee.
- "4214. Revocation of Parole.
- "4215. Reconsideration and appeal.
- "4216. Young adult offenders.
- "4217. Warrants to retake Canal Zone parole violators.
- "4218. Applicability of Administrative Procedure Act.

“§ 4201. Definitions

“As used in this chapter—

“(1) ‘Commission’ means the United States Parole Commission;

“(2) ‘Commissioner’ means any member of the United States Parole Commission;

“(3) ‘Director’ means the Director of the Bureau of Prisons;

“(4) ‘Eligible prisoner’ means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;

“(5) ‘Parolee’ means any eligible prisoner who has been released on parole or deemed as if released on parole under section 4164 or section 4205 (f); and

“(6) ‘Rules and regulations’ means rules and regulations promulgated by the Commission pursuant to section 4203 and section 553 of title 5, United States Code.

“§ 4202. Parole Commission created

“There is hereby established, as an independent agency in the Department of Justice, a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. The President shall designate from among the commissioners one to serve as Chairman. The term of office of a commissioner shall be six years, except that the term of a person appointed as a commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a commissioner, the commissioner shall continue to act until a successor has been appointed and qualified, except that no commissioner may serve in excess of 12 years. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).

“§ 4203. Powers and duties of the Commission

“(a) The Commission shall meet at least quarterly, and by majority vote shall—

“(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (b) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

“(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five; and

“(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

“(b) The Commission, by majority vote, and pursuant to the procedures set out in this chapter, shall have the power to—

“(1) grant or deny an application or recommendation to parole any eligible prisoner;

“(2) impose reasonable conditions on an order granting parole;

“(3) modify or revoke an order paroling any eligible prisoner; and

“(4) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the Commission deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations or agencies shall bear excessive caseloads.

“(c) The Commission, by majority vote, and pursuant to rules and regulations—

“(1) may delegate to any commissioner or commissioners powers enumerated in subsection (b) of this section;

“(2) may delegate to hearing examiners any powers necessary to conduct hearings and proceedings, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpoenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (b) of this section, except that any such findings or recommendations shall be based upon the concurrence of not less than two hearing examiners;

“(3) delegate authority to conduct hearings held pursuant to section 4214 to any officer or employee of the executive or judicial branch of Federal or State government; and

“(4) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

“(d) Except as otherwise provided by law, any action taken by the Commission pursuant to subsection (a) of this section shall be taken by a majority vote of all individuals currently holding office as members of the Commission which shall maintain and make available for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it. In so acting, each commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

“§ 4204. Powers and duties of the Chairman

“(a) The Chairman shall—

“(1) convene and preside at meetings of the Commission pursuant to section 4203 and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three commissioners;

“(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that—

“(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner's employment; and

"(B) regional commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

"(3) assign duties among officers and employees of the Commission, including commissioners, so as to balance the workload and provide for orderly administration;

"(4) direct the preparation of requests for appropriations for the Commission, and the use of funds made available to the Commission;

"(5) designate three commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as vice chairman of the Commission (who shall act as Chairman of the Commission in the absence or disability of the Chairman or in the event of the vacancy of the Chairmanship), and designate, for each such region established pursuant to section 4203, one commissioner to serve as regional commissioner in each such region; except that in each such designation the Chairman shall consider years of service, personal preference and fitness, and no such designation shall take effect unless concurred in by the President; or his designee;

"(6) serve as spokesman for the Commission and report annually to each House of Congress on the activities of the Commission; and

"(7) exercise such other powers and duties and perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law.

"(b) The Chairman shall have the power to—

"(1) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

"(2) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665(b));

"(3) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code.

"(4) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process;

"(5) carry out programs of research concerning the parole process to develop classification systems which describe types of offenders, and to develop theories and practices which can be applied to the different types of offenders;

"(6) publish data concerning the parole process;

"(7) devise and conduct, in various geographical locations, seminars, workshops and training programs providing continuing studies and instruction for personnel of Federal, State and local agencies and private and public organizations working with parolees and connected with the parole process; and

"(8) utilize the services, equipment, personnel, information, facilities, and instrumentalities with or without reimbursement therefor of other Federal, State, local and private agencies with their consent.

"(c) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

"§ 4205. Time of eligibility for release on parole

"(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

"(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

"(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (d) of this section. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

"(d) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsections (a) or (b), of this section, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Commission a summary report together with any recommendations which in his opinion would be helpful in determin-

ing the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary.

"(e) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

"(f) Any prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

"(g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

"(h) Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

"§ 4206. Parole determination criteria

"(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

"(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and

"(2) that release would not jeopardize the public welfare; subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

"(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

"(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing; provided, that the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon.

"(d) Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving 30 years of each consecutive term or terms of more than 45 years including any life term, whichever is earlier; Provided, however, that the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State or local crime.

"§ 4207. Information considered

"In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

"(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

"(2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

"(3) presentence investigation reports;

"(4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge; and

"(5) reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

"§ 4208. Parole determination proceeding; time

"(a) In making a determination under this chapter (relating to parole) the Commission shall conduct a parole determination proceeding unless it determines on the basis of the prisoner's record that the prisoner will be released on parole.

"Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsections (a) and (b) (1) of section 4205 shall be held not later than thirty days before the date of such eligibility for parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsection (b) (2) of section 4205 or released on parole and whose parole has been revoked shall be held not later than one hundred and twenty days following such prisoner's imprisonment or reimprisonment in a federal institution, as the case may be.

"An eligible prisoner may knowingly and intelligently waive any proceeding.

"(b) At least thirty days prior to any parole determination proceeding, the prisoner shall be provided with (1) written notice of the time and place of the proceeding, and (2) reasonable access to a report or other document to be used by the Commission in making its determination. A prisoner may waive such notice, except that if notice is not waived the proceeding shall be held during the next regularly scheduled proceedings by the Commission at the institution in which the prisoner is confined.

"(c) Subparagraph (2) of subsection (b) shall not apply to—

"(1) diagnostic opinions which, if made known to the eligible prisoner, could lead to a serious disruption of his institutional program;

"(2) any document which reveals sources of information obtained upon a promise of confidentiality; or

"(3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs (1), (2), or (3) of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

"(d) (1) During the period prior to the parole determination proceeding as provided in subsection (b) of this section, a prisoner may consult, as provided by the director, with a representative as referred to in subparagraph (2) of this subsection, and by mail or otherwise with any person concerning such proceeding.

"(2) The prisoner shall, if he chooses, be represented at the parole determination proceeding by a representative who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

"(e) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination proceeding.

"(f) A full and complete record of every proceeding shall be retained by the Commission. Upon request, the Commission shall make available to any eligible prisoner such record as the Commission may retain of the proceeding.

"(g) If parole is denied, a personal conference to explain the reasons for such denial shall be held, if feasible, between the prisoner and the Commissioners or examiners conducting the proceeding at the conclusion of the proceeding. When feasible, the conference shall include advice to the prisoner as to what steps may be taken to enhance his chance of being released at a subsequent proceeding.

"(h) In any case in which release on parole is not granted, subsequent parole determination proceedings shall be held not less frequently than:

"(1) eighteen months in the case of a prisoner with a term or terms of more than one year but less than seven years; and

"(2) twenty-four months in the case of a prisoner with a term or terms of seven years or longer.

"§ 4209. Conditions of parole

"(a) In every case, the Commission shall impose as a condition of parole that the parolee not commit another Federal, State, or local crime. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to—

"(1) the nature and circumstances of the offense; and

"(2) the history and characteristics of the parolee; and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

"(b) The conditions of parole should be sufficiently specific to serve as a guide to supervision and conduct, and upon release on parole the parolee shall be given a certificate setting forth the conditions of his parole. An effort shall be made to make certain that the parolee understands the conditions of his parole.

"(c) Release on parole or release as if on parole may as a condition of such release require—

"(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole;

"(2) a parolee, who is an addict within the meaning of section 4251(a), or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 for all or part of the period of parole.

A parolee residing in a residential community treatment center pursuant to subparagraphs (1) or (2) of this subsection, may be required to pay such costs incident to residence as the Commission deems appropriate.

"(d) (1) The Commission may modify conditions of parole pursuant to this section on its own motion, or on the motion of a U.S. Probation Officer supervising a parolee, provided that the parolee receives notice of such action and has ten days after receipt of such notice to express his views on the proposed modification. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to act upon such motion or application.

"(2) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

"(3) The provisions of this subsection shall not apply to modifications of parole conditions pursuant to a revocation proceeding under section 4214.

"§ 4210. Jurisdiction of Commission

"(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

"(b) Except as otherwise provided in this section, the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that,

"(1) Such jurisdiction shall terminate at an earlier date to the extent provided under section 4164 (relating to mandatory release) or section 4211 (relating to early termination of parole supervision), and

"(2) In the case of a parolee who has been convicted of a Federal, State, or local crime committed subsequent to his release on parole, and such crime is punishable by a term of imprisonment, detention or incarceration in any penal facility, the Commission shall determine, in accordance with the provisions of section 4214 (b) or (c), whether all or any part of the unexpired term being served at the time of parole shall run concurrently or

consecutively with the sentence imposed for the new offense, but in no case shall such service together with such time as the parolee has previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense.

"(c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.

"(d) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

"(e) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

"(f) Upon the termination of the jurisdiction of the Commission over any parolee, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

§ 4211. Early termination of parole

"(a) Upon its own motion or upon request of the parolee, the Commission may terminate supervision over a parolee prior to the termination of jurisdiction under section 4210.

"(b) Two years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of the 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 such release, nor any period served in confinement on any other sentence.

"(c) (1) Five years after each parolee's release on parole, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in section 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.

"(2) If supervision is not terminated under subparagraph (1) of this subsection the parolee may request a hearing annually thereafter, and a hearing, with procedures as provided in subparagraph (1) of this subsection shall be conducted with respect to such termination of supervision not less frequently than biennially.

"(3) In calculating the five-year period referred to in paragraph (1), there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

§ 4212. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such prisoner on condition that such person be deported and remain outside the United States.

"Such prisoner when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

§ 4213. Summons to appear or warrant for retaking of parolee

"(a) If any parolee is alleged to have violated his parole, the Commission may—

"(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

"(2) issue a warrant and retake the parolee as provided in this section.

"(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

"(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of—

"(1) the conditions of parole he is alleged to have violated as provided under section 4209;

"(2) his rights under this chapter; and

"(3) the possible action which may be taken by the Commission.

"(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

§ 4214. Revocation of parole

"(a) (1) Except as provided in subsections (b) and (c), any alleged parole violator summoned or retaken under section 4213 shall be accorded the opportunity to have—

"(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time; except that after a finding of probable cause the Commission may restore any parolee to parole supervision if:

"(i) continuation of revocation proceedings is not warranted; or

"(ii) incarceration of the parolee pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations;

"(iii) the parolee is not likely to fail to appear for further proceedings; and

"(iv) the parolee does not constitute a danger to himself or others.

"(B) upon a finding of probable cause under subparagraph (1)(A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such de-

termination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

"(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

"(B) opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to section 3006A) or, if he so chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation.

"(C) opportunity for the parolee to appear and testify, and present witnesses and relevant evidence on his own behalf; and

"(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reason for not so allowing.

For the purposes of subparagraph (1) of this subsection, the Commission may subpoena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, or in which such person may be found.

"(b) (1) Conviction for a Federal, State, or local crime committed subsequent to release on parole shall constitute probable cause for purposes of subsection (a) of this section. In cases in which a parolee has been convicted of such a crime and is serving a new sentence in an institution, a parole revocation warrant or summons issued pursuant to section 4213 may be placed against him as a detainer. Such detainer shall be reviewed by the Commission within 180 days of notification to the Commission of placement. The parolee shall receive notice of the pending review, have an opportunity to submit a written application containing information relative to the disposition of the detainer, and, unless waived, shall have counsel as provided in subsection (a) (2) (B) of this section to assist him in the preparation of such application.

"(2) If the Commission determines that additional information is needed to review a detainer, a dispositional hearing may be held at the institution where the parolee is confined. The parolee shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel as provided in subsection (a) (2) (B) of this section.

"(3) Following the disposition review, the Commission may:

"(A) let the detainer stand; or

"(B) withdraw the detainer.

"(c) Any alleged parole violator who is summoned or retaken by warrant under section 4213 who knowingly and intelligently waives his right to a hearing under subsection (a) of this section, or who knowingly and intelligently admits violation at a preliminary hearing held pursuant to subsection (a) (1) (A) of this section, or who is retaken pursuant to subsection (b) of this section, shall receive a revocation hearing within ninety days of the date of retaking. The Commission may conduct such hearing at the institution to which he has been returned, and the alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel or another representative as provided in subsection (a) (2) (B) of this section.

"(d) Whenever a parolee is summoned or retaken pursuant to section 4213, and the Commission finds pursuant to the procedures of this section and by a preponderance of the evidence that the parolee has violated a condition of his parole the Commission may take any of the following actions:

"(1) restore the parolee to supervision;

"(2) reprimand the parolee;

"(3) modify the parolee's conditions of the parole;

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

"(5) formally revoke parole or release as if on parole pursuant to this title.

The Commission may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

"(e) The Commission shall furnish the parolee with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and reasons for such action, a copy of which shall be given to the parolee.

"§ 4215. Reconsideration and appeal

"(a) Whenever parole release is denied under section 4206, parole conditions are imposed or modified under section 4209, parole discharge is denied under section 4211 (c), or parole is modified or revoked under section 4214, the individual to whom any such decision applies may have the decision reconsidered by submitting a written application to the regional commissioner not later than thirty days following the date on which the decision is rendered. The regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within thirty days to reaffirm, modify, or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefor.

"(b) Any decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify, or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

"(c) The National Appeals Board may review any decision of a regional commissioner upon the written request of the Attorney General filed not later than thirty days following the decision and, by majority vote, shall reaffirm, modify, or reverse the decision within sixty days of the receipt of the Attorney General's request. The Board shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefor.

"§ 4216. Young adult offenders

"In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

"§ 4217. Warrants to retake Canal Zone parole violators

"An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

"§ 4218. Applicability of Administrative Procedure Act

"(a) For purposes of the provisions of chapter 5 of title 5, United States Code, other than sections 554, 555, 556, and 557 the Commission is an 'agency' as defined in such chapter.

"(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, United States Code, relating to rule-making, shall be deemed not to include the phrase 'general statements of policy'.

"(c) To the extent that actions of the Commission pursuant to section 4203(a)(1) are not in accord with the provisions of section 553 of title 5, United States Code, they shall be reviewable in accordance with the provisions of sections 701 through 706 of title 5, United States Code.

"(d) Actions of the Commission pursuant to paragraphs (1), (2) and (3) of section 4203(b) shall be considered actions committed to agency discretion for purposes of section 701(a)(2) of title 5, United States Code.

SEC. 3. Section 5005 of title 18, United States Code, is amended to read as follows:

"§ 5005. Youth correction decisions

"The Commission and, where appropriate, its authorized representatives as provided in section 4203(e), may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title."

SEC. 4. Section 5006 of title 18, United States Code, is amended to read as follows:

"§ 5006. Definitions

"As used in this chapter—

"(a) 'Commission' means the United States Parole Commission;

"(b) 'Bureau' means the Bureau of Prisons;

"(c) 'Director' means the Director of the Bureau of Prisons;

"(d) 'youth offender' means a person under the age of twenty-two years at the time of conviction;

"(e) 'committed youth offender' is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

"(f) 'treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

"(g) 'conviction' means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere."

SEC. 5. Section 5007, 5008, and 5009 of title 18, United States Code, are repealed.

SEC. 6. Section 5014 of title 18, United States Code, is amended to read as follows:

"§ 5014. Classification studies and reports

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview."

SEC. 7. Section 5017(a) of title 18, United States Code, is amended to read as follows:

"(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth

offender in accordance with the provisions of section 4206 of this title. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission."

SEC. 8. Section 5020 of title 18, United States Code, is amended to read as follows:

"§ 5020. Apprehension of released offenders

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission."

SEC. 9. Chapter 402 of title 18, United States Code, is amended by deleting the term "division" whenever it appears therein and inserting in lieu thereof the word "Commission."

SEC. 10. The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

"Sec.

"5005. Youth correction decisions.

"5006. Definitions.

"5010. Sentence.

"5011. Treatment.

"5012. Certificate as to availability of facilities.

"5013. Provision of facilities.

"5014. Classification studies and reports.

"5015. Powers of Director as to placement of youth offenders.

"5016. Reports concerning offenders.

"5017. Release of youth offenders.

"5018. Revocation of Commission orders.

"5019. Supervision of released youth offenders.

"5020. Apprehension for released offenders.

"5021. Certificate setting aside conviction.

"5022. Applicable date.

"5023. Relationship to Probation and Juvenile Delinquency Acts.

"5024. Where applicable.

"5025. Applicability to the District of Columbia.

"5026. Parole of other offenders not affected.

SEC. 11. Section 5041 of title 18, United States Code, is amended to read as follows:

"§ 5041. Parole

"A juvenile delinquent who has been committed may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper in accordance with the provisions in section 4206 of this title."

SEC. 12. Whenever in any of the laws of the United States or the District of Columbia the term "United States Parole Board", or any other term referring thereto, is used, such term or terms, on and after the date of the effective date of this Act, shall be deemed to refer to the United States Parole Commission as established by the amendments made by this Act.

SEC. 13. Section 5108(c) (7) of title 5, United States Code, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons in GS-16".

SEC. 14. Section 3655 of title 18, United States Code, relating to duties of probation officers, is amended by striking out "Attorney General" in the last sentence and inserting in lieu thereof "United States Parole Commission".

SEC. 15. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of the amendments made by this Act.

SEC. 16. (a) There are hereby transferred to the Chairman of the U.S. Parole Commission, all personnel, liabilities, contracts, property and records as are employed, held, used, arising from, available or to be made available of the U.S. Board of Parole with respect to all functions, powers, and duties transferred by this Act to the U.S. Parole Commission.

(b) This Act shall take effect sixty days after the date of enactment, except that the provisions of section 4208(h) of this Act shall take effect 120 days after the date of enactment.

(c) Each person holding office as a member of the United States Board of Parole on the day before the effective date of the Parole Commission and Reorganization Act shall be a Commissioner whose term as such shall expire on the date of the expiration of the term for which such person was appointed as a member of the Board of Parole.

(d) For the purpose of section 4202 of title 18, United States Code, service by an individual as a member of the United States Board of Parole shall not constitute service as a Commissioner.

And the Senate agree to the same.

QUENTIN N. BURDICK,
ROMAN L. HRUSKA,
JOHN L. MCCLELLAN,
CHARLES MCC. MATHIAS, JR.,
EDWARD KENNEDY,
Managers on the Part of the Senate.
ROBERT W. KASTENMEIER,
GEORGE DANIELSON,
ROBERT F. DRINAN,
HERMAN BADILLO,
EDWARD W. PATTISON,
TOM RAILSBACK,
CHARLES E. WIGGINS,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5727) to establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommend in the accompanying conference report:

Nearly all men and women sent to prison as law breakers are eventually released, and the decision as to when they are released is shared by the three branches of government. Wrapped up in the decision to release an individual from incarceration are all of the emotions and fears of both the individual and society.

Parole may be a greater or lesser factor in the decision to release a criminal offender. It depends upon the importance of parole in the complex of criminal justice institutions. In the Federal system, parole is a key factor because most Federal prisoners become eligible for parole, and approximately 35 per cent of all Federal offenders who are released, are released on parole. Because of the scope of authority conferred upon the Parole Board, its responsibilities are great.

From an historical perspective, parole originated as a form of clemency; to mitigate unusually harsh sentences, or to reward prison inmates for their exemplary behavior while incarcerated. Parole today, however, has taken a much broader goal in correctional policy, fulfilling different specific objectives of the correctional system. The sentences of nearly all offenders include minimum and maximum terms, ordinarily set by the sentencing court within a range of discretion provided by statute. The final determination of precisely how much time an offender must serve is made by the parole authority. The parole agency must weigh several complex factors in making its decision, not all of which are necessarily complementary. In the first instance, parole has the practical effect of balancing differences in sentencing policies and practices between judges and courts in a system that is as wide and diverse as the Federal criminal justice system. In performing this function, the parole authority must have in mind some notion of the appropriate range of time for an offense which will satisfy the legitimate needs of society to hold the offender accountable for his own acts.

The parole authority must also have in mind some reasonable system for judging the probability that an offender will refrain from future criminal acts. The use of guidelines and the narrowing of geographical areas of consideration will sharpen this process and improve the likelihood of good decisions.

The parole authority must also take into consideration whether or not continuing incarceration of an offender will serve a worthwhile purpose. Incarceration is the most expensive of all of the alternative types of sentences available to the criminal justice system, as well as the most corrosive because it can destroy whatever family and community ties an offender may have which would be the foundation of his eventual return as a law-abiding citizen. Once sentence has been imposed, parole is the agency responsible for keeping in prison those who because of the need for accountability to society or for the protection of society must be retained in prison. Of equal importance, however, parole provides a means of releasing those inmates who are ready to be responsible citizens, and whose continued incarceration, in terms of the needs of law enforcement, represents a misapplication of tax dollars.

These purposes which parole serves may at times conflict and at the very least are complicated in their administration by the lack of tools to accurately predict human behavior and judge human motivation.

Because these decisions are so difficult from both the standpoint of the inmate denied parole, as well as the concerns of a larger public about the impact of a rising crime rate, there was almost universal dissatisfaction with the parole process at the beginning of this decade. As a result, both the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee, and the Subcommittee on National Penitentiaries of the Senate Judiciary Committee began seeking legislative answers to the problems raised. In the case of both Subcommittees a major effort was mounted to make parole a workable process.

Following the appointment of Maurice H. Sigler as Chairman of the U.S. Board of Parole in 1972, a working relationship developed between the Board and the two Subcommittees. As a result of this relationship, and with the support of the two Subcommittee chairmen, the Parole Board began reorganization in 1973 along the lines of the legislation presented here.

The organization of parole decision-making along regional lines, the use of hearing examiners to prepare recommendations for action, and, most importantly, the promulgation of guidelines to make parole less disparate and more understandable has met with such success that this legislation incorporates the system into the statute, removes doubt as to the legality of changes implemented by administrative reorganization, and makes the improvements permanent.

It is not the purpose of this legislation to either encourage or discourage the parole of any prisoner or group of prisoners. Rather, the purpose is to assure the newly-constituted Parole Commission the tools required for the burgeoning caseload of required decisions and to assure the public and imprisoned inmates that parole decisions are openly reached by a fair and reasonable process after due consideration has been given the salient information.

To achieve this, the legislation provides for creation of regions, assigning a commissioner to each region, and delegation of broad decisionmaking authority to each regional commissioner and to a national appellate panel. The bill also makes the Parole Commission, the agency succeeding the Parole Board, independent of the Department of Justice for decision-making purposes.

In the area of parole decision-making, the legislation establishes clear standards as to the process and the safeguards incorporated into it to insure fair consideration of all relevant material, including that offered by the prisoner. The legislation provides a new statement of criteria for parole determinations, which are within the discretion of the agency, but reaffirms existing caselaw as to judicial review of individual case decisions.

The legislation also reaffirms caselaw insuring a full panoply of due process to the individual threatened with return to prison for violation of technical conditions of his parole supervision, and provides that the time served by the individual without violation of conditions be credited toward service of sentence. It goes beyond present law in insuring appointment of counsel to indigents threatened with reimprisonment.

SECTION-BY-SECTION ANALYSIS

Section 4201. Definitions

This section defines certain terminology which is used throughout the Conference Report.

Subparagraph (6) provides that certain rule-making procedures in section 553 of title 5, United States Code, apply to rules and regulations promulgated by the full Commission pursuant to section 4203(a)(1). Guidelines for parole decision making promulgated by the full Commission are rules and regulations within the meaning of this definition.

Section 4202. Parole commission created

This section establishes a nine-member U.S. Parole Commission as an independent agency in the Department of Justice. The Commission is attached to the Department solely for administrative purposes. It is the intent of the Conferees that parole decisionmaking be independent of, and not governed by, the investigative and prosecutorial functions of the Department of Justice. Commissioners serve a term of six years under Presidential appointment by and with the advice and consent of the Senate. The President shall from time to time designate one commissioner to serve as Chairman. Each commissioner appointment shall be for a full six year term with commissioner members continuing to serve until their successors have been qualified, except that no one may serve more than twelve years as a commissioner. The rate of pay for a member of the Commission shall be the highest step of G.S. level 18.

Section 4203. Powers and duties of the Commission

(a) The full Commission shall meet at least quarterly as a policy making group to: (1) establish guidelines and procedural rules for parole determinations so that the administration of parole throughout the Federal system will be uniform; (2) set boundaries for the nation's five parole regions; and (3) act upon budget recommendations, which shall be separate from other agencies of the Department of Justice.

(b) The Commission by majority vote and pursuant to procedures set out in this chapter has the authority to: (1) grant or deny parole to any Federal prisoner who is eligible for parole; (2) impose conditions under which any prisoner may be released on parole; (3)

modify or revoke the parole of any individual who violated the conditions of his release; and (4) request probation officers to perform certain duties with respect to parole supervision.

It is the intent of the Conferees that subparagraphs (1) through (3) of this subsection vest authority for parole decision making in the discretion of the U.S. Parole Commission, and that parole decisions made under other sections of this Act are pursuant to authority delegated from section 4203(b) (1)-(3).

The Conferees do not intend that subparagraph (4) of this subsection be construed as a reduction of Commission authority provided in section 3655 of title 18, United States Code, as amended by this Act. Subparagraph (4) simply reflects Congressional policy encouraging U.S. Probation Officers to consult with the Parole Commission to ensure that parole supervision is geared to the protection of the public as well as the needs of the parolee.

(c) Subparagraph (1) enables the Commission to delegate its decisionmaking workload to regional commissioners who are responsible for initial parole determinations and to the three commissioners on the National Appeals Board who review these decisions on appeal.

It is contemplated by the Conferees that the Parole Commission will delegate decisionmaking power to the regional commissioners, and when so delegated, the regional commissioner may adopt the recommendation of the hearing examiners and enter a decision, or make a decision of his own. The Commission should provide appropriate review procedures for delegated decision-making, particularly where the regional commissioner's decision deviates from the recommendation of the two-member panel of hearing examiners, in order to carry out the national parole policies required by this Act. An appropriate procedure might, for example, provide that a regional commissioner's decision that deviates from the recommendation of the hearing examiners would not become effective until the expiration of the time for appeal or until the regional commissioner's reasons for such decision have been reviewed by a member of the National Appeals Board and such member has declined to certify the case to that body for decision, whichever occurs first. Such a procedure would recognize the authority and responsibility of the regional commissioners while providing appropriate appellate oversight of the regions. Review procedures should be designed to identify and resolve decision patterns involving significant inconsistencies between regions or involving departures from national parole policies promulgated by the Commission.

Although the statutory language is flexible enough to permit the Commission by regulation to reserve special categories of cases for initial parole decision by the Commission as a whole, it is contemplated that the normal procedure to be followed will involve an orderly process of decision making delegated to regional commissioners, subject to review by the National Appeals Board. In appropriate cases, en banc consideration of cases will be held by the full Commission. The necessity of decision by the full Commission, whether as a matter of original jurisdiction or on appeal, should occur only in cases involving special circumstances.

Subparagraph (2) sets out the responsibility of hearing examiners for compiling the information upon which the decisions of regional commissioners are based. In performing this function, hearing exam-

iners conduct proceedings and hearings, take sworn testimony, make a record of the pertinent evidence presented at parole proceedings and hearings, make findings of probable cause and issue subpoenas in parole revocation hearings, and make specific recommendations for each parole decision to be made by the regional commissioner. In decisions involving the grant or denial of parole under section 4206, or the revocation of parole under section 4214 (a) and (c), findings and recommendations must be based upon the concurrence of at least two examiners. In the event of a split between the two examiners concerning such findings or recommendations, however, another examiner may cast the deciding vote based upon a review of the case record, findings and recommendations. Parole determination proceedings and revocation hearings are to be conducted in the federal institutions on a regular schedule by panels of two examiners. However, other situations will from time to time arise involving the duties of the Commission where it is appropriate for one examiner to conduct the examination, with the concurrence requirement met by review of the case record, findings and recommendations. An exception to this is findings of probable cause in local revocation hearings, which may be made by an individual hearing examiner upon the record before him.

It is recognized that in most instances the recommendation of the hearing examiners will be followed by the regional commissioner. This recognizes the crucial role of hearing examiners in the parole process without detracting from the regional commissioner's executive responsibility for the actions of those under his supervision. Since most recommendations will probably fall within the guidelines for decision-making promulgated by the full Commission the regional commissioner's primary obligation in such cases is to ensure that the guidelines have been properly interpreted and followed. It is the intent of the Conferees that the hearing examiners may recommend a disposition notwithstanding the guidelines only when they determine that there is good cause to do so and that the regional commissioner shall review the case and determine whether such good cause exists which justifies this exception to the guidelines.

Subparagraph (3) permits the Commission to delegate power to conduct hearings and make findings and recommendations in certain parole revocation proceedings to Federal and State officials. This provision is in response to the time limitations and administrative problems involved in holding local preliminary and revocation hearings pursuant to section 4214 of this Act. The reference to judicial branch officers is a recognition that under the Federal system, the executive function of parole supervision is carried out by U.S. Probation Officers, who are court employees. Under present law and practice, certain U.S. Probation Officers from time to time conduct probable cause hearings for parolees supervised by other officers. This language permits the practice to continue, to the extent that the court employees involved are not judges who might at some later date consider litigation arising from the revocation proceedings.

Subparagraph (4) enables the Commission to review any delegated decision on its own motion and permits the Commission to delegate this review authority to the National Appeals Board.

(d) In promulgating guidelines and other regulations, creating regions and acting on the agency's budget pursuant to subsection (a)

of this section, the Commission shall operate by majority vote. Records of the final vote of the commissioners on these policy making actions shall be available for public inspection. In such determinations, each member shall have an equal voice, be provided with all necessary information, and have one vote.

Section 4204. Powers and duties of the Chairman

(a) The Chairman, who functions as the chief executive officer of the Commission, is authorized to: (1) preside at the regular meetings of the full Commission as well as special meetings that are called upon his own request or that of any three commissioners; (2) make all personnel decisions except that the full Commission must confirm the appointment of any hearing examiner before his probationary status as a first-year government employee terminates and each regional commissioner will be responsible for the appointment and supervision of certain clerical personnel employed in his region (except that this provision is not intended to exempt the Commission from such Civil Service regulations as are presently applicable); (3) delegate work among the Commissioners and the various units and employees of the Commission; (4) carry out fiscal responsibilities including preparation of appropriation requests and oversight of Commission expenditures; (5) designate three commissioners to serve on a National Appellate Board, one of whom shall also serve as Vice Chairman, and designate one commissioner to serve in each of the parole regions as regional commissioner, except that in making any such designation the Chairman must consider certain pertinent criteria and must obtain the concurrence of the President or his designee (in recognition of the need for effective and swift administrative action due to the heavy workload of the Commission, the concurrence should be prompt); (6) serve as spokesman for the Commission and report annually to each house of Congress on its activities (except that such Annual report shall be approved by the Commission and shall contain such additional views of commissioners as may be submitted); and (7) perform such other duties as are necessary to carry out any other responsibilities and functions of the Commission.

(b) In addition to above duties, the Chairman has responsibility for a research and training component in the Commission which may provide studies and information concerning the parole process to public and private agencies, and has certain other conventional administrative powers. These include procuring, contracting, utilizing and accepting services, including the use of Federal, State and other governmental resources as well as private agencies.

(c) The Chairman shall carry out his administrative duties and responsibilities in line with the national parole policies promulgated by the Commission.

Section 4205. Time of eligibility for release on parole

(a) This subsection provides that a prisoner serving a sentence of more than one year is eligible for parole consideration after having served one-third of his sentence; or in the case of a prisoner sentenced to life or more than 30 years, after serving 10 years of his sentence.

(b) Existing provisions of law are reenacted to enable the court to: (1) direct that the prisoner be eligible for parole at any time up to one-

third of his maximum sentence, or (2) specify that the Commission shall decide when the prisoner shall be considered for parole.

(c) Existing provisions of law are reenacted to allow judges to have the Bureau of Prisons conduct a study of the individual before the final sentencing disposition is made.

(d) Existing provisions of law are reenacted relating to the preparation of a progress report by the Bureau of Prisons which is considered by the Commission during the parole release determination. In addition to the material provided by the Bureau of Prisons, the Commission is authorized to make such other investigations as it may deem appropriate.

(e) The Commission is authorized to seek information from other government agencies such as the U.S. Probation Service and the Federal Bureau of Investigation. Upon request, these agencies shall furnish available information, and, where appropriate, their views and recommendations with respect to Commission matters.

(f) Individuals sentenced to a maximum term or terms of more than six months, but not more than one year, shall be released at the expiration of their sentence less good time earned. The sentencing court may, however, at the time of sentencing, authorize release of the offender as if on parole after service of one-third the sentence. The phrase "at the time of sentencing" includes the 120-day time period for sentence modification provided by Rule 35 of the Federal Rules of Criminal Procedures.

(g) This subsection provides a means by which the minimum term of any federal prisoner may be reduced to make the individual eligible for parole consideration.

(h) Existing powers of the sentencing court and certain special provisions relating to eligibility for parole are preserved.

Section 4206. Parole determination criteria

This section provides the standards and criteria to be used by the Parole Commission in making parole release determinations for federal prisoners who are eligible for parole.

It is the intent of the Conferees that the Parole Commission make certain judgments pursuant to this section, and that the substance of those judgments is committed to the discretion of the Commission.

First, it is the intent of the Conferees that the Parole Commission reach a judgment on the institutional behavior of each prospective parolee. It is the view of the Conferees that understanding by the prisoner of the importance of his institutional behavior is crucial to the maintenance of safe and orderly prisons.

Second, it is the intent of the Conferees that the Parole Commission review and consider both the nature and circumstances of the offense and the history and characteristics of the prisoner. It is the view of the Conferees that these two items are most significant in making equitable release determinations and are a viable basis, when considered together, for making other judgments required by this section.

It is the intent of the Conferees that the Parole Commission, in making each parole determination, shall recognize and make a determination as to the relative severity of the prospective parolee's offense and that in so doing shall be cognizant of the public perception of and respect for the law. It is the view of the Conferees that the U.S.

Parole Commission is joined in purpose by the Courts, the Congress and the other Executive agencies in a continuing effort to instill respect for the law. The Parole Commission efforts in this regard are fundamental and shall be manifested by parole determinations which result in the release on parole of only those who meet the criteria of this Act.

Determinations of just punishment are part of the parole process, and these determinations cannot be easily made because they require an even-handed sense of justice. There is no body of competent empirical knowledge upon which parole decision-makers can rely, yet it is important for the parole process to achieve an aura of fairness by basing determinations of just punishment on comparable periods of incarceration for similar offenses committed under similar circumstances. The parole decision-makers must weigh the concepts of general and special deterrence, retribution and punishment, all of which are matters of judgment, and come up with determinations of what is meant by "would not depreciate the seriousness of his offense or promote disrespect for the law" that, to the extent possible, are not inconsistent with the findings in other parole decisions.

The phrase "release would not depreciate the seriousness of his offense or promote disrespect for the law" involves two separate criterion and there may be situations in which one criterion is met but the other remains unsatisfied. For example, if a public official was convicted of fraud which involved a violation of the public trust and was sentenced to three years imprisonment, his release on parole after one year might satisfy the depreciate the seriousness criterion but the Commission could justify denying release on the grounds that such release "would promote disrespect for the law."

The use of the phrase "release would not jeopardize the public welfare," is intended by the Conferees to recognize the incapacitative aspect of the use of imprisonment which has the effect of denying the opportunity for future criminality, at least for a time. It is the view of the Conferees that the Parole Commission must make judgments as to the probability that any offender would commit a new offense based upon considerations which include comparisons of the offender with other offenders who have similar backgrounds. The use of predictive devices is at best an inexact science, and caution should be utilized. Such items as prior criminal records, employment history and stability of living patterns have demonstrated their usefulness in making determinations of probability over a substantial period of time. These are not written into the statute, however, as it is the intent of the Conferees to encourage the newly created Parole Commission to continue to refine both the criteria which are used and the means for obtaining the information used therein.

Further, this section provides that Parole Commission guidelines, shall provide a fundamental gauge by which parole determinations are made.

It is the intent of the Conferees that the guidelines serve as a national parole policy which seeks to achieve both equity between individual cases and a uniform measure of justice. The Parole Commission shall actively seek the counsel and comment of the corrections and criminal justice communications prior to promulgation of guidelines and shall be cognizant of past criticism of parole decision making.

Further, this section provides that when parole is denied, that the prisoner be given a written notice which states with particularity the reasons for such denial.

The phrase "shall be released" includes release at expiration as if on parole or without parole supervision as provided in section 4164 of title 18, United States Code. The term "holidays" as used in this section refers to congressionally declared Federal holidays.

This section also permits the Commission to grant or deny parole notwithstanding the guidelines only when the Commission has determined that there is good cause to do so, and then requires that the prisoner be provided "with particularity the reasons for the Commission's determination, including a summary of the information relied upon." For example, if a prisoner who has served the time required to be released on parole according to the guidelines is denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he shall receive a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines.

For the purposes of this section "good cause" means substantial reason and includes only those grounds put forward by the Commission in good faith and which are not arbitrary, irrational, unreasonable, irrelevant or capricious.

The definition of what constitutes good cause to go outside the established guidelines can not be a precise one, because it must be broad enough to cover many circumstances.

For example, in making a parole release determination above the guidelines, the Commission would consider factors which include whether or not the prisoner was involved in an offense with an unusual degree of sophistication or planning, or has a lengthy prior record, or was part of a large scale conspiracy or continuing criminal enterprise.

On the other hand, the Commission would consider factors such as a prisoner's adverse family or health situation in deciding to make a parole release determination below guidelines. By focusing on the justifications for exceptions to the guidelines, subsequent administrative review by the National Appellate Board will be facilitated and there will be more uniformity and greater precision in the grant or denial of parole.

If decisions to go above or below parole guidelines are frequent, the Commission should reevaluate its guidelines.

Lastly, this section provides more liberal criteria for release on parole for prisoners with long sentences after they have completed two-thirds of any sentence or thirty years, whichever occurs first. In calculating two-thirds of a term, all sentences imposed consecutively should be considered separately and the time on each sentence added together. The purpose of this provision is to insure at least some minimum period of parole supervision for all except those offenders who have the greatest probability of committing violent offenses following their release so that parole supervision is part of their transition from the institutional life of imprisonment to living in the community. For any prisoner whose parole, once granted pursuant to subsection (d), has been revoked any future parole consideration would be based upon subsections (a), (b) and (c) of this section, and he would not be con-

sidered under subsection (d) until two-thirds of his remaining term had been served.

Section 4207. Information considered

The Commission shall consider the following information, if available and relevant, in parole release determinations: (1) reports and recommendations of prison staff; (2) prior criminal record; (3) presentence investigation reports; (4) recommendations of the sentencing judge; (5) reports of physical, mental, or psychiatric examination; and (6) such other additional relevant information as is available, including information submitted by the prisoner.

It is also the intent of the Conferees that availability and relevance act as limitations on the Commission's responsibility to consider this material. In terms of availability, for example, if a judge has not commented on the sentence or parole of the offender, the Commission is under no duty to solicit such commentary.

The relevance of material before the Commission is a determination committed to the agency's discretion. Moreover, this provision should not be construed as setting out priorities or assigning weights to the information before the Commission in the parole release process. The Conferees are in complete agreement with the Fifth Circuit holding in *Scarpa v. U.S. Board of Parole*, 477 F.2d 281 (1973), vacated as moot, 414 U.S. 809, that the weight assigned to individual factors (in parole decision making) is solely within the province of the (commission's) broad discretion.

It would not be practical or desirable for the Commission to make a record of the relevance or weight accorded to each piece of information before it. This section in combination with the requirement for reasons for denial of parole under subsection (b) of section 4206 or the requirement for reasons "including a summary of the information relied upon" under subsection (c) of section 4206 should not be construed as requiring the Commission to make a written evaluation of every piece of information considered.

The phrase "at the time of sentencing" in subparagraph (4) includes the 120-day time period for sentence modification provided by Rule 35 of the Federal Rules of Criminal Procedure.

Section 4208. Parole determination proceeding; time

(a) A parole determination proceeding shall be held, unless the Commission decides to grant release on the basis of the prisoner's record. The phrase "prisoner's record" refers to the information considered by the Commission in parole determination proceedings.

In the case of a prisoner with a minimum sentence, the parole determination proceeding shall be held, whenever feasible, not later than 30 days prior to the expiration of the minimum sentence. In the case of a prisoner with no minimum sentence or who has been reimprisoned following a revocation proceeding, the parole determination proceeding shall be held, whenever feasible, not later than 120 days following imprisonment or reimprisonment, as the case may be, in a federal institution. It is the intent of the Conferees that the Commission attempt, whenever feasible, to give prisoner's serving all or any part of their sentences in State or local prison facilities prompt parole determination proceedings.

In addition, this subsection permits a prisoner to waive any parole determination proceeding. The phrase "knowingly and intelligently" requires the prisoner to acknowledge in writing that he understands what it is that he is waiving and that he do so consciously and intentionally and without coercion.

(b) Notice of pending release proceedings and access to information considered by the Commission in such proceedings must be given to the inmate at least 30 days prior thereto. Where an inmate has just arrived at an institution, however, it may be impossible to meet this time period. Provision is made therefore for waiver, at the inmate's option, of the time requirement. But, if an inmate refuses to waive notice, the Commission is under no duty to schedule special sessions to make up for such proceedings, although they may. In such cases, the inmate shall be heard by the Commission at the next regularly scheduled parole proceedings at that institution. The phrase "report or other documents" in section 4208(b)(2) refers to those materials in the institution's files which the Commission looks at in making its parole release determinations.

(c) An eligible federal prisoner shall have reasonable access to certain documents which are utilized by the Commission in determining parole eligibility. Three categories of documents, however, may be excluded: (1) diagnostic opinions such as psychological or psychiatric reports which if revealed to the individual might cause a serious disruption of his institutional program; (2) documents which contain information obtained upon the basis of a pledge of confidentiality, or (3) any other information which, if revealed, might result in harm, physical or otherwise, to any person.

Subparagraphs (1), (2) and (3) of this subsection closely parallel the provisions of Rule 32 of the Federal Rules of Criminal Procedure relating to the court's power to refuse disclosure of certain information in the presentence investigation report. The Commission, the Bureau of Prisons, or any other agency which deems the document excludable under subparagraphs (1), (2), or (3) of this subsection shall be responsible for preparing a summary of such document. Such summary should give the inmate an idea of the basic contents of the excluded material, but should not reveal information which might violate any need for confidentiality involved. The phrase "bearing in mind the need for confidentiality" includes consideration of possible harm to any person. In addition, in summarizing material excluded under subparagraph (1) of this subsection, an effort shall be made to avoid unnecessary disruption of the prisoner's institutional program.

(d) Subparagraph (1) permits the prisoner to consult by mail, or otherwise, with a representative or any other person concerning his forthcoming proceeding. The phrase "as provided by the Director" simply acknowledges that such communications must be in accordance with institutional policies and regulations promulgated by the Bureau of Prisons for prisoner mail, visiting, etc.

Subparagraph (2) permits the inmate to select a representative to assist him both before and during the parole determination proceeding. The Commission is authorized to promulgate rules and regulations as to who a representative may be. It is the intent of the Con-

ferrees that the use of the term "representative" not be construed as support for analogizing the parole determination process to formal judicial proceedings.

(e) This subsection permits the prisoner to appear and testify in his own behalf at the parole determination proceeding. The term "testify" is not intended to require testimony under oath, and should not be construed as analogous to formal judicial process.

(f) The Commission must maintain and make available upon request a complete record of every parole determination proceeding. Availability of the record does not entail preparation of a transcript in every case. When the Commission has prepared a transcript for its own use, a copy shall be provided the inmate if he so requests. If, however, the proceeding was tape recorded and never transcribed, or written notes of the proceeding were retained, then the availability requirement is satisfied if the agency forwards a copy of the tape to the institution where the inmate is permitted to listen to it, or, in the case of notes, forwards a copy of such notes as it has retained.

(g) If parole is denied, the hearing examiners shall, where feasible, personally explain to the eligible prisoner the reasons for their recommendation. The phrase "if feasible" simply acknowledges that every hearing examiner recommendation is subject to review by the regional commissioner, the possibility of a split recommendation requiring a third hearing examiner's vote who may not be present, and that there is no requirement that the inmate listen to such explanation if he chooses not to. Also, when feasible, the hearing examiners shall advise the prisoner of what he could do to enhance his prospects for parole. The Conferees intend that this requirement for advice on future parole prospects be narrowly construed. In situations in which the prisoner has been convicted of a serious offense, there may well be nothing that he can do to enhance his parole potential until service of some period of time has been completed. Moreover, promises of parole should not be used to coerce inmate participation in institutional programming.

(h) If a prisoner is denied parole, he shall receive additional parole determination proceedings not less frequently than every 18 months if he is sentenced to a term or terms of imprisonment of more than one year but less than seven years, or every 24 months if he is sentenced to a term or terms of imprisonment of seven years or more.

It is the intent of the Conferees that all of the items which bear upon the parole decision are considered at the initial determination proceeding, but that the subsequent proceedings required by this section focus upon those items which have changed, or which may have changed, in the intervening time.

Section 4209. Conditions of parole

(a) Every parolee shall have as a condition of parole that he not commit any criminal offense during his parole. The Commission may impose or modify any other condition of parole only to the extent that there is a reasonable relationship between such condition and the nature and circumstances of the offense and the history and characteristics of the parolee, except that, the Commission may impose conditions of parole that limit the parolee's liberty (short of incarceration) if in the Commission's judgment such conditions are reasonably necessary to protect the public welfare. The phrase "Federal, State or

local crime" excludes such petty violations as minor traffic offenses except where a pattern of such violations indicates disrespect for the law.

(b) Conditions imposed by the Commission must be specific so that they can serve as a guide to behavior. In addition, upon release the parolee is given a certificate setting forth in writing his conditions. An effort shall be made to ensure that parolees understand the nature and limitations involved in such conditions. It is the intent of the Conferees that when feasible such services as translation to a language other than English should be made to assist in the understanding of conditions of parole.

(c) As provided under present law, the conditions of parole may require that an individual reside in or participate in the program of a community treatment center or addict treatment program.

(d) This subsection provides a process by which the condition of parole may be modified in accordance with the standards established in this section.

Should a probation officer wish to modify conditions of parole of a parolee under his supervision he may apply to the Commission for such modification. He shall give the parolee notice of proposed modification, and the parolee shall have 10 days in which to comment on or object to the proposed modification. The Commission shall then review the application and consider any relevant information which the parolee may present.

The proposed modification shall take effect within 21 days following the 10 day period in which the parolee may object or comment if the Commission has determined that the modification is warranted.

Further, the Commission may modify parole conditions on its own motion provided the parolee has been given 10 days in which to comment on the proposed modification.

Also, the parolee may petition the Commission in his own behalf for a modification of his parole conditions. The Commission shall act with due deliberation on such petitions, but shall not be required to respond within the 21 day period required for petitions of parole officers, in order to deter parolees from submitting repeated or unwarranted applications.

The Commission may not modify the provision that all parolees shall have as a condition of parole that there be no violation of criminal law.

Parole modification pursuant to a revocation proceeding under section 4214 is not governed by the provisions of this subsection.

Section 4210. Jurisdiction of the Commission

(a) An individual released on parole remains in the legal custody of the Attorney General until expiration of the sentence or the Commission terminates parole supervision pursuant to this Act.

(b) This subsection provides that the jurisdiction of the Parole Commission over a parolee terminates no later than the date of the expiration of the sentence imposed by the court except under circumstances cited in this section. Section 4164 of Title 18 and section 4211 of the bill establish means for termination of jurisdiction over persons released on parole or as if on parole prior to the expiration of the sentence.

This subsection also provides that an individual whose parole has been revoked upon conviction of any new criminal offense that is punishable by a term of detention, incarceration or imprisonment in any penal institution shall receive no credit for service of his sentence from the day he is released on parole until he either returns to Federal custody following completion of any sentence of incarceration or upon the Commission determining that the sentence run concurrently with any new sentence that may have been imposed, pursuant to section 4214(b) or (c) of this Act. In computing the date of expiration of the sentence, the Commission shall take into account the time the parolee previously served in connection with the original offense at commitment prior to his release on parole together with the time served for such offense following his revocation and the time together shall not be longer than the maximum term for which he was sentenced in connection with the original offense.

The phrase "punishable by a term of imprisonment, detention or incarceration in a penal facility" is intended by the Conferees to mean any term of confinement which may be levied upon adjudication of guilt or delinquency and does not include detention prior to adjudication. For example, a person convicted of any offense punishable by even one day of imprisonment would not automatically receive credit toward service of his sentence, even if no sentence of imprisonment was imposed.

This subsection also provides that an individual whose parole has been revoked for the violation of any condition of release other than commission of any Federal, State or local crime punishable by any term of imprisonment, detention or incarceration shall receive credit toward service of his sentence for time previously served in prison and for time spent on parole prior to the date that a warrant or summons is issued pursuant to Section 4213 of this Act.

(c) This subsection provides that the Commission may extend its jurisdiction over any parolee who is an absconder or who has refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof for such time as the parolee refused or failed to respond. In calculating time under this subsection, the Parole Commission shall consider the length of time the parolee served prior to his release on parole and may consider all time which he served while released on parole prior to refusing or failing to respond to the Commission or any of its agents, and any continuous period of time thereafter during which the parolee did not refuse or fail to respond to the Commission or any of its agents.

(d) Parole shall run concurrently with any other term of parole or probation.

(e) This subsection protects the eligibility of any prisoner remaining in the federal system who was sentenced prior to June 29, 1932, in order to preserve the possibility that he may be released under applicable provisions of law.

(f) When the Commission's jurisdiction over a parolee terminates or otherwise expires, it must issue a certificate of discharge to the parolee and may provide such additional copies of the document to other agencies as it may deem appropriate.

Section 4211. Early termination of parole

This section provides that the Parole Commission may upon its own motion or upon petition of a parolee terminate supervision over the parolee at any time.

This section also provides for periodic reviews of the status of each parolee in order to determine if continued supervision on parole is necessary. Such reviews will take place two years after each parolee's release on parole and annually thereafter.

This section further provides that after 5 years of parole supervision each parolee shall be released from further supervision, unless the Parole Commission determines that there is a likelihood that the parolee will engage in criminal behavior.

The phrase "likelihood that the parolee will engage in conduct violating any criminal law" is a phrase closely related to the term "release would not jeopardize the public welfare" from section 4206. Both rely on the use of probability in making the judgments required of the Commission by this section. Likelihood is a higher standard upon which the judgment is to be based, but this is only recognition by the Conferees that the Commission has five continuous years of supervision in the community on which to base its comparisons with other offenders who have similar backgrounds.

Periods of parole supervision occurring prior to the most recent release on parole as well as periods of confinement on any other sentence shall not be included in the calculation of the two and five year periods of continuous parole supervision used in this section.

Section 4212

The conference report provides that existing law with respect to delivery of convicted aliens for deportation is reenacted under a new section number.

Section 4213. Summons to appear or warrant for retaking of parolee

This section provides that the Commission may initiate revocation proceedings using either a summons or a warrant procedure. It is the intent of the Conferees that the Commission should minimize the disruption of the parolee's life in any revocation proceeding. One means by which this intent has been implemented in giving the Commission discretion to use either a summons or warrant when a condition of parole has alleged to have been violated. However, the Conferees recognize that use of a summons for parolees with prior adult or juvenile records may simply be inappropriate.

The phrase "except when delay is deemed necessary" in subsection (b) of this section recognizes that the decision as to when the revocation process should be initiated is committed to the Commission's discretion. It is the intent of the Conferees that it shall not be a defense to a revocation that previous parole violations were either ignored or not acted upon.

Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of the conditions of parole he is alleged to have violated, his rights, and possible action which may be taken by the Commission, except that the Commission may satisfy the last two notice requirements with a printed form that sets forth the necessary information. Any federal correctional officer or other federal

officer authorized to serve criminal process within the United States shall execute warrants under this section if so directed by the Commission.

Section 4214. Parole revocation

This section provides a process for the consideration of parole revocation following the issuance of a summons or warrant. The process established by this section reflects certain due process safeguards required by the Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 788 (1973) and Congressional cognizance of the potential for deprivation of liberty in parole revocation and the resultant need for procedural safeguards.

The process established by this section for individuals whose revocation is not based on a new criminal conviction involves two hearings: (1) a preliminary hearing held near the place of the alleged violation to determine if there is probable cause to believe that the parolee has violated a condition of his parole, and if such a finding is reached, (2) a revocation hearing to determine if a violation has taken place, and, if it did, whether or not there are circumstances in mitigation which suggest that the violation does not warrant revocation. The probable cause hearing must be held without unnecessary delay.

After a finding of probable cause at the preliminary hearing, the Commission may release the parolee to supervision, if the Commission believes that continuation of revocation proceedings is not warranted, or that incarceration is not warranted by any of the following considerations: the alleged frequency or seriousness of a violation, the degree of likelihood that the parolee will not appear at the revocation proceeding, or the degree of danger that the parolee represents to any person.

Both the preliminary and revocation hearing shall be conducted in accordance with the following procedures:

(a) notice to the parolee as to the allegations and the time, place, and purpose of the scheduled hearing;

(b) the right to be represented by retained counsel or if he is unable to retain counsel, counsel shall be provided pursuant to the Criminal Justice Act (18 U.S.C. 3006A) or another representative as provided by rules and regulations;

(c) opportunity for the parolee to appear and testify and present witnesses and relevant evidence on his own behalf; and

(d) opportunity for the parolee to be apprised of the evidence against him and to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reason for not allowing confrontation. The phrase "apprised of the evidence against him" shall be construed in accordance with the disclosure requirements of present law with respect to parole revocation proceedings. In addition, the Conferees acknowledge that there is often simply no adequate alternative to live testimony, but recognize that in some cases it may be appropriate for the Commission to use conventional substitutes for live testimony including affidavits, depositions and documentary evidence. *Gagnon v. Scarpelli*, 411 U.S. 783 n.5 (1973). The phrase "substantial reason" includes but is not necessarily limited to situations involving the potential of harm to any person, physical or otherwise, testimony which is irrelevant or duplicative, and considerations of availability such as illness or distance.

This section also makes provision for the Commission to subpoena witnesses and evidence for parole revocation proceedings. In exercising its discretion to issue a subpoena the Commission shall take into consideration factors which include relevance of the testimony, or evidence sought, and whether or not such testimony or evidence is duplicative.

If the Commission determines that a preponderance of the evidence indicates that the parolee has violated a condition of his parole, the Commission may restore the parolee to supervision, reprimand the parolee, modify any condition of his release, refer him to a halfway house, or revoke his parole.

Provision is also made for abbreviated revocation proceedings in cases in which the parolee has a new criminal conviction. It is the intent of the Conferees that the new criminal conviction satisfies the probable cause requirement in parole revocation proceedings. *U.S. v. Tucker*, 524 F.2d 77 (Fifth Cir. 1975).

A procedure is provided for Commission review of detainers placed against parolees who have been imprisoned after conviction for a crime committed subsequent to their release on parole. After being notified that a parole detainer has been lodged against a parolee in an institution where he is serving his new sentence, the Commission shall review such detainer within 180 days. It is the intent of the Conferees that notice of the pending review be sent to the parolee as soon as practical after notification to the Commission that a detainer has been lodged. No dispositional hearing shall be required to determine the existence of mitigating circumstances. However, if the Commission decides that more information is necessary for the detainer review, a dispositional hearing may be held at the institution in which the parolee is serving his new sentence. Legal representation, as described in subsection (a) (2) (B) of this section is provided to assist the parolee in the dispositional process.

Following the dispositional review, the Commission may let the detainer stand or withdraw the detainer. If the detainer is withdrawn, the case can be closed. The Commission may also withdraw the detainer and reinstate the parolee to supervision; thus permitting the federal sentence time to run uninterruptedly from the time of the parolee's original release on parole or mandatory release.

Any alleged parole violator who waives his right to revocation proceedings under subsection (a) of this section or who admits to a violation at a preliminary hearing held under subsection (a) (1) (A) of this section, or who is retaken under subsection (b) of this section shall receive a parole revocation hearing within 90 days of being retaken in Federal custody. The alleged parole violator shall have notice of such hearing, be permitted to appear and testify on his own behalf and has the right to counsel or a representative as provided in subsection (a) (2) (B) of this section.

Section 4215. Reconsideration and appeal

This section provides that action imposing conditions of parole or modifying or denying release or revoking parole, may be appealed not later than 30 days after receiving written notice of such action. The regional commissioner shall decide the appeal within 30 days after receipt of the appellant's papers and shall inform the appellant in writing of his decision and the reasons therefor.

Appeal from an adverse decision on the part of the regional commissioner may be taken to the National Appellate Board within 30 days of the decision of such regional commissioner and such appeal will be decided within 60 days by a majority vote of the three commissioners on the National Appellate Board.

Also this section provides that the National Appellate Board may review any decision of a regional commissioner upon the written request of the Attorney General.

Section 4216. Young adult offenders

This section provides that existing law which permits certain offenders to be sentenced under the provisions of the Youth Corrections Act is reenacted under a new section number.

Section 4217. Warrant to retake Canal Zone offenders

This section provides that existing law with respect to revocation of Canal Zone offenders is reenacted under a new section number.

Section 4218. Applicability of Administrative Procedure Act

This section brings the Commission's rulemaking process within the coverage of the Administrative Procedure Act, including the Chapter 7 judicial review procedures. In this regard the Conferees recognize the principles established in *Pickus v. United States*, 507 F.2d 1107 (1974).

It is the intent of the Conferees that Commission decisions involving the grant, denial, modification or revocation of parole shall be considered actions committed to agency discretion for the purpose of section 701(a)(2) of title 5, United States Code. It is the Conferees understanding that the exclusion of such decisions from the judicial review provisions of Chapter 7 of title 5, United States Code, reflects the present law with respect to limitations on judicial review of individual parole decisions.

SEC. 3. Section 5005 of title 18, United States Code, is amended to make certain parole procedures for individuals sentenced under the provisions of the Youth Corrections Act parallel with those provided under Chapter 311 of title 18, United States Code, as amended by this Act.

SEC. 4. Section 5006 of title 18, United States Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

SEC. 5. Sections 5007, 5008 and 5009 of title 18, United States Code, which conflict with the provisions of Chapter 311 of title 18, United States Code, as amended by this Act, are repealed.

SEC. 6. Section 5014 of title 18, United States Code, is amended to provide that parole interviews for individuals sentenced under the provisions of the Youth Corrections Act are conducted in the same manner as prescribed for other eligible prisoners.

SEC. 7. Section 5017(a) of title 18, United States Code, is amended to provide for parallel parole release criteria for all eligible prisoners.

SEC. 8. Section 5020 of title 18, United States Code, is amended to provide that parole revocations for individuals sentenced under the provisions of the Youth Corrections Act are conducted in the same manner as prescribed for other parolees.

SEC. 9. Chapter 402 of title 18, United States Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

SEC. 10. This section amends the Table of Sections of Chapter 402 of title 18, United States Code.

SEC. 11. Section 5041 of title 18, United States Code, is amended to provide for parallel parole release criteria for all eligible prisoners.

SEC. 12. This section provides that wherever the term "United States Parole Board" is used in any law it shall be replaced with the term "United States Parole Commission."

SEC. 13. Section 5108(c)(7) of title 5, United States Code, is amended to delete from the control of the Attorney General the salary of members of the U.S. Parole Commission which shall be set by the Congress under the provisions of section 4202 of title 18, United States Code.

SEC. 14. Section 3655 of title 18, United States Code, is amended to replace the term "Attorney General" with the term "United States Parole Commission."

SEC. 15. This section authorizes the appropriation of such sums as are necessary to carry out the purposes of this Act.

SEC. 16. (a) This subsection transfers personnel, liabilities, etc., of the U.S. Board of Parole to the Chairman of the U.S. Parole Commission.

(b) This legislation takes effect 60 days after enactment, except that the provisions of section 4208(h) shall take effect 120 days after enactment.

(c) All members of the U.S. Board of Parole on the effective date of this legislation would become commissioners entitled to serve for the remainder of the terms for which they were appointed as members of the U.S. Board of Parole.

(d) The purpose of this section is to insure that service as a member of the United States Board of Parole prior to the effective date of this Act shall not be counted toward the twelve-year limitation on terms of U.S. Parole Commissioners provided by this Act. It is the intent of the Conferees that this provision be liberally construed so that a person who has two years of his term as a U.S. Parole Commissioner, be eligible for reappointment for a six-year term as a member of the U.S. Parole Commission and be eligible again for reappointment for whatever period of time would be necessary so that he would be entitled to twelve years of service as a U.S. Parole Commissioner.

QUENTIN N. BURDICK,
ROMAN L. HRUSKA,
JOHN L. MCCLELLAN,
CHARLES McC. MATHIAS, Jr.,
EDWARD KENNEDY,

Managers on the Part of the Senate.

ROBERT W. KASTENMEIER,
GEORGE DANIELSON,
ROBERT F. DRINAN,
HERMAN BADILLO,
EDWARD W. PATTISON,
TOM RAILSBACK,
CHARLES E. WIGGINS,

Managers on the Part of the House.

THE PAROLE COMMISSION ACT

SEPTEMBER 11, 1975.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following:

REPORT

[To accompany H.R. 5727]

The Committee on the Judiciary, to which was referred (H.R. 5727) an act to establish an independent and regional United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill as amended do pass.

AMENDMENT

The Committee made the following amendment to the bill as originally introduced:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Parole Commission Act".

SEC. 2. Chapter 311 of title 18, United States Code, is amended to read as follows:

"CHAPTER 311—PAROLE

"Sec.

- "4201. Definitions.
- "4202. Parole Commission created.
- "4203. Powers and duties of the Commission.
- "4204. Powers and duties of the Chairman.
- "4205. Persons eligible.
- "4206. Release on parole.
- "4207. Conditions of parole.
- "4208. Parole interviews procedures.
- "4209. Aliens.
- "4210. Retaking parole violator under warrant.
- "4211. Officer executing warrant to retake parole-violator.
- "4212. Parole modification and revocation.
- "4213. Reconsideration and appeal.
- "4214. Original jurisdiction cases.
- "4215. Applicability of Administrative Procedure Act.
- "4216. Young adult offenders.
- "4217. Warrants to retake Canal Zone violators.

§ 4201. Definitions

"As used in this chapter—

- "(1) 'Commission' means the United States Parole Commission;
- "(2) 'Commissioner' means any member of the United States Parole Commission;
- "(3) 'Director' means the Director of the Bureau of Prisons;
- "(4) 'eligible person' means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;
- "(5) 'parolee' means any eligible person who has been released on parole or deemed as if released on parole under section 4164 or section 4205(d) of this title; and
- "(6) 'rules and regulations' means rules and regulations promulgated by the Commission pursuant to section 4203(b)(1) of this title and section 553 of title 5, United States Code.

§ 4202. Parole Commission created

"There is hereby established as an independent agency of the Department of Justice a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. At no time shall more than six members be of the same political party. The Attorney General shall designate from among the commissioners one to serve as Chairman. The term of office of a commissioner shall be six years, except that the term of a person appointed as a commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a commissioner, the commissioner shall continue to act until a successor has been appointed and qualified. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 17 of the General Schedule pay rates (5 U.S.C. 5332).

§ 4203. Powers and duties of the Commission

- "(a) The Commission, by majority vote, shall have the power to—
 - "(1) grant or deny any application or recommendation to parole any eligible person;
 - "(2) impose reasonable conditions on any order granting parole;
 - "(3) modify or revoke any order paroling any eligible person; and
 - "(4) establish the maximum length of time which any person whose parole has been revoked shall be required to serve, but in no case shall such time, together with such time as he previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense; and where such revocation is based upon a subsequent conviction of the parolee of any Federal, State, or local crime committed subsequent to his release on parole, determine whether all or any part of the unexpired term being served at time of such parole shall run concurrently or consecutively with the sentence imposed for such subsequent offense.

"(b) The Commission shall meet at least quarterly, and by majority vote shall—

- "(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (a) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;
- "(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five; and
- "(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

A record of the final vote of each commissioner on any action pursuant to this subsection shall be maintained and made available for public inspection.

"(c) The Commission, by majority vote, and pursuant to rules and regulations—

- "(1) may delegate to any commissioner or commissioners any powers enumerated in subsection (a) of this section;
- "(2) may delegate to any panel of hearing examiners, any powers necessary to conduct hearings and interviews, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpoenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (a) of this section, except that any such findings or recommendations of any panel of hearing examiners shall be based upon the concurrence of not less than two members of such a panel; and
- "(3) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified, or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

"(d) Except to the extent otherwise herein provided, in every decision or action made by the Commission pursuant to the powers enumerated in this section, each commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

§ 4204. Powers and duties of the Chairman

"(a) The Chairman shall—

- "(1) convene and preside at meetings of the Commission pursuant to section 4203 of this title and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three commissioners;
- "(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that:

"(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner's employment; and

"(B) regional commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

"(3) assign duties among officers and employees of the Commission, including commissioners, so as to balance the workload and provide for orderly administration;

"(4) designate three commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as vice chairman, and designate, for each such region established pursuant to section 4203(b)(2) of this title, one commissioner to serve as regional commissioner in each such region; except that in each such designation the Chairman shall consider years of service, preference and fitness, and no such designation shall take effect unless concurred in by the Attorney General;

"(5) direct the preparation of request for appropriations and the use and expenditure of funds;

"(6) make reports on the position and policies of the Commission to the Attorney General, the Administrative Office of the United States Courts, and the Congress;

"(7) provide for research and training, including, but not limited to—

"(A) collecting data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(B) disseminating pertinent data and studies, to individuals, agencies, and organizations concerned with the parole process and parolees;

"(C) publishing data concerning the parole process and parolees; and

"(D) conducting seminars, workshops, and training programs on methods of parole for parole personnel and other persons connected with the parole process;

"(8) accept voluntary and uncompensated services;

"(9) utilize, on a cost-reimbursable basis, the services of officers or employees of the executive or judicial branches of Federal or State government, for the purpose of carrying out the provisions of section 4210 of this title; and

"(10) perform such administrative and other duties and responsibilities as may be necessary to carry out the provisions of this chapter.

"(b) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

§ 4205. Persons eligible

"(a) An eligible person, other than a juvenile delinquent or committed youth offender, wherever confined and serving a definite term or terms of more than one year, may be released on parole after

serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence in excess of forty-five years, except to the extent otherwise provided by law.

"(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term of exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the person shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the person may be released on parole at such time as the Commission may determine.

"(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may, for purposes of study, commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law. The results of such study, together with any recommendations which the Director believes would be helpful in determining the disposition of the case, shall be furnished to the court within sixty days, or such additional period, but not to exceed sixty days, as the court may grant. After receiving such reports and recommendations, the court may in its discretion—

"(1) place the person on probation as authorized by section 3651 of this title; or

"(2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(d) Any person sentenced to imprisonment for a term or terms of one year or less, who after one hundred and eighty days has not served his term or terms less good time deductions, shall be released as if on parole, notwithstanding the provisions of section 4164 of this title, unless the court which imposed sentence, shall, at the time of sentencing, find that such release is not in accord with the ends of justice and the best interests of the public and sets another time for such release. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

"(e) At any time upon motion of the Bureau of Prisons and upon notice to the attorney for the Government, the court may reduce any minimum term to the time the defendant has served.

"(f) Except to the extent otherwise herein specifically provided, nothing in this section shall be construed to affect or otherwise alter, amend, modify, or repeal any provision of law relating to eligibility for release on parole, or any other provision of law which empowers the court to suspend the imposition or execution of any sentence, to place any person on probation, or to correct, reduce, or otherwise modify any sentence.

§ 4206. Release on parole

"(a) If it appears from a report or recommendation by the proper institution officers or upon application by a person eligible for release

on parole, that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society, the Commission may authorize release of such person on parole.

"(b) Upon commitment of any person sentenced to imprisonment under any law for a definite term or terms of more than one year, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the person and shall furnish to the Commission a summary report, together with any recommendations which in the Director's opinion would be helpful in determining the suitability of the prisoner for parole. Such report may include, but shall not be limited to, data regarding the eligible person's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary. Such report and recommendations shall be made not less than ninety days prior to the date upon which such person becomes eligible for parole, except where such person may become eligible for parole less than one hundred and twenty days following commitment, the Director, in the absence of exceptional circumstances, shall have not less than thirty days, but not more than sixty days, to make such report and recommendations.

"(c) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible person or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

§ 4207. Conditions of parole

"(a) A parolee shall remain in the legal custody and under the control and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

"(b) In every case, the Commission shall impose as a condition of parole that the parolee not commit another Federal, State, or local crime during the term of his parole. In imposing any other condition or conditions of parole the Commission shall consider the following:

"(1) there should be a reasonable relationship between the conditions imposed and the person's conduct and present situation;

"(2) the conditions may provide for such deprivations of liberty as are reasonably necessary for the protection of the public welfare; and

"(3) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

Upon release on parole, a parolee shall be given a written statement setting forth the conditions of such parole.

"(c) An order of parole or release as if on parole may as a condition such order require—

"(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole or release. A person residing in a community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate;

"(2) a parolee, who is an addict within the meaning of section 4251 (a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole.

"(d) The Commission may discharge any parolee from parole supervision or release him from one or more conditions of parole any time after release on parole. In addition, the Commission shall—

"(1) review, at least annually, the status of any parolee who has had two years of continuous parole supervision, to determine the need for continued parole supervision; and

"(2) discharge from parole supervision any parolee who has had five years of continuous parole supervision unless it is determined, after a hearing, that he should not be so discharged because there is a likelihood that he will either engage in conduct violating any criminal law or would jeopardize the public welfare. In any case in which parole supervision is continued pursuant to this subparagraph, the parolee shall receive a hearing at least every two years for the purpose of determining need for further parole supervision. Any hearing held pursuant to this subparagraph shall be in accordance with the procedures set out in section 4210(b)(2) of this title at a time and location determined by the Commission.

§ 4208. Parole interview procedures

"(a) Any person eligible for parole shall promptly be given a parole interview and such additional parole interviews as the Commission deems necessary, but in no case shall there be less than one additional parole interview every three years, except that an eligible person may waive any interview.

"(b) Any interview of an eligible person by the Commission in connection with the consideration of a parole application or recommendation shall be conducted in accordance with the following procedure—

"(1) an eligible person shall be given written notice of the time, place, and purpose of such interview; and

"(2) an eligible person shall be allowed to select a representative to aid him in such interview. The representative may be any person who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

"(c) Following notification that a parole interview is pending, an eligible person shall have reasonable access to progress reports and such other materials as are prepared by or for the use of the Commission in making any determination, except that the following materials may be excluded from inspection—

"(1) diagnostic opinions which, if made known to the eligible person, would lead to a serious disruption of his institutional program of rehabilitation;

"(2) any document which contains information which was obtained on the basis of a pledge of confidentiality made by or in behalf of a public official in the performance of his official duties if such official has substantial reason to believe that such information would place any person in jeopardy of life or limb; or

"(3) any other information that would place any person in jeopardy of life or limb.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraph 1, 2, or 3 of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

"(d) A full and complete record of every interview shall be retained by the Commission. For good cause shown, the Commission may make a transcript of such record available to any eligible person.

"(e) Not later than fifteen working days after the date of the interview, the Commission shall notify the eligible person in writing of its determination. In any case in which parole release is denied or parole conditions are imposed other than those commonly imposed, the Commission shall include the reasons for such determination, and, if possible, a personal conference to explain such reasons shall be held between the eligible person and the Commissioners or examiners conducting the interview.

"§ 4209. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such person on condition that such person be deported and remain outside the United States.

"Such person, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

"§ 4210. Retaking parole violator under warrant

"(a) A warrant for the taking of any person who is alleged to have violated his parole may be issued by the Commission within the maximum term or terms for which such person was sentenced.

"(b)(1) Except as provided in subsection (c), any alleged parole violator retaken upon a warrant under this section shall be accorded the opportunity to have—

"(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time;

"(B) upon a finding of probable cause under subparagraph (1)(A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

"(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

"(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

"(B) opportunity for the parolee to appear and testify, and present witnesses and documentary evidence on his own behalf;

"(C) opportunity for the parolee to be represented by retained counsel, or if he is unable to retain counsel, counsel may be provided pursuant to section 3006A of this title, and

"(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds good cause for not allowing confrontation. The Commission may subpoena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, in which such person resides or carries on business, or in which such person may be found.

"(c)(1) Any parolee convicted of any Federal, State, or local crime committed subsequent to his release on parole and sentenced for such crime to a term or terms of imprisonment who has a detainer for a warrant issued under this section placed against him shall receive a revocation hearing within one hundred and eighty days of such placement, or promptly upon release from such commitment, whichever comes first.

"(2) Any alleged parole violator, who waives his right to any hearing under subsection (b), shall receive an institutional revocation hearing within ninety days of the date of retaking.

"(3) Hearings held pursuant to subparagraphs (1) and (2) of this subsection shall be conducted by the Commission. The alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and to select a representative in accordance with the procedures of section 4208(b)(2) of this title to aid him in such appearance.

"(d) Following any revocation hearing held pursuant to this section, the Commission may dismiss the warrant or take any action provided under section 4212 of this title: *Provided, however,* That in any case in which parole is modified or revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for such action, a copy of which shall be given to the parolee.

(e) The Commission, pursuant to rules and regulations, may delegate authority to conduct hearings held pursuant to this section to any officer or employee of the executive or judicial branches of Federal or State Government.

§ 4211. Officer executing warrant to retake parole violator

"Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Attorney General.

§ 4212. Parole modification and revocation

"When a warrant has been executed pursuant to section 4210 of this title, and such warrant is not dismissed, the decision of the Commission may include—

- "(1) a reprimand;
- "(2) an alteration of parole conditions;
- "(3) referral to a residential community treatment center for all or part of the remainder of the original sentence;
- "(4) formal revocation of parole or release as if on parole pursuant to this title; or
- "(5) any other action deemed necessary for successful rehabilitation of the violator, or which promotes the ends of justice.

The Commission may take any action pursuant to this section it deems appropriate taking into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole, or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

§ 4213. Reconsideration and appeal

"(a) Whenever parole release is denied under section 4206 of this title, parole conditions are imposed other than those commonly imposed under section 4207 of this title, parole discharge is denied under section 4207(d)(2) of this title, or parole is modified or revoked under section 4212 of this title, the individual to whom any such decision applies may have the decision reconsidered by submitting a written application to the regional commissioner not later than thirty days following the date on which the decision is rendered. The regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within sixty days to reaffirm, modify or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefore.

"(b) Any decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefore.

(c) The National Appeals Board shall review any decision of a regional commissioner upon the written request of the Attorney General

filed not later than thirty days following the decision and, by majority vote, shall reaffirm, modify, or reverse the decision within sixty days of the receipt of the Attorney General's request. The Board shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefore.

§ 4214. Original jurisdiction cases

"The regional commissioner, pursuant to rules and regulations, may designate certain cases as original jurisdiction cases, and shall forward any case so designated to the National Appeals Board with his vote and the reasons therefore. Decisions shall be based upon the concurrence of three votes with the appropriate regional director and the members of the National Appeals Board each having one vote. In case of a tie vote, and pursuant to rules and regulations, an additional vote shall be cast by one of the other regional commissioners. The individual to whom such decision applies, or any commissioner who voted in the decision, may appeal such decision directly to the Commission by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. The Commission, by majority vote, shall decide the appeal at its next regularly scheduled meeting and shall inform the individual to which such decision applies of the decision and the reasons therefore.

§ 4215. Applicability of the Administrative Procedure Act

"Except as otherwise provided in this chapter, the provisions of section 551 and sections 553 through 559 and sections 701 through 706 of title 5, United States Code, shall not apply to the making of any determination, decision, or order made by the Commission pursuant to this chapter or any other law."

SEC. 3. Sections 4209 and 4210 of title 18, United States Code, are renumbered to appear as sections 4216 and 4217 of such title.

SEC. 4. Section 5002 of title 18, United States Code, is repealed.

SEC. 5. Section 5005 of title 18, United States Code, is amended to read as follows:

§ 5005. Youth correction decisions

The Commission may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title."

SEC. 6. Section 5006 of title 18, United States Code, is amended to read as follows:

§ 5006. Definitions

"As used in this chapter—

"(a) 'Commission' means the United States Parole Commission;

"(b) 'Bureau' means the Bureau of Prisons;

"(c) 'Director' means the Director of the Bureau of Prisons;

"(d) 'youth offender' means a person under the age of twenty-two years at the time of conviction;

committed youth offender is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

"(f) 'treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

"(g) 'conviction' means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere."

SEC. 7. Sections 5007, 5008, and 5009 of title 18, United States Code, are repealed.

SEC. 8. Section 5014 of title 18, United States Code, is amended to read as follows:

§ 5014. Classification studies and reports

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview."

SEC. 9. Section 5017(a) of title 18, United States Code, is amended to read as follows:

"(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender when it appears that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission."

SEC. 10. Section 5020 of title 18, United States Code, is amended to read as follows:

§ 5020. Apprehension of released offenders

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission."

SEC. 11. Chapter 402 of title 18, United States Code, is amended by deleting the term "division" whenever it appears therein and inserting in lieu thereof the word "Commission".

SEC. 12. The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

- "Sec.
- "5005. Youth correction decisions.
 - "5006. Definitions.
 - "5010. Sentence.
 - "5011. Treatment.
 - "5012. Certificate as to availability of facilities.
 - "5013. Provision of facilities.
 - "5014. Classification studies and reports.
 - "5015. Powers of Director as to placement of youth offenders.
 - "5016. Reports concerning offenders.
 - "5017. Release of youth offenders.
 - "5018. Revocation of Commission orders.
 - "5019. Supervision of released youth offenders.
 - "5020. Apprehension for released offenders.
 - "5021. Certificate setting aside conviction.
 - "5022. Applicable date.
 - "5023. Relationship to Probation and Juvenile Delinquency Acts.
 - "5024. Where applicable.
 - "5025. Applicability to the District of Columbia.
 - "5026. Parole of other offenders not affected."

SEC. 13. Section 5041 of title 18, United States Code, is amended to read as follows:

§ 5041. Parole

"A juvenile delinquent who has been committed and who, by his conduct, has given sufficient evidence that he has reformed, may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper if it shall appear to the satisfaction of such Commission that the juvenile has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society."

SEC. 14. Whenever in any of the laws of the United States or the District of Columbia the term "United States Parole Board", or any other term referring thereto, is used, such term or terms, on and after the expiration of the one-year period following the date of the enactment of this Act, shall be deemed to refer to the United States Parole Commission as established by the amendments made by this Act.

SEC. 15. The parole of any person sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

SEC. 16. Section 5108(c) (7) of title 5, United States Code, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons in GS-16."

SEC. 17. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of the amendments made by this Act.

Sec. 18. (a) The foregoing amendments made by this Act shall take effect upon the expiration of the thirty-day period following the date of the enactment of this Act.

(b) Upon the effective date of the amendments made by this Act, each person holding office as a member of the Board of Parole on the date immediately preceding such effective date shall be deemed to be a Commissioner and shall be entitled to serve as such for the remainder of the term for which such person was appointed as a member of such Board of Parole.

(c) All powers, duties, and functions of the aforementioned Board of Parole shall, on and after such effective date, be deemed to be vested in the Commission, and shall, on and after such date, be carried out by the Commission in accordance with the provision of applicable law, except that the Commission may make such transitional rules as are necessary to be in effect for not to exceed one year following such effective date.

PURPOSE

The primary purpose of H.R. 5727 is to reorganize the Federal paroling structure to replace the present United States Board of Parole with the U.S. Parole Commission, and to make certain changes in parole and procedures.

PURPOSE OF AMENDMENTS

The amendments make certain changes in the language of the bill as introduced, clarify the procedural steps involved in the grant, denial and revocation of parole, and make clear the organizational structure of the U. S. Parole Commission.

GENERAL STATEMENT

Most men and women sent to prison as law breakers are eventually released, and the decision as to when they are released is shared by the legislative and judicial branches of government, as well as the executive branch, through prison officers and parole authorities. Wrapped up in the decision to release an individual from incarceration are all of the emotions and fears of both the individual and society. The prisoner seeks freedom, while society seeks every reasonable means to achieve protection against victimization by criminal offenders.

Parole may be a greater or lesser factor in the decision to release a criminal offender. It depends upon the importance of parole in the complex of criminal justice institutions. In the Federal system, parole is a key factor because most Federal prisoners become eligible for parole, and approximately 35 per cent of all Federal offenders who are released, are released on parole. Because of the scope of authority conferred upon the Parole Board, its responsibilities are great. The purpose of this legislation is to give the Federal paroling structure the tools necessary to do its job.

This legislation would accomplish the following objectives:

(1) The present U.S. Board of Parole would be abolished and replaced with a U.S. Parole Commission which is independent for policy-making purposes, but is attached to the Department of Justice for administrative convenience.

(2) The present eight Parole Board members would be increased to nine Parole Commissioners, one to serve as Chairman and chief administrative officer, three to serve as members of a National Appeals Board, and five to serve in the five regions around the country. This will bring parole decision-making closer to institutions where offenders are housed, and to the communities where they would be released.

(3) Panels of hearing examiners, operating under guidelines adopted by the full Commission, would conduct parole hearings and recommend decisions. These recommended decisions would be subject to review by regional commissioners and the National Appeals Board before becoming final decisions.

(4) An internal appeal process is provided to assure fairness in every decision, and to be sure that both law and guidelines are administered fairly across the country. The Attorney General as well as the offender may trigger review by the National Appeals Board of any decision made by a regional commissioner.

(5) The Chairman would be given the necessary administrative powers to keep the decision-making machinery of the Parole Commission operating on a timely basis, but his impact on policy questions as to who will be granted parole is limited because (a) He does not regularly sit as a member of the National Appeals Board; and (b) All nine Commissioners must meet quarterly and exercise an equal voice in policy decisions.

(6) Parole interviews would provide better opportunities for decision-making, and give the parole process an appearance of fairness to all. Offenders would receive notice of parole interviews; they would have the opportunity to examine progress reports and other documents which weigh heavily in the parole decision as long as personal safety is not jeopardized; they would receive timely notice of decisions, and they would receive a brief summary of reasons when parole is denied.

(7) When a parolee may be returned to prison for violating the conditions of his parole, the revocation process must include certain procedural safeguards set out by the Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

(8) The administrative appeal process, as well as precision in the definitions of procedural terms and standards for release, would have a beneficial effect on the rapidly increasing volume of court litigation regarding parole decisions.

(9) An offender who has demonstrated by his conduct that he has rehabilitated himself could be discharged from supervision by the Parole Commission. Supervising officers would concentrate more of their time on offenders who represent a greater risk of committing new crimes.

From an historical perspective, parole originated as a form of clemency; to mitigate unusually harsh sentences, or to reward prison inmates for their exemplary behavior while incarcerated. Parole today, however, has taken a much broader goal in correctional policy, fulfilling different specific objectives of the correctional system. Parole is an extension of the sentencing process. The sentences of nearly all offenders include minimum and maximum terms, ordinarily set by the sentencing court within a range of discretion provided by statute. The final determination of precisely how much time an offender must

serve is made by the parole authority. The parole agency must weigh several complex factors in making its decision, not all of which are necessarily complementary. In the first instance, parole has the practical effect of balancing differences in sentencing policies and practices between judges and courts in a system that is as wide and diverse as the Federal criminal justice system. In performing this function, the parole authority must have in mind some notion of the appropriate range of time for an offense which will satisfy the legitimate needs of society to hold the offender accountable for his own acts.

The parole authority must also have in mind some reasonable system for judging the likelihood that an offender will refrain from future criminal acts. This remains a very subjective judgment, but the use of guidelines and the narrowing of geographical areas of consideration will sharpen this process and improve the likelihood of good decisions.

The parole authority must also take into consideration whether or not continuing incarceration of an offender will serve a worthwhile purpose. Incarceration is the most expensive of all of the alternative types of sentences available to the criminal justice system, as well as the most corrosive because it can destroy whatever family and community ties an offender may have which would be the foundation of his eventual return as a law-abiding citizen. Once sentence has been imposed, parole is the agency responsible for keeping in prison those who because of the need for accountability to society or for the protection of society must be retained in prison. Of equal importance, however, parole provides a means of releasing those inmates who are ready to be responsible citizens, and whose continued incarceration, in terms of the needs of law enforcement, represents a misapplication of tax dollars.

These purposes which parole serves may at times conflict and at the very least are complicated in their administration by the lack of tools to accurately predict human behavior and judge human motivation. However, it is incumbent upon the Congress to try to attempt to utilize what tools are available and to come up with the best system that can be assembled. This legislation is based upon hearings and consultation with the present Board of Parole; upon a review of the literature, and upon the recommendations of groups which have studied criminal justice systems, including the President's Commission on Law Enforcement and Criminal Justice, which issued its report in 1967, and the National Advisory Commission on Criminal Justice Standards and Goals, which issued its report in 1973.

This legislation would replace the present unitary Board of Parole with a Parole Commission composed of nine Commissioners, appointed by the President with the advice and consent of the Senate. One of the Commissioners is designated as chairman and he is the chief executive and administrative officer of the Commission. Three Commissioners would be designated by the Chairman as members of a National Appeals Board, and five Commissioners serve as regional directors of each of five parole regions established by the Commission. While the Chairman is given significant administrative and executive powers to see that the work of the Parole Commission is done in a timely fashion, his role as chief executive is insulated from the policy-making process, to prevent the power of parole to gravitate to the hands of any one Commissioner.

The Chairman must also have the concurrence of the Attorney General prior to making any permanent change in the job assignment of any of the other eight commissioners.

To each of the five regions would be assigned hearing examiners who would periodically go in panels of at least two to the Federal prisons to conduct interviews with prisoners eligible for parole. The eligible prisoner would receive notice of a pending interview, and would have the opportunity to prepare for this interview by selecting a representative to assist him in his presentation, and by examining the documents in his parole file which would weigh heavily in any decision. There are obvious and necessary limitations, however, on both of these practices. A representative would be someone such as a wife or other family member, an employer or someone such as a minister who is familiar with the individual and his family and could give the panel of hearing examiners additional insight into the family, job and community to which the individual would return should he be released on parole.

The opportunity to inspect documents must also be limited, to prevent release of diagnostic opinions or other potentially disruptive materials, or to prevent information from becoming available that might endanger any other person.

Following the interview the panel of examiners shall act upon the case by making a recommended decision. In the case of a denial of parole the individual will be called back before the examiners to hear the reason why they are recommending denial.

Before any recommendation of the panel of examiners becomes final, the regional commissioner shall affirm, modify or reverse the recommendation of the examiners. In the case of any denial of parole, a brief written statement of reasons shall be prepared for the individual, and made available to him. In the case of any adverse decision, including the grant of parole under unusual conditions as well as parole denial, the individual has the opportunity to request reconsideration by the regional commissioner, and if the decision is still adverse, he may appeal the decision to the National Appeals Board. A decision by the regional commissioner which is favorable to the individual may be brought to the attention of the National Appeals Board by the Attorney General, for the purpose of review and reconsideration.

The parolee who is living successfully in the community after his release may be discharged from supervision before the completion of his sentence. The regional commissioner may give consideration to discharging the individual from supervision, but after five years of continuous supervision without revocation or conviction of a new offense there would be a presumption that discharge be granted. Supervision may be continued, however, when necessary for the protection of society.

If the offender during the period of his parole supervision is convicted of new offenses under state or federal law, and if the conviction is for more than a minor violation, revocation of parole is almost automatic. In such cases, the issue before the Commission is how much of the time remaining on the original sentence must be served by the parolee and whether this time should be served concurrently or consecutively with the new sentence. By conducting a parole revocation hearing early in the new sentence, the Commission retains the option

to run the original sentence concurrent with the new sentence and the parolee is spared the unnecessary complications of an unresolved parole detainer pending throughout the service of his new sentence. The legislation provides procedures for such hearings which are similar to those provided for the parole determination interviews because the issue before the Commission, how much time remains to be served, is parallel.

In the case of allegations that a parolee has violated the conditions of his release other than a criminal conviction, (i.e., a technical violation) the Supreme Court has required a higher standard for determining whether parole should be revoked and the individual returned to prison. Although counsel has been provided to federal parolees for some time under the Criminal Justice Act, the Morrissey decision requires that the parolee, initially, be given a prompt hearing as to whether or not there is sufficient cause to detain him. If probable cause is found, he is given the opportunity to confront and cross-examine adverse witnesses under reasonable conditions, and to present his own case. Because a new period of incarceration, even if only 24 hours in length, may cost a parolee his employment, and further jeopardize his chances for rehabilitation, the detention of an alleged violator is a serious matter and must be dealt with in a manner which clearly recognizes the degree of loss to be suffered.

The standards for release on parole and for revocation of parole are not significantly changed from existing law. The only notable change is that the standards and criteria are made the same for all federal prisoners without regard to which of the three main sentencing alternatives is utilized by the court. This will be of significant benefit to the federal correctional institutions because offenders sentenced for similar crimes under similar circumstances will be required to serve comparable periods of incarceration.

The legislation recognizes the process by which guidelines for release on parole have been established, and provides, through publication and the opportunity for notice and comment, for an orderly procedure to make and change these guidelines. The guidelines take into account the circumstances of the individual both in his personal life and with respect to the offense which he has committed, as well as measuring the severity of the offense involved so as to significantly reduce the area of discretion which the Parole Commission, in fact, has in any given case. The guidelines give definiteness to the indefinite nature of most federal criminal cases—by reducing the opportunity for sentencing disparity and abuse of discretion and by giving to parole an aura of fairness for both victim and offender.

It would be an endless and impractical task to attempt to write parole guidelines in the statute. In the first place, too much detail would be required to effectuate administrative implementation. Second, the guidelines are still evolving and subject to change as empirical evaluations of their ability continues. The parole guidelines which are to be promulgated pursuant to this legislation will be an important area for the continuing jurisdiction of the Subcommittee on National Penitentiaries to ensure that these regulations are carrying out the purposes and policy determined by the Congress.

By its very nature, parole is a very imprecise process. It requires subjective judgments. It requires predictions about human behavior

when the instruments of prediction have not been perfected, and may never be perfected. Because of this imprecision, parole is under attack from a variety of sources. There are some who suggest that the use of parole produces only the release of offenders who will prey on new victims. There is criticism from others who point to the unevenness of parole decision making as proof that it is used arbitrarily and capriciously to keep behind bars members of minority groups or friends of unpopular causes. There are those from all points who say that parole fails to take account of the seriousness of offenses, and the nature and circumstances of the individual. Because of these limitations, it is not possible to draft a perfect parole statute or to establish a perfect parole system. It is, however, the public responsibility to attempt to improve the machinery by which these complex judgments are made. It requires a recognition of the individual's stake in the parole process, as well as the responsibility for the protection of the larger society.

Parole is perhaps the most important item in the mind of every prisoner because it is his key to the door. It is essential, then, that parole has both the fact and appearance of fairness to all. Nothing less is necessary for the maintenance of the integrity of our criminal justice institutions. The openness and sense of fairness that is intended in the provisions of this legislation will have the beneficial effect of allowing the participants in parole—the inmates—to understand their place in the system and to better appreciate what is expected of them.

At the same time, the parole agency acts for society as its protector. It can serve that role by delaying or denying release up to the maximum sentence imposed by the court.

When being considered for parole, the individual does not have a right or presumption to be released. At the same time, the paroling authority has no obligation to continue incarceration beyond what is necessary to protect the general welfare. Parole is neither a matter of right for the inmate nor a matter of grace for the state, it is a matter of administrative discretion.

The constitutional test to be applied to parole is not one of right, but whether or not parole is administered in a fashion that is neither arbitrary nor capricious to the individual, nor unfairly jeopardizes the legitimate aim of society to control deviant behavior.

The denial of parole is in a limited sense the taking of an individual's liberty, or at least the opportunity for him to obtain liberty. The Constitution requires due process of law, but in the view of this Committee, the degree of due process that is required can only be arrived at by a balancing of the interests of the individual with the interest of society in its own protection. We believe that this legislation has struck the appropriate balance, and that the procedural standards established by this legislation sufficiently meet the required test.

VIEWS OF THE DEPARTMENT OF JUSTICE

The Justice Department, in particular the U.S. Board of Parole, has worked closely with the Subcommittee on National Penitentiaries in drafting this bill, and fully supports H.R. 5727 as amended.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Short title, The Parole Commission Act.

SEC. 2. Chapter 311 of title 18, United States Code, is amended to read as follows:

§ 4201. DEFINITIONS

As used in this chapter—

(1) "Commission" means the U.S. Parole Commission created by this Act;

(2) "Commissioner" is any one of the nine members of the U.S. Parole Commission;

(3) "Director" means the Director of the U.S. Bureau of Prisons;

(4) "Eligible person" means any Federal prisoner in the custody of the Attorney General who is by law eligible for parole, including any individual whose parole has been previously revoked;

(5) "Parolee" means any eligible person who has been released on parole or deemed to have been released as if on parole under sections 4164 and 4205 (d) of title 18, U.S. Code, which provide for release as if on parole; and

(6) "Rules and regulations" means the rules and regulations made by the full Commission. The rulemaking procedures of § 553 of title 5, U.S. Code, apply; notice is required in the Federal Register, and interested parties shall have an opportunity to comment. Guidelines promulgated by the full Commission for parole decision-making are rules and regulations within the meaning of this definition. *Pickus et al v. U.S. Board of Parole*, 507 F2d 1107 (1974).

§ 4202. This section establishes a nine-member U.S. Parole Commission as an independent agency of the Department of Justice. No more than six members of the Commission can be of the same political party. The Commission is attached to the Department for administrative reasons but its decision-making machinery is independent so as to guard against influence in case decisions. Commissioners serve a term of six years under Presidential appointment by and with the advice and consent of the Senate; the Chairman is appointed by the Attorney General. The terms are staggered with the Commission members continuing to serve until their successors have been qualified. The rate of pay for a member of the Commission shall be the highest step of G.S. level 17.

§ 4203 (a) The Commission, acting by majority vote, has authority to: (1) grant or deny parole to any Federal prisoner who is eligible for parole; (2) impose conditions under which any prisoner would be released on parole; (3) modify or revoke the parole of any individual who violated the conditions of his release; and (4) decide on the period of reimprisonment for any individual whose parole has been revoked, except that the length of such reimprisonment together with the time served for the offense before parole was granted cannot be longer than the maximum length of the sentence; where revocation is based on a conviction for a new crime the Commission may also determine whether all or any part of the unexpired term shall run concurrently or consecutively with the new sentence.

(b) The full Commission will meet periodically as a policy making group to: (1) establish procedural rules and guidelines for parole determinations so that the administration of parole throughout the Federal system will be uniform; (2) set boundaries for the nation's

five parole regions; and (3) act upon budget recommendations, which will be separate from other agencies of the Department of Justice.

Records of the final vote of the commissioners on these policy making actions will be available for public inspection.

(c) Subparagraphs (1) and (2) of this subsection permit the Commission to delegate some of its workload to individual commissioners or panels of commissioners and provide for panels of hearing examiners to assist them in this task.

Subparagraph (1) enables the Commission to allocate its decision making workload to regional commissioners who are responsible for initial parole determinations and to the three commissioners on the National Appeals Board who review these decisions on appeal.

Subparagraph (2) sets out the responsibilities of the hearing examiner panels for compiling the information upon which the decisions of regional commissioners are based. In performing this function, hearing examiner panels will conduct hearings and interviews, take sworn testimony, make a record of the pertinent evidence presented at parole proceedings, make findings of probable cause and issue subpoenas in parole revocation proceedings, and make specific recommendations for each parole decision to be made by the regional commissioner.

It is recognized that in most instances the recommendation of the panel of hearing examiners will be followed by the regional commissioner. This recognizes the crucial role of hearing examiners in the parole process without detracting from the regional commissioner's executive responsibility for the actions of those under his supervision. Since most panel recommendations will probably fall within the guidelines for decision-making promulgated by the full Commission the regional commissioner's primary obligation in such cases is to ensure that the guidelines have been properly interpreted and followed. In cases in which the panel recommends a disposition which is above or below the guidelines, the regional commissioner should carefully review the case and decide that significant factors are present which justify this exception to the guidelines. The same careful scrutiny would be expected for recommendations to parole individuals with long sentences for crimes involving serious aggressive behavior.

Subparagraph (3) enables the Commission to review any delegated decision on its own motion and permits the Commission to delegate this review authority to the National Appeals Board.

(d) When the full Commission is required to make decisions under the powers and duties set out in this section, each member will have an equal voice in policy or decision determinations, be provided with all necessary information, and have one vote.

§ 4204. (a) The Chairman, who functions as the chief executive officer of the Commission, is authorized to: (1) preside at the regular meetings of the full Commission as well as special meetings that are called upon his own request or that of any three commissioners; (2) make all personnel decisions except that the full Commission must confirm the appointment of any hearing examiner before his probationary status as a first-year government employee terminates and each regional commissioner will be responsible for the appointment and supervision of certain clerical personnel employed in his

region; (3) delegate work among the commissioners and the various units and employees of the Commission; (4) designate three commissioners to serve on a National Appellate Board, one of which will also serve as Vice Chairman, and designate one commissioner to serve in each of the parole regions as regional commissioner, except that in making any such designation the Chairman must consider certain pertinent criteria and must obtain the concurrence of the Attorney General; (5) carry out fiscal responsibilities including preparation of appropriation requests and oversight of Commission expenditures; (6) serve as spokesman for the Commission and make reports to the Congress, the courts, and the Attorney General; (7) provide for a research and training component in the Commission which will provide studies and information concerning the parole process to public and private agencies; (8) accept voluntary and uncompensated services such as volunteers who assist in the counseling and supervision of individuals who have been released on parole; (9) utilize, on a cost reimbursable basis, Federal or State officials for certain parole revocation proceedings; and (10) perform other necessary duties.

(b) The Chairman shall carry out his administrative duties and responsibilities in line with the national parole policies promulgated by the Commission.

§ 4205. (a) The statutory basis for eligibility for parole for Federal prisoners under regular adult and special sentencing procedures remains unchanged. A Federal prisoner is eligible for parole after serving one-third of his maximum term or after serving fifteen years and there is no change in this from present language of title 18.

(b) This subsection reenacts the existing provisions of law which enables the court to: (1) direct that the prisoner be eligible for parole at any time up to one-third of his maximum sentence, or (2) specify that the Commission shall decide when the prisoner shall be considered for parole.

(c) This subsection amends existing provisions of law which give the judge an opportunity to request that the Bureau of Prisons conduct a study of the individual by reducing the time period allowed for such study from 90 to 60 days, and preserves existing provisions of sentencing law.

(d) This subsection reenacts in part and amends in part the present law on eligibility for parole of offenders with maximum sentences of one year or less. For individuals whose maximum term or terms is six months or less, there is no change from present law, under which the sentencing judge may set any release date, including a split sentence under 18 U.S.C. 3651, of up to six months incarceration and five years probation. For individuals sentenced to a maximum term or terms of more than six months, but not more than one year, the sentencing judge sets the date for release of the offender as if on parole, except if the judge sets no release date, the individual would be released after having served six months. Present law concerning good time reductions and surrender of prisoners to other authorities is unchanged.

(e) This subsection provides a means by which the minimum term of any Federal prisoner may be reduced to make the individual eligible for parole consideration. The Bureau of Prisons would make a motion to the court which imposed sentence, and the appropriate U.S. Attorney would have an opportunity to oppose it.

(f) Present law and practice relating to existing powers of the sentencing court and certain special provisions relating to eligibility for parole are preserved.

§ 4206. (a) The present statutory criteria utilized by the Federal parole authorities in making their decision as to whether or not to grant parole are preserved. Before granting parole, the Commission must decide that an individual who is eligible for parole has substantially observed the rules of the institution in which he is confined, there is a reasonable probability that he will not violate the law on release, and his release is compatible with the general welfare of society.

(b) When an individual is about to become eligible for parole consideration the Bureau of Prisons prepares a progress report which includes a summary of his criminal and social background, his mental and physical health, his behavior in the institution and his participation in institution programs. The Commission is authorized to make such other investigations as it may deem appropriate.

(c) The Commission is authorized to seek information from other government agencies such as the U.S. Probation Service and the Federal Bureau of Investigation. Upon request, these agencies will furnish available information, and, where appropriate, their views and recommendations with respect to Commission matters.

§ 4207. (a) An individual released on parole remains in the legal custody of the Attorney General but time spent on parole is not automatically credited toward service of the maximum sentence.

(b) Every parolee shall have as a condition of parole that he cannot commit any criminal offense during his parole. In imposing any other condition or conditions of parole the Commission shall consider the following guidelines: (1) there should be a reasonable relationship between the standards of behavior required and the individual's circumstances; (2) deprivations of liberty which are necessary for the protection of the public welfare may be imposed; (3) the conditions must be specific and not vague so that they can serve as a guide to behavior. In addition, the parolee is given a written statement of his conditions.

(c) As provided under present law, the conditions of parole may require that an individual reside in or participate in the program of a community treatment center or an addict treatment program.

(d) An orderly procedure under which the Commission may suspend parole supervision of parolees who no longer need it is established. (1) Systematic evaluation for parole discharge begins after an individual has been under parole supervision for two years, but discharge remains entirely in the discretion of the Commission. (2) After five years of continuous parole supervision an individual shall receive a hearing to decide whether or not such supervision shall be terminated. Similar consideration will be accorded at least every two years thereafter.

Parole discharge under this section is not the same as unconditional discharge provided for youth offenders under the Federal Youth Corrections Act, Chapter 402 of title 18, U.S. Code. The Youth Act provides a procedure for certain conditionally released youth offenders who achieve the status of unconditional discharge within a specific time period to earn a set aside of their conviction.

§ 4208. (a) Once an individual becomes eligible for parole he is entitled to a hearing and additional rehearings at least once every three years, but he may waive any hearing.

(b) When a commissioner or panel of hearing examiners conducts an interview of any individual who is eligible for parole, that individual will receive written notice of the time of the interview and will be allowed to select a representative to assist him both before and during the interview. The Commission is authorized to promulgate rules and regulations as to who a representative may be. Persons appropriate for such position include members of the immediate family, including common-law relations; other relatives; friends; ministers, or prospective employers. The phrase, "Such rules shall not exclude attorneys as a class", means that inmates may utilize retained counsel as representatives but that any other provision for legal assistance is within the discretion of the Commission.

(c) An eligible Federal prisoner shall have reasonable access to certain documents which are utilized by the Commission to determine parole eligibility. Three categories of documents, however, may be excluded: (1) diagnostic opinions such as psychological or psychiatric reports which if revealed to the individual might cause a serious disruption in his program of rehabilitation; (2) documents which contain information obtained on the basis of a pledge of confidentiality by, or on behalf of, any public official who has substantial reason to believe that revealing the information would jeopardize the life or limb of any person; or (3) any other information which if revealed would jeopardize the life or limb of any person. The Commission, the Bureau of Prisons, or any other agency which deems a document excludable under subparagraphs (1), (2) or (3) of this subsection, shall be responsible for preparing a summary of such document. In recognition of administrative time constraints, agencies, other than the Commission or the Bureau of Prisons, submitting excludable documents shall enclose summarized versions which meet the requirements of this subsection. The Bureau of Prisons recently implemented a procedure for disclosing progress reports and, in some cases, psychiatric reports to Federal prisoners awaiting parole consideration. BOP Policy Statement, No. 7200.13, "Disclosure of Parole/Special Progress Reports", (1-28-74).

(d) The Commission is required to retain a record of all parole interviews. Where an individual is denied parole or granted parole under conditions other than those commonly imposed, he can obtain a copy of the transcript of the interview record if he can demonstrate to the satisfaction of the Commission that it is necessary for purposes of administrative appeal. In any case in which the Commission has transcribed the interview record for its own use in connection with any appellate determination, the inmate, if he so requests, shall be provided with a copy of such transcript.

(e) The Commission has fifteen working days in which to notify the individual in writing of the initial parole decision. Individuals denied parole or granted parole under conditions other than those commonly imposed will receive a written statement which spells out clearly the reasons for this adverse action.

The Committee does not wish to tie the hands of the Parole Commission by specifying a particular format for such statement of rea-

sons. A formal judicial fact-finding is not required, but the inmate must receive an understandable explanation of his parole status. For example, under the published rules of the U.S. Board of Parole, 28 CFR 2.20 (1975 Vol. as amended), the Board utilizes a set of guidelines for parole release determinations. The guidelines take into consideration certain primary elements in the parole decision-making process and indicate, for any individual combination thereof, the general range of time to be served before release.

The subsection would operate in the following manner in relation to the present guidelines system. If a prisoner who has not served the minimum period recommended by the guidelines is denied parole, he should receive a statement containing his severity of offense rating, the calculation of his salient factors score and an explanation of how such a determination utilizing the guidelines was reached. On the other hand, if a prisoner who has served the time required to be eligible for parole under the guidelines is denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he should receive not only the above information but also a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines. Parole Form R-2, Notice of Action Worksheet (revised June, 1974), which was implemented by the U.S. Parole Board in the northeast region on April 1, 1974, provides the necessary information.

The Committee realizes that these guidelines and procedures may change and reserves the right of continuing oversight to ensure that individuals receiving adverse parole determinations are given an adequate explanation of the reasons for such action.

The phrase, "parole conditions other than those commonly imposed", refers to any condition imposed by the Commission on any order of parole release which the individual wishes to contest on the grounds that such a deprivation of liberty is unwarranted. Typically imposed proscriptions relating to violations of law, use of narcotics, etc., would not fit this category.

§ 4209. Existing law with respect to delivery of convicted aliens for deportation is recodified under a new section number.

§ 4210. This section codifies certain due process safeguards mandated by the recent Supreme Court decisions, *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 788 (1973), which relate to the revocation of parole under circumstances in which there may be a need to ascertain facts concerning an alleged violation of the conditions of such release on parole.

(a) This subsection provides for issuing a warrant for the arrest of a parolee alleged to have violated a condition of parole before the expiration of his maximum sentence.

(b) (1) This subsection provides revocation procedures for any alleged parole violator who wishes to contest the revocation and whose revocation is not based on a conviction for a new offense. (A) Such parolee is entitled to an immediate hearing, near where the violation is alleged to have occurred or where the parolee was arrested, to determine if there is probable cause to believe that he has violated his parole conditions. The timing of the preliminary hearing is particularly crucial; even if probable cause is not found, if a parolee is held in jail awaiting his hearing for more than one or two days, his job will prob-

ably be lost and his reintegration efforts badly disrupted. The Commission upon a finding of probable cause shall make a written summary of the hearing which states the reasons for the decision and the factors considered in the hearing. The parolee shall be given a copy of this written summary a reasonable period of time before his revocation hearing, unless the revocation hearing is held at the same time as the probable cause hearing in which case he will be given a document summarizing the joint proceedings within fifteen working days. (B) Upon a finding of probable cause under subparagraph (A) of this subsection, the alleged parole violator is entitled to a revocation hearing which also takes place reasonably near the place where the alleged violation occurred or where the parolee was arrested. In the words of Chief Justice Burger, "This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest the violation does not warrant revocation." 471 U.S. 488 (1972). While the revocation hearing must be held within sixty days of the preliminary hearing held pursuant to subparagraph (A), it may be held at the same time.

(2) In any hearing held pursuant to subparagraph (1) (A) or (B) of this subsection, the alleged parole violator is entitled to the following procedures: (A) notice of the violations of parole and the time, place, and purposes of the scheduled hearings; (B) the right to appear and testify and to present witnesses and documentary evidence on his own behalf; (C) the right to be represented by retained counsel or if he is unable to retain counsel, counsel may be provided pursuant to the Criminal Justice Act (18 U.S.C. 3006A) and (D) the right to be apprised of evidence against him and the qualified right to confront and cross-examine adverse witnesses. This subparagraph would permit an inmate who so requests to confront and cross-examine adverse witnesses unless the hearing officer designated by the Commission makes a determination that there is good cause for not allowing confrontation. This determination requires the hearing officer to balance the parolee's need to confront his accusers (in view of the particular facts and circumstances of his case) against factors, which include but are not necessarily limited to, the probability and severity of either the risk of harm to the informant or the danger that the rights of someone in any pending criminal prosecution would be jeopardized. The Commission, where appropriate, may subpoena adverse witnesses but only for the purposes set out in this subparagraph.

(c) (1) Any parolee, who is convicted of a new offense and sentenced to imprisonment in any Federal, State or local correctional facility and who has a parole revocation detainer lodged against him at such institution, shall receive a revocation hearing within one hundred and eighty days of the placement of such detainer, or upon his release, whichever comes first. In *Morrissey*, the Court distinguished between revocation proceedings based on conviction of another crime and revocation proceedings based on the alleged violation of some other parole condition. 408 U.S. 490. By being convicted of a new offense, the parolee has violated the only mandatory parole condition. Section 4207 (b).

Where a new conviction is the basis for parole revocation, a preliminary probable cause hearing is unnecessary because this determination has been satisfied by the judicial proceedings leading to the new conviction.

(2) Any alleged parole violator, who waives any of his hearing rights under subsection (b), shall receive an institutional revocation hearing within three months of recommitment.

(3) Hearings held under this subsection shall be conducted by the Commission. The alleged parole violator will have notice of the hearing and be allowed to appear and testify in his own behalf and to select a representative, as provided in § 4208 (b) (2), to aid him in his appearance.

(d) The Commission, after any revocation hearing held under this section, may dismiss the warrant or take any other action which it deems appropriate in accordance with the provisions of § 4212 of this chapter. In any case in which parole is modified or revoked pursuant to a hearing under this section, the Commission shall provide a written summary of the hearing which states the reason for the adverse action and indicates the evidence considered and relied upon. It is important to remember that this is not a formal judicial determination. In *Morrissey*, the Court observed, "no interest would be served by formalism in this process; informality will not lessen the utility of this inquiry in reducing the risk of error." 408 U.S.C. 487 (1972). The alleged violator shall receive a copy of this document.

(e) To facilitate speedy parole revocation determinations, the Commission may delegate authority to State or Federal officials to conduct hearings pursuant to this section. The Commission would promulgate regulations setting out appropriate categories of government officials to be used in this capacity such as U.S. magistrates, administrative law judges, and officials of State parole authorities, etc.

§ 4211. Existing law with respect to the enumeration of individuals entitled to serve parole revocation warrants is recodified under a new section number.

§ 4212. If the parole revocation warrant is not dismissed, the range of possible responses by the Commission to a parolee who has been found to have violated the conditions of his parole include: (1) a reprimand; (2) an alteration of parole conditions; (3) referral to a half-way house or other residential facility for all or part of the remainder of the original sentence; (4) formal revocation of parole or release as if on parole; or (5) any other action deemed necessary for the purposes of successful rehabilitation of the parole violator, or which promotes the ends of justice.

In taking any action under this section, the Commission shall take into consideration whether or not the parolee has been convicted of a new criminal offense or whether such action is warranted by either the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

§ 4213(a) Initial decisions involving a grant or denial of parole, the imposition of unusual parole conditions, denial of parole discharge after five or more years of continuous parole supervision, or the modification or revocation of parole, are made by regional commissioners in accordance with rules and regulations promulgated by the full Commission. The eligible person or parolee adversely affected by any such

decision is entitled, by filing a timely application, to have the regional commissioner reconsider the decision. The regional commissioner, in accordance with rules and regulations promulgated by the full Commission, must act on the application within sixty days and shall notify the applicant of the reconsidered decision and the reasons therefor.

(b) If the decision is affirmed by the regional commissioner or in some other way still adverse to the applicant, he may take his case to the three-member National Appeals Board. In accordance with the same time and notice requirements as provided in subsection (a), the applicant's final administrative appeal will be decided by the majority vote of the three members.

(c) The Attorney General has an unqualified right to have the National Appeals Board review any decision of a regional commissioner. In accordance with the same time and notice requirements as provided in subsection (a), the National Appeals Board, by majority vote, shall reaffirm, modify, or reverse the regional commissioner's decision and must give a written copy of its decision to both the Attorney General and the individual whose case is involved.

§ 4214. This section sets out the review procedure for parole determinations in which original jurisdiction is retained by the Commission. The initial decision is made by the regional commissioner, the members of the National Appeals Board, and, in the event of a tie vote, an additional regional commissioner. The eligible person or parolee adversely affected by this decision, or any commissioner who took part in the decision, may appeal the decision within thirty days to the full Commission which shall decide the case at its next quarterly meeting.

§ 4215. This section provides that certain provisions of the Administrative Procedure Act do not apply to the making of any determination, decision or order of the United States Parole Commission.

Under the present procedures of the U.S. Board of Parole, all reference to the name of the parole applicant is excised from the copy of the final parole order which is kept on file and made available for public inspection in accordance with the provisions of Section 552 of title 5, U.S. Code. The Committee supports this excision procedure which is designed to avoid misuse of criminal record information and expects it to be continued by the U.S. Parole Commission. However, in situations where legitimate inquiries are made about specific individuals, such as inquiries from news media, the Commission would be obligated to report its decision, keeping in mind the need for protection of personal records such as diagnostic opinions, etc.

SEC. 3. Section 4209, relating to the application of the Federal Youth Corrections Act, and Section 4210, relating to Canal Zone warrants, are reenacted under new section numbers.

SEC. 4. Section 5002 of title 18, U.S. Code, is repealed.

SEC. 5. Section 5005 of title 18, U.S. Code, is amended to make procedures for consideration of individuals sentenced under the Youth Corrections Act an integral part of the Commission's responsibilities. Decisions regarding parole of youthful offenders will be made in the manner prescribed for all other eligible offenders, with the exception

of certain provisions relating to unconditional discharge of youth offenders.

SEC. 6. Section 5006 of title 18, U.S. Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

SEC. 7. Sections 5007, 5008, 5009 of title 18, U.S. Code, which conflict with the provisions of Chapter 311 of title 18, relating to the organization and operation of the U.S. Parole Commission, are repealed.

SEC. 8. Section 5014 of title 18, U.S. Code, is amended to provide that parole interviews for youth offenders are conducted in the same manner as prescribed for other eligible offenders.

SEC. 9. Section 5017(a) of title 18, U.S. Code, is amended to provide for parallel parole release criteria for all offenders.

SEC. 10. Section 5020 of title 18, U.S. Code, is amended to provide that parole revocations for youth offenders are conducted in the same manner as prescribed for other parolees.

SEC. 11. Chapter 402 of title 18, U.S. Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

SEC. 12. Amends the Table of Sections of Chapter 402 of title 18, U.S. Code.

SEC. 13. Section 5041 of title 18, U.S. Code, is amended to provide for parallel parole release criteria for all offenders.

SEC. 14. This section provides that wherever the term United States Parole Board is used in any law it shall be replaced with the term U.S. Parole Commission.

SEC. 15. Protects the eligibility of the one prisoner remaining in the Federal system who was sentenced prior to June 29, 1932, in order to preserve the possibility that he may be released under applicable provisions of law.

SEC. 16. Section 5106(c)(7) of title 5, U.S. Code, is amended to delete from the control of the Attorney General the salary of members of the U.S. Parole Commission which shall be set by the Congress under the provisions of Section 4202 of title 18, U.S. Code.

SEC. 17. Authorizes the appropriation of such sums as are necessary to carry out the purposes of this Act.

SEC. 18. (a) This legislation would take effect ninety days following enactment.

(b) All members of the Board of Parole on the effective date of this legislation would become commissioners, entitled to serve for the remainder of the terms for which they were appointed as members of the Board of Parole.

(c) All powers, duties and functions of the Board of Parole would be transferred to the U.S. Parole Commission on or after the effective date. The U.S. Parole Commission may make such transitional rules as are necessary for a period of one year following the effective date.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law is shown in roman, matter repealed enclosed in black brackets, and new matter is printed in italic).

CHAPTER 311 OF TITLE 18, UNITED STATES CODE

CHAPTER 311—PAROLE

- [Sec.]
 [4201. Board of Parole; members.]
 [4202. Prisoners eligible.]
 [4203. Application and release; terms and conditions.]
 [4204. Aliens.]
 [4205. Retaking parole violator under warrant; time to serve undiminished.]
 [4206. Officer executing warrant to retake parole violator.]
 [4207. Revocation upon retaking parolee.]
 [4208. Fixing eligibility for parole at time of sentencing.]
 [4209. Young adult offenders.]
 [4210. Warrants to retake Canal Zone parole violators.]

[§ 4201. Board of Parole; Members]

[There is hereby created in the Department of Justice a Board of Parole to consist of eight members to be appointed by the President, by and with the advice and consent of the Senate. The members of the Board first appointed under this section shall be appointed for terms as follows: Two for two years, two for three years, two for four years, and two for six years, respectively, from the effective date of this section. The term of office of a successor to any member shall expire six years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Upon the expiration of his term of office, a member of the Board shall continue to act until his successor shall have been appointed and qualified. The Attorney General shall from time to time designate one of its members to serve as Chairman of said Board and delegate to him the necessary administrative duties and responsibilities.]

[§ 4202. Prisoners Eligible]

[A Federal prisoner, other than a juvenile delinquent or a committed youth offender, wherever confined and serving a definite term or terms of over one hundred and eighty days, whose record shows that he has observed the rules of the institution in which he is confined, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence of over forty-five years.]

[(a) If it appears to the Board of Parole from a report by the proper institutional officers or upon application by a prisoner eligible for release on parole, that there is a reasonable probability that such prisoner will live and remain at liberty without violating the laws, and if in the opinion of the Board such release is not incompatible with the welfare of society, the Board may in its discretion authorize the release of such prisoner on parole.]

[Such parolee shall be allowed in the discretion of the Board, to return to his home, or to go elsewhere, upon such terms and conditions, including personal reports from such paroled person, as the Board shall prescribe, and to remain, while on parole, in the legal custody

and under the control of the Attorney General, until the expiration of the maximum term or terms for which he was sentenced.

[The Board may require a parolee or a prisoner released pursuant to section 4164 of this title as conditions of parole or release to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of parole: *Provided*, That the Attorney General certifies that adequate treatment facilities, personnel and programs are available. If the Attorney General determines that the person's residence in the center or participation in its program, or both, should be terminated, because the person can derive no further significant benefits from such residence or participation, or both, or because his such residence or participation adversely affects the rehabilitation of other residents or participants, he shall so notify the Board of Parole, which shall thereupon make such other provision with respect to the person as it deems appropriate.]

[The Board may require a parolee, or a prisoner released pursuant to section 4164 of this title, who is an addict within the meaning of section 4251 (a) of this title, or a drug dependent person within the meaning of section 2 (q) of the Public Health Service Act, as amended (42 U.S.C. 201), as a condition of parole or release to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole: *Provided*, That the Attorney General certifies a suitable program is available. If the Attorney General determines that the person's participation in the program should be terminated, because the person can derive no further significant benefits from participation or because his participation adversely affects the rehabilitation of other participants, he shall so notify the Board of Parole, which shall thereupon make such other provision with respect to the person as it deems appropriate.]

[A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate.]

[Each order of parole shall fix the limits of the parolee's residence which may be changed in the discretion of the Board.]

[(b) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.]

[§ 4204. Aliens]

[When an alien prisoner subject to deportation becomes eligible for parole, the Board of Parole may authorize his release on condition that he be deported and remain outside the United States.]

[Such prisoner, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.]

[§ 4205. Retaking Parole Violator Under Warrant; Time To Serve Undiminished]

[A warrant for the retaking of any United States prisoner who has violated his parole, may be issued only by the Board of Parole or a member thereof and within the maximum term or terms for which he was sentenced. The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General under said warrant, and the time the prisoner was on parole shall not diminish the time he was sentenced to serve.]

§ 4206. Officer Executing Warrant To Retake Parole Violator]

[Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such prisoner and returning him to the custody of the Attorney General.]

§ 4207. Revocation Upon Retaking Parolee]

[A prisoner retaken upon a warrant issued by the Board of Parole, shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board.

[The Board may then, or at any time in its discretion, revoke the order of parole and terminate such parole or modify the terms and conditions thereof.

[If such order of parole shall be revoked and the parole so terminated, the said prisoner may be required to serve all or any part of the remainder of the term for which he was sentenced.]

§ 4208. Fixing Eligibility For Parole At Time of Sentencing]

[(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may become eligible for parole at such time as the board of parole may determine.

[(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, or a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) Place the prisoner on probation as authorized by section 3651 of this title, or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

[(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Board of Parole a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal ex-

perience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Board of Parole may make such other investigation as it may deem necessary.

[It shall be the duty of the various probation officers and government bureaus and agencies to furnish the Board of Parole information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

[(d) The Board of Parole having jurisdiction of the parolee may promulgate rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners.]

§ 4209. Young Adult Offenders]

[In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there is reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C. Chap. 402) sentence may be imposed pursuant to the provisions of such act.]

§ 4210. Warrants To Retake Canal Zone Parole Violators]

[An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to the representative of the Governor of the Canal Zone for return to the Canal Zone.]

CHAPTER 811—PAROLE

Sec.	
4201.	Definitions.
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§ 4201. Definitions

As used in this chapter—

- (1) "Commission" means the United States Parole Commission;
- (2) "Commissioner" means any member of the United States Parole Commission;

(3) "Director" means the Director of the Bureau of Prisons;

(4) "Eligible person" means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;

(5) "Parole" means any eligible person who has been released on parole or deemed as if released on parole under section 4164 or section 4205 (d) of this title; and

(6) "Rules and regulations" means rules and regulations promulgated by the Commission pursuant to section 4203 (b) (1) of this title and section 553 of title 5, United States Code.

§ 4202. Parole Commission created

There is hereby established as an independent agency of the Department of Justice a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. At no time shall more than six members be of the same political party. The Attorney General shall designate from among the commissioners one to serve as Chairman. The term of office of a commissioner shall be six years, except that the term of a person appointed as a commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a commissioner, the commissioner shall continue to act until a successor has been appointed and qualified. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 17 of the General Schedule pay rates (5 U.S.C. 5332).

§ 4203. Powers and Duties of the Commission

(a) The Commission, by majority vote, shall have the power to—

(1) grant or deny any application or recommendation to parole any eligible person;

(2) impose reasonable conditions on any order granting parole;

(3) modify or revoke any order paroling any eligible person; and

(4) establish the maximum length of time which any person whose parole has been revoked shall be required to serve, but in no case shall such time, together with such time as he previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense; and where such revocation is based upon a subsequent conviction of the parolee of any Federal, State or local crime committed subsequent to his release on parole, determine whether all or any part of the unexpired term being served at time of such parole shall run concurrently or consecutively with the sentence imposed for such subsequent offense.

(b) The Commission shall meet at least quarterly, and by majority vote shall—

(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (a) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five; and

(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

A record of the final vote of each commissioner on any action pursuant to this subsection shall be maintained and made available for public inspection.

(c) The Commission, by majority vote, and pursuant to rules and regulations—

(1) may delegate to any commissioner or commissioners and powers enumerated in subsection (a) of this section;

(2) may delegate to any panel of hearing examiners, any powers necessary to conduct hearings and interviews, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpoenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (a) of this section, except that any such findings or recommendations of any panel of hearing examiners shall be based upon the concurrence of not less than two members of such a panel; and

(3) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

(d) Except to the extent otherwise herein provided, in every decision or action made by the Commission pursuant to the powers enumerated in this section, each commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

§ 4204. Powers and duties of the Chairman

(a) The Chairman shall—

(1) convene and preside at meetings of the Commission pursuant to section 4203 of this title and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three commissioners;

(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that:

(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner's employment; and

(B) regional commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

(3) assign duties among officers and employees of the Commission, including commissioners, so as to balance the workload and provide for orderly administration;

(4) designate three commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as Vice Chairman, and designate, for each such region established pursuant to section 4203 (b) (2) of this title, one commissioner to serve as regional commissioner in each such region; except that in each such designation the Chairman shall consider years

of service, preference and fitness, and no such designation shall take effect unless concurred in by the Attorney General;

(5) direct the preparation of request for appropriations and the use and expenditure of funds;

(6) make reports on the position and policies of the Commission to the Attorney General, the Administrative Office of the United States Courts, and the Congress;

(7) provide for research and training, including, but not limited to—

(A) collecting data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

(B) disseminating pertinent data and studies, to individuals, agencies, and organizations concerned with the parole process and parolees;

(C) publishing data concerning the parole process and parolees; and

(D) conducting seminars, workshops, and training programs on methods of parole for parole personnel and other persons connected with the parole process;

(8) accept voluntary and uncompensated services;

(9) utilize, on a cost-reimbursable basis, the services of officers or employees of the executive or judicial branches of Federal or State government, for the purpose of carrying out the provisions of section 10 of this title; and

(10) perform such administrative and other duties and responsibilities as may be necessary to carry out the provisions of this chapter.

(b) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

§ 4205. Persons eligible

(a) An eligible person, other than a juvenile delinquent or committed youth offender, wherever confined and serving a definite term or terms of more than one year, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence in excess of forty-five years, except to the extent otherwise provided by law.

(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the person shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the person may be released on parole at such time as the Commission may determine.

(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may, for purposes of study, commit the defendant to the custody of the Attorney Gen-

eral, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law. The results of such study, together with any recommendations which the Director believes would be helpful in determining the disposition of the case, shall be furnished to the court within sixty days, or such additional period, but not to exceed sixty days, as the court may grant. After receiving such reports and recommendations, the court may in its discretion—

(1) place the person on probation as authorized by section 3651 of this title; or

(2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

(d) Any person sentenced to imprisonment for a term or terms of one year or less, who after one hundred and eighty days has not served his term or terms less good time deductions, shall be released as if on parole, notwithstanding the provisions of section 4164 of this title, unless the court which imposed sentence, shall, at the time of sentencing, find that such release is not in accord with the ends of justice and the best interest of the public and sets another time for such release. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

(e) At any time upon motion of the Bureau of Prisons and upon notice to the attorney for the government, the court may reduce any minimum term to the time the defendant has served.

(f) Except to the extent otherwise herein specifically provided, nothing in this section shall be construed to affect or otherwise alter, amend, modify, or repeal any provision of law relating to eligibility for release on parole, or any other provision of law which empowers the court to suspend the imposition or execution of any sentence, to place any person on probation, or to correct, reduce, or otherwise modify any sentence.

§ 4206. Release on parole

(a) If it appears from a report or recommendation by the proper institution officers or upon application by a person eligible for release on parole, that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society, the Commission may authorize release of such person on parole.

(b) Upon commitment of any person sentenced to imprisonment under any law for a definite term or terms of more than one year, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the person and shall furnish to the Commission a summary report, together with any recommendations which in the Director's opinion would be helpful in determining the suitability of the prisoner for parole. Such report may include, but shall not be limited to, data regarding the eligible person's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical

health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary. Such report and recommendations shall be made not less than ninety days prior to the date upon which such person becomes eligible for parole, except where such person may become eligible for parole less than one hundred and twenty days following commitment the Director, in the absence of exceptional circumstances, shall have not less than thirty days, but not more than sixty days, to make such report and recommendations.

(c) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau or agency, concerning any eligible person or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

§ 4207. Conditions of parole

(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

(b) In every case, the Commission shall impose as a condition of parole that the parolee not commit another Federal, State or local crime during the term of his parole. In imposing any other condition or conditions of parole the Commission shall consider the following:

(1) there should be a reasonable relationship between the conditions imposed and the person's conduct and present situation;

(2) the conditions may provide for such deprivations of liberty as are reasonably necessary for the protection of the public welfare; and

(3) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

Upon release on parole, a parolee shall be given a written statement setting forth the conditions of such parole.

(c) An order of parole or release as if on parole may as a condition of such order require—

(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole or release. A person residing in a community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate;

(2) a parolee, who is an addict within the meaning of section 4251 (a) of this title, or a drug dependent person within the meaning of section 2 (g) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole.

(d) The Commission may discharge any parolee from parole supervision or release him from one or more conditions of parole at any time after release on parole. In addition, the Commission shall—

(1) review, at least annually, the status of any parolee who has two years of continuous parole supervision, to determine the need for continued parole supervision; and

(2) discharge from parole supervision any parolee who has had five years of continuous parole supervision unless it is determined, after a hearing, that he should not be so discharged because there is a likelihood that he will either engage in conduct violating any criminal law or would jeopardize the public welfare. In any case in which parole supervision is continued pursuant to this subparagraph, the parolee shall receive a hearing at least every two years for the purpose of determining need for further parole supervision. Any hearing held pursuant to this subparagraph shall be in accordance with the procedures set out in section 4210 (b) (2) of this title at a time and location determined by the Commission.

§ 4208. Parole interview procedures

(a) Any person eligible for parole shall promptly be given a parole interview and such additional parole interviews as the Commission deems necessary, but in no case shall there be less than one additional parole interview every three years, except that an eligible person may waive any interview.

(b) Any interview of an eligible person by the Commission in connection with the consideration of a parole application or recommendation shall be conducted in accordance with the following procedure—

(1) an eligible person shall be given written notice of the time, place, and purpose of such interview; and

(2) an eligible person shall be allowed to select a representative to aid him in such interview. The representative may be any person who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

(c) Following notification that a parole interview is pending, an eligible person shall have reasonable access to progress reports and such other materials as are prepared by or for the use of the Commission in making any determination, except that the following materials may be excluded from inspection—

(1) diagnostic opinions which, if made known to the eligible person, would lead to a serious disruption of his institutional program of rehabilitation;

(2) any document which contains information which was obtained on the basis of a pledge of confidentiality made by or in behalf of a public official in the performance of his official duties if such official has substantial reason to believe that such information would place any person in jeopardy of life or limb; or

(3) any other information that would place any person in jeopardy of life or limb.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs 1, 2, or 3 of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

(d) A full and complete record of every interview shall be retained by the Commission. For good cause shown, the Commission may make a transcript of such record available to any eligible person.

(e) Not later than fifteen working days after the date of the interview, the Commission shall notify the eligible person in writing of its determination. In any case in which parole release is denied or parole conditions are imposed other than those commonly imposed, the Commission shall include the reasons for such determination, and, if possible, a personal conference to explain such reasons shall be held between the eligible person and the Commissioners or examiners conducting the interview.

§ 4209. Aliens

When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such person on condition that such person be deported and remain outside the United States.

Such person, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

§ 4210. Retaking parole violator under warrant

(a) A warrant for the taking of any person who is alleged to have violated his parole may be issued by the Commission within the maximum term or terms for which such person was sentenced.

(b) (1) Except as provided in subsection (c), any alleged parole violator retaken upon a warrant under this section shall be accorded the opportunity to have—

(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time;

(B) upon a finding of probable cause under subparagraph (1) (A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

(B) opportunity for the parolee to appear and testify, and present witnesses and documentary evidence on his own behalf;

(C) opportunity for the parolee to be represented by retained counsel, or if he is unable to retain counsel, counsel may be provided pursuant to section 3006A of this title, and

(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds good cause for not allowing confrontation. The Commission may subpoena witnesses and evidence,

and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, in which such person may be found.

(c) (1) Any parolee convicted of any Federal, State or local crime committed subsequent to his release on parole and sentenced for such crime to a term or terms of imprisonment who has a detainer for a warrant issued under this section placed against him shall receive a revocation hearing within one hundred and eighty days of such placement, or promptly upon release from such commitment, which ever comes first.

(2) Any alleged parole violator, who waives his right to any hearing under subsection (b), shall receive an institutional revocation hearing within ninety days of the date of retaking.

(3) Hearings held pursuant to subparagraphs (1) and (2) of this subsection shall be conducted by the Commission. The alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and to select a representative, in accordance with the procedures of section 4208(b) (2) of this title, to aid him in such appearance.

(d) Following any revocation hearing held pursuant to this section, the Commission may dismiss the warrant or take any action provided under section 4212 of this title: Provided, however, That in any case in which parole is modified or revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for such action, a copy of which shall be given to the parolee.

(e) The Commission, pursuant to rules and regulations, may delegate authority to conduct hearings held pursuant to this section to any officer or employee of the executive or judicial branches of Federal or State Government.

§ 4211. Officer executing warrant to retake parole violator

Any officer of any Federal penal or correctional institutions, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Attorney General.

§ 4212. Parole modification and revocation

When a warrant has been executed pursuant to section 4210 of this title, and such warrant is not dismissed, the decision of the Commission may include—

(1) a reprimand;

- (2) an alteration of parole conditions;
- (3) referral to a residential community treatment center for all or part of the remainder of the original sentence;
- (4) formal revocation of parole or release as if on parole pursuant to this title; or
- (5) any other action deemed necessary for successful rehabilitation of the violator, or which promotes the ends of justice.

The Commission may take any action pursuant to this section it deems appropriate taking into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

§ 4213. Reconsideration and appeal

(a) Whenever parole release is denied under section 4206 of this title, parole conditions are imposed other than those commonly imposed under section 4207 of this title, parole discharge is denied under section 4207 (d) (2) of this title, or parole is modified or revoked under section 4212 of this title, the individual to whom any such decision applies may have the decision reconsidered by submitting a written application to the regional commissioner not later than thirty days following the date on which the decision is rendered. The regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within sixty days to reaffirm, modify or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefor.

(b) Any decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

(c) The National Appeals Board shall review any decision of a regional commissioner upon the written request of the Attorney General filed not later than thirty days following the decision and, by majority vote, shall reaffirm, modify, or reverse the decision within sixty days of the receipt of the Attorney General's request. The Board shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefor.

§ 4214. Original Jurisdiction Cases

The regional commissioner, pursuant to rules and regulations, may designate certain cases as original jurisdiction cases, and shall forward any case so designated to the National Appeals Board with his vote and the reasons therefore. Decisions shall be based upon the concurrence of three votes with the appropriate regional director and the members of the National Appeals Board each having one vote. In case of a tie vote, and pursuant to rules and regulations, an additional vote shall be cast by one of the other regional commissioners. The individual to whom such decision applies, or any commissioner who voted in

the decision, may appeal such decision directly to the Commission by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. The Commission, by majority vote, shall decide the appeal at its next regularly scheduled meeting and shall inform the individual to which such decision applies of the decision and the reasons therefor.

§ 4215. Applicability of the Administrative Procedure Act

Except as otherwise provided in this chapter, the provisions of section 551 and sections 553 through 559 and sections 701 through 706 of title 5, United States Code, shall not apply to the making of any determination, decision, or order made by the Commission pursuant to this chapter or any other law.

§ 4216. Young Adult Offenders

In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there is reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C. Chap. 402) sentence may be imposed pursuant to the provisions of such act.

§ 4217. Warrants To Retake Canal Zone Parole Violators

An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

CHAPTER 401 OF TITLE 18, UNITED STATES CODE

CHAPTER 401—GENERAL PROVISIONS

[Sec.]

[5001. Surrender to state authorities; expenses.]

[5002. Advisory Corrections Council.]

[5003. Custody of State offenders.]

"Sec.

"5001. Surrender to state authorities; expenses.

"5003. Custody of State offenders.

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[§ 5002. Advisory Corrections Council]

[There is hereby created an Advisory Corrections Council, composed of one United States circuit judge and two United States district judges designated from time to time by the Chief Justice of the United States, of one member, who shall be Chairman, designated by the Attorney General, and, ex officio, of the Chairman of the Board of Parole, the Chairman of the Youth Division, the Director of the Bureau of Prisons, and the Chief of Probation of the Ad-

ministrative Office of the United States Courts. The Council shall hold stated meetings to consider problems of treatment and correction of all offenders against the United States and shall make such recommendations to the Congress, the President, the Judicial Conference of the United States, and other appropriate officials as may improve the administration of criminal justice and assure the coordination and integration of policies respecting the disposition, treatment, and correction of all persons convicted of offenses against the United States. It shall also consider measures to promote the prevention of crime and delinquency, suggest appropriate studies in this connection to be undertaken by agencies both public and private. The members of the Council shall serve without compensation but necessary travel and subsistence expenses as authorized by law shall be paid from available appropriations of the Department of Justice.]

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CHAPTER 402 OF TITLE 18, UNITED STATES CODE

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CHAPTER 402—FEDERAL YOUTH CORRECTIONS ACT

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[Sec.]

- [5005. Youth Correction Division.]
- [5006. Definitions.]
- [5007. Duties of members, meetings.]
- [5008. Officers and employees.]
- [5009. Rules of Division.]
- [5010. Sentence.]
- [5011. Treatment.]
- [5012. Certificate as to availability of facilities.]
- [5013. Provision of facilities.]
- [5014. Classification studies and reports.]
- [5015. Powers of Director as to placement of youth offenders.]
- [5016. Reports concerning offenders.]
- [5017. Release of youth offenders.]
- [5018. Revocation of Division orders.]
- [5019. Supervision of released youth offenders.]
- [5020. Apprehension of released offenders.]
- [5021. Certificate setting aside conviction.]
- [5022. Applicable date.]
- [5023. Relationship to Probation and Juvenile Delinquency Acts.]
- [5024. Where applicable.]
- [5025. Applicability to the District of Columbia.]
- [5026. Parole of other offenders not affected.]

"Sec.

- "5005. Youth correction decisions.
- "5006. Definitions.
- "5010. Sentence.
- "5011. Treatment.
- "5012. Certificate as to availability of facilities.
- "5013. Provision of facilities.
- "5014. Classification studies and reports.
- "5015. Powers of Director as to placement of youth offenders.
- "5016. Reports concerning offenders.

- "5017. Release of youth offenders.
- "5018. Revocation of Commission orders.
- "5019. Supervision of released youth offenders.
- "5020. Apprehension of released offenders.
- "5021. Certificate setting aside conviction.
- "5022. Applicable date.
- "5023. Relationship to Probation and Juvenile Delinquency Acts.
- "5024. Where applicable.
- "5025. Applicability to the District of Columbia.
- "5026. Parole of other offenders not affected.

[§ 5005. Youth Correction Division]

[There is created within the Board of Parole a Youth Correction Division. The Attorney General shall from time to time designate members of the Board of Parole to serve on said Division as the work requires. The Attorney General shall from time to time designate one of the members of the Division to serve as Chairman and delegate to him such administrative duties and responsibilities as may be required to carry out the purposes of this chapter.]

"5005. Youth Correction Decisions

"The Commission may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title."

[§ 5006. Definitions]

- [As used in this chapter—
- [(a) "Board" means the Board of Parole;
 - [(b) "Division" means the Youth Correction Division of the Board of Parole;
 - [(c) "Bureau" means the Bureau of Prisons;
 - [(d) "Director" means the Director of the Bureau;
 - [(e) "Youth offender" means a person under the age of twenty-two years at the time of conviction;
 - [(f) "Committed youth offender" is one committed for treatment hereunder to the custody of the Attorney General pursuant to section 5010(b) and 5010(c) of this chapter;
 - [(g) "Treatment" means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders;
 - [(h) "Conviction" means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.]

"§ 5006. Definitions

- "As used in this chapter—*
- "(a) 'Commission' means the United States Parole Commission;*
 - "(b) 'Bureau' means the Bureau of Prisons;*
 - "(c) 'Director' means the Director of the Bureau of Prisons;*
 - "(d) 'Youth offender' means a person under the age of twenty-two years at the time of conviction;*

"(e) 'Committed youth offender' is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(e) of this chapter;

"(f) 'Treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

"(g) 'Conviction' means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere."

[§ 5007. Duties of Members; Meetings]

[The Division shall hold stated meetings to consider problems of treatment and correction, to consult with, and make recommendations to, the Director with respect to general treatment and correction policies for committed youth offenders, and to enter orders directing the release of such youth offenders conditionally under supervision and the unconditional discharge of such youth offenders, and take such further action and enter such other orders as may be necessary or proper to carry out the purposes of this chapter.]

[§ 5008. Officers and Employees]

[The Attorney General shall appoint such supervisory and other officers and employees as may be necessary to carry out the purposes of this chapter. United States probation officers shall perform such duties with respect to youth offenders on conditional release as the Attorney General shall request.]

[§ 5009. Rules of Division]

[The Division shall adopt and promulgate rules governing its own procedure.]

[§ 5014. Classification Studies and Reports]

[The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Division a report of its findings with respect to the youth offender and its recommendations as to his treatment. At least one member of the Division, or an examiner designated by the Division, shall, as soon as practicable after commitment, interview the youth offender, review all reports concerning him, and make such recommendations to the Director and to the Division as may be indicated.]

"§ 5014. Classification Studies and Reports

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental

and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, and previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview."

[§ 5017. Release of Youth Offenders]

[(a) The Division may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Division.]

"§ 5017. Release of Youth Offenders

(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender when it appears that such person has substantially observed the rules of the institution to which he is confined, that there is reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission.

[§ 5020. Apprehension of Released Offenders]

[If, at any time before the unconditional discharge of a committed youth offender, the Division is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility any member of the Division may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youth offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given an opportunity to appear before the Division a member thereof, or an examiner designated by the Division. The Division may then or at its discretion revoke the order of conditional release.]

"§ 5020. Apprehension of Released Offenders

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youth offender and cause such warrant to be executed

by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission."

CHAPTER 403 OF TITLE 18, UNITED STATES CODE

CHAPTER 403—JUVENILE DELINQUENCY

- * * * * *
- ["Sec.
 ["5031. Definitions.
 ["5032. Delinquency proceedings in district courts; transfer for criminal prosecution.
 ["5033. Custody prior to appearance before magistrate.
 ["5034. Duties of magistrate.
 ["5035. Detention prior to disposition.
 ["5036. Speedy trial.
 ["5037. Dispositional hearing.
 ["5038. Use of juvenile records.
 ["5039. Commitment.
 ["5040. Support.
 ["5041. Parole.
 ["5042. Revocation of parole or probation.".]

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 "5039. Commitment.
 "5040. Support.
 "5041. Parole.

["5041. Parole]

5041. Parole

["5041. Parole]

["§ 5041. Parole]

["The Board of Parole shall release from custody, on such conditions as it deems necessary, each juvenile delinquent who has been committed, as soon as the Board is satisfied that he is likely to remain at liberty without violating the law and when such release would be in the interest of justice."]

"§ 5041. Parole

"A juvenile delinquent who has been committed and who, by his conduct, has given sufficient evidence that he has reformed, may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper if it shall appear to the satisfaction of such Commission that the juvenile has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society."

["§ 5042. Revocation of parole or probation]

["Any juvenile parolee or probationer shall be accorded notice and a hearing with counsel before his parole or probation can be revoked."]

CHAPTER 51 OF TITLE 5, UNITED STATES CODE

CHAPTER 51—CLASSIFICATION

- * * * * *
- ["§ 5108(c) (7)"]
 "5108(c) (7)
- * * * * *
- ["§ 5108(c)"]
 ["(7) the Attorney General, without regard to any other provision of this section, may place a total of—
 (A) 10 positions of Warden in the Bureau of Prisons in GS-16; and
 (B) 8 positions of Member of the Board of Parole in GS-17;"]
- * * * * *
- "§ 5108(c)
 "(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons in GS-16;"

* * * * *

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PAROLE COMMISSION AND REORGANIZATION ACT

FEBRUARY 23, 1976.—Ordered to be printed

Mr. KASTENMEIER, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 5727]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5727) to establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Parole Commission and Reorganization Act."

UNITED STATES PAROLE COMMISSION; PAROLE PROCEDURES, CONDITIONS,
ETC.

SECTION 2. Title 18 of the United States Code is amended by repealing chapter 311 (relating to parole) and inserting in lieu thereof the following new chapter to read as follows:

"CHAPTER 311—PAROLE

"Sec.

"4201. Definitions.

"4202. Parole commission created.

"4203. Powers and duties of the Commission.

"4204. Powers and duties of the Chairman.

"4205. Time of eligibility for release on parole.

"4206. Parole determination criteria.

"4207. Information considered.

"4208. Parole determination proceeding; time.

"4209. Conditions of parole.

"4210. Jurisdiction of Commission.

"4211. Early termination of parole.

"4212. Aliens.

"4213. Summons to appear or warrant for retaking of parolee.

"4214. Revocation of Parole.

"4215. Reconsideration and appeal.

"4216. Young adult offenders.

"4217. Warrants to retake Canal Zone parole violators.

"4218. Applicability of Administrative Procedure Act.

“§ 4201. Definitions

“As used in this chapter—

“(1) ‘Commission’ means the United States Parole Commission;

“(2) ‘Commissioner’ means any member of the United States Parole Commission;

“(3) ‘Director’ means the Director of the Bureau of Prisons;

“(4) ‘Eligible prisoner’ means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;

“(5) ‘Parolee’ means any eligible prisoner who has been released on parole or deemed as if released on parole under section 4164 or section 4205 (f); and

“(6) ‘Rules and regulations’ means rules and regulations promulgated by the Commission pursuant to section 4203 and section 553 of title 5, United States Code.

“§ 4202. Parole Commission created

“There is hereby established, as an independent agency in the Department of Justice, a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. The President shall designate from among the commissioners one to serve as Chairman. The term of office of a commissioner shall be six years, except that the term of a person appointed as a commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a commissioner, the commissioner shall continue to act until a successor has been appointed and qualified, except that no commissioner may serve in excess of 12 years. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).

“§ 4203. Powers and duties of the Commission

“(a) The Commission shall meet at least quarterly, and by majority vote shall—

“(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (b) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

“(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five; and

“(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

“(b) The Commission, by majority vote, and pursuant to the procedures set out in this chapter, shall have the power to—

“(1) grant or deny an application or recommendation to parole any eligible prisoner;

“(2) impose reasonable conditions on an order granting parole;

“(3) modify or revoke an order paroling any eligible prisoner; and

“(4) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the Commission deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations or agencies shall bear excessive caseloads.

“(c) The Commission, by majority vote, and pursuant to rules and regulations—

“(1) may delegate to any commissioner or commissioners powers enumerated in subsection (b) of this section;

“(2) may delegate to hearing examiners any powers necessary to conduct hearings and proceedings, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpoenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (b) of this section, except that any such findings or recommendations shall be based upon the concurrence of not less than two hearing examiners;

“(3) delegate authority to conduct hearings held pursuant to section 4214 to any officer or employee of the executive or judicial branch of Federal or State government; and

“(4) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission’s actions with respect thereto and the reasons for such actions.

“(d) Except as otherwise provided by law, any action taken by the Commission pursuant to subsection (a) of this section shall be taken by a majority vote of all individuals currently holding office as members of the Commission which shall maintain and make available for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it. In so acting, each commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

“§ 4204. Powers and duties of the Chairman

“(a) The Chairman shall—

“(1) convene and preside at meetings of the Commission pursuant to section 4203 and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three commissioners;

“(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that—

“(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner’s employment; and

"(B) regional commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

"(3) assign duties among officers and employees of the Commission, including commissioners, so as to balance the workload and provide for orderly administration;

"(4) direct the preparation of requests for appropriations for the Commission, and the use of funds made available to the Commission;

"(5) designate three commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as vice chairman of the Commission (who shall act as Chairman of the Commission in the absence or disability of the Chairman or in the event of the vacancy of the Chairmanship), and designate, for each such region established pursuant to section 4203, one commissioner to serve as regional commissioner in each such region; except that in each such designation the Chairman shall consider years of service, personal preference and fitness, and no such designation shall take effect unless concurred in by the President; or his designee;

"(6) serve as spokesman for the Commission and report annually to each House of Congress on the activities of the Commission; and

"(7) exercise such other powers and duties and perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law.

"(b) The Chairman shall have the power to—

"(1) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

"(2) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665 (b));

"(3) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109 (b) of title 5, United States Code.

"(4) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process;

"(5) carry out programs of research concerning the parole process to develop classification systems which describe types of offenders, and to develop theories and practices which can be applied to the different types of offenders;

"(6) publish data concerning the parole process;

"(7) devise and conduct, in various geographical locations, seminars, workshops and training programs providing continuing studies and instruction for personnel of Federal, State and local agencies and private and public organizations working with parolees and connected with the parole process; and

"(8) utilize the services, equipment, personnel, information, facilities, and instrumentalities with or without reimbursement therefor of other Federal, State, local and private agencies with their consent.

"(c) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

"§ 4205. Time of eligibility for release on parole

"(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

"(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

"(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (d) of this section. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

"(d) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsections (a) or (b), of this section, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Commission a summary report together with any recommendations which in his opinion would be helpful in determin-

ing the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary.

"(e) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

"(f) Any prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

"(g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

"(h) Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

§ 4206. Parole determination criteria

"(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

"(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and

"(2) that release would not jeopardize the public welfare; subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

"(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

"(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing; provided, that the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon.

"(d) Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving 30 years of each consecutive term or terms of more than 45 years including any life term, whichever is earlier; Provided, however, that the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State or local crime.

§ 4207. Information considered

"In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

"(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

"(2) official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

"(3) presentence investigation reports;

"(4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge; and

"(5) reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

§ 4208. Parole determination proceeding; time

"(a) In making a determination under this chapter (relating to parole) the Commission shall conduct a parole determination proceeding unless it determines on the basis of the prisoner's record that the prisoner will be released on parole.

"Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsections (a) and (b)(1) of section 4205 shall be held not later than thirty days before the date of such eligibility for parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsection (b)(2) of section 4205 or released on parole and whose parole has been revoked shall be held not later than one hundred and twenty days following such prisoner's imprisonment or reimprisonment in a federal institution, as the case may be.

"An eligible prisoner may knowingly and intelligently waive any proceeding.

"(b) At least thirty days prior to any parole determination proceeding, the prisoner shall be provided with (1) written notice of the time and place of the proceeding, and (2) reasonable access to a report or other document to be used by the Commission in making its determination. A prisoner may waive such notice, except that if notice is not waived the proceeding shall be held during the next regularly scheduled proceedings by the Commission at the institution in which the prisoner is confined.

“(c) Subparagraph (2) of subsection (b) shall not apply to—
 “(1) diagnostic opinions which, if made known to the eligible prisoner, could lead to a serious disruption of his institutional program;

“(2) any document which reveals sources of information obtained upon a promise of confidentiality; or

“(3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs (1), (2), or (3) of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

“(d)(1) During the period prior to the parole determination proceeding as provided in subsection (b) of this section, a prisoner may consult, as provided by the director, with a representative as referred to in subparagraph (2) of this subsection, and by mail or otherwise with any person concerning such proceeding.

“(2) The prisoner shall, if he chooses, be represented at the parole determination proceeding by a representative who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

“(e) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination proceeding.

“(f) A full and complete record of every proceeding shall be retained by the Commission. Upon request, the Commission shall make available to any eligible prisoner such record as the Commission may retain of the proceeding.

“(g) If parole is denied, a personal conference to explain the reasons for such denial shall be held, if feasible, between the prisoner and the Commissioners or examiners conducting the proceeding at the conclusion of the proceeding. When feasible, the conference shall include advice to the prisoner as to what steps may be taken to enhance his chance of being released at a subsequent proceeding.

“(h) In any case in which release on parole is not granted, subsequent parole determination proceedings shall be held not less frequently than:

“(1) eighteen months in the case of a prisoner with a term or terms of more than one year but less than seven years; and

“(2) twenty-four months in the case of a prisoner with a term or terms of seven years or longer.

“§ 4209. Conditions of parole

“(a) In every case, the Commission shall impose as a condition of parole that the parolee not commit another Federal, State, or local crime. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to—

“(1) the nature and circumstances of the offense; and

“(2) the history and characteristics of the parolee; and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

“(b) The conditions of parole should be sufficiently specific to serve as a guide to supervision and conduct, and upon release on parole the parolee shall be given a certificate setting forth the conditions of his parole. An effort shall be made to make certain that the parolee understands the conditions of his parole.

“(c) Release on parole or release as if on parole may as a condition of such release require—

“(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole;

“(2) a parolee, who is an addict within the meaning of section 4251 (a), or a drug dependent person within the meaning of section 2(g) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 for all or part of the period of parole.

A parolee residing in a residential community treatment center pursuant to subparagraphs (1) or (2) of this subsection, may be required to pay such costs incident to residence as the Commission deems appropriate.

“(d)(1) The Commission may modify conditions of parole pursuant to this section on its own motion, or on the motion of a U.S. Probation Officer supervising a parolee, provided that the parolee receives notice of such action and has ten days after receipt of such notice to express his views on the proposed modification. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to act upon such motion or application.

“(2) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

“(3) The provisions of this subsection shall not apply to modifications of parole conditions pursuant to a revocation proceeding under section 4214.

“§ 4210. Jurisdiction of Commission

“(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

“(b) Except as otherwise provided in this section, the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that,

“(1) Such jurisdiction shall terminate at an earlier date to the extent provided under section 4164 (relating to mandatory release) or section 4211 (relating to early termination of parole supervision), and

“(2) In the case of a parolee who has been convicted of a Federal, State, or local crime committed subsequent to his release on parole, and such crime is punishable by a term of imprisonment, detention or incarceration in any penal facility, the Commission shall determine, in accordance with the provisions of section 4214 (b) or (c), whether all or any part of the unexpired term being served at the time of parole shall run concurrently or

consecutively with the sentence imposed for the new offense, but in no case shall such service together with such time as the parolee has previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense.

"(c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.

"(d) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

"(e) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

"(f) Upon the termination of the jurisdiction of the Commission over any parolee, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

"§ 4211. Early termination of parole

"(a) Upon its own motion or upon request of the parolee, the Commission may terminate supervision over a parolee prior to the termination of jurisdiction under section 4210.

"(b) Two years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of the 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 such release, nor any period served in confinement on any other sentence.

"(c) (1) Five years after each parolee's release on parole, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in section 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.

"(2) If supervision is not terminated under subparagraph (1) of this subsection the parolee may request a hearing annually thereafter, and a hearing, with procedures as provided in subparagraph (1) of this subsection shall be conducted with respect to such termination of supervision not less frequently than biennially.

"(3) In calculating the five-year period referred to in paragraph (1), there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

"§ 4212. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such prisoner on condition that such person be deported and remain outside the United States.

"Such prisoner when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

"§ 4213. Summons to appear or warrant for retaking of parolee

"(a) If any parolee is alleged to have violated his parole, the Commission may—

"(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

"(2) issue a warrant and retake the parolee as provided in this section.

"(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

"(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of—

"(1) the conditions of parole he is alleged to have violated as provided under section 4209;

"(2) his rights under this chapter; and

"(3) the possible action which may be taken by the Commission.

"(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

"§ 4214. Revocation of parole

"(a) (1) Except as provided in subsections (b) and (c), any alleged parole violator summoned or retaken under section 4213 shall be accorded the opportunity to have—

"(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time; except that after a finding of probable cause the Commission may restore any parolee to parole supervision if:

"(i) continuation of revocation proceedings is not warranted; or

"(ii) incarceration of the parolee pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations;

"(iii) the parolee is not likely to fail to appear for further proceedings; and

"(iv) the parolee does not constitute a danger to himself or others.

"(B) upon a finding of probable cause under subparagraph (1) (A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such de-

termination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

"(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

"(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

"(B) opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to section 3006A) or, if he so chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation.

"(C) opportunity for the parolee to appear and testify, and present witnesses and relevant evidence on his own behalf; and

"(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reason for not so allowing.

For the purposes of subparagraph (1) of this subsection, the Commission may subpoena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, or in which such person may be found.

"(b) (1) Conviction for a Federal, State, or local crime committed subsequent to release on parole shall constitute probable cause for purposes of subsection (a) of this section. In cases in which a parolee has been convicted of such a crime and is serving a new sentence in an institution, a parole revocation warrant or summons issued pursuant to section 4213 may be placed against him as a detainer. Such detainer shall be reviewed by the Commission within 180 days of notification to the Commission of placement. The parolee shall receive notice of the pending review, have an opportunity to submit a written application containing information relative to the disposition of the detainer, and, unless waived, shall have counsel as provided in subsection (a) (2) (B) of this section to assist him in the preparation of such application.

"(2) If the Commission determines that additional information is needed to review a detainer, a dispositional hearing may be held at the institution where the parolee is confined. The parolee shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel as provided in subsection (a) (2) (B) of this section.

"(3) Following the disposition review, the Commission may:

"(A) let the detainer stand; or

"(B) withdraw the detainer.

"(c) Any alleged parole violator who is summoned or retaken by warrant under section 4213 who knowingly and intelligently waives his right to a hearing under subsection (a) of this section, or who knowingly and intelligently admits violation at a preliminary hearing held pursuant to subsection (a) (1) (A) of this section, or who is retaken pursuant to subsection (b) of this section, shall receive a revocation hearing within ninety days of the date of retaking. The Commission may conduct such hearing at the institution to which he has been returned, and the alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel or another representative as provided in subsection (a) (2) (B) of this section.

"(d) Whenever a parolee is summoned or retaken pursuant to section 4213, and the Commission finds pursuant to the procedures of this section and by a preponderance of the evidence that the parolee has violated a condition of his parole the Commission may take any of the following actions:

"(1) restore the parolee to supervision;

"(2) reprimand the parolee;

"(3) modify the parolee's conditions of the parole;

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

"(5) formally revoke parole or release as if on parole pursuant to this title.

The Commission may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

"(e) The Commission shall furnish the parolee with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and reasons for such action, a copy of which shall be given to the parolee.

"§ 4215. Reconsideration and appeal

"(a) Whenever parole release is denied under section 4206, parole conditions are imposed or modified under section 4209, parole discharge is denied under section 4211(c), or parole is modified or revoked under section 4214, the individual to whom any such decision applies may have the decision reconsidered by submitting a written application to the regional commissioner not later than thirty days following the date on which the decision is rendered. The regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within thirty days to reaffirm, modify, or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefor.

“(b) Any decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. The National Appeals Board, upon receipt of the appellant’s papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify, or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

“(c) The National Appeals Board may review any decision of a regional commissioner upon the written request of the Attorney General filed not later than thirty days following the decision and, by majority vote, shall reaffirm, modify, or reverse the decision within sixty days of the receipt of the Attorney General’s request. The Board shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefor.

“§ 4216. Young adult offenders

“In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

“§ 4217. Warrants to retake Canal Zone parole violators

“An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

“§ 4218. Applicability of Administrative Procedure Act

“(a) For purposes of the provisions of chapter 5 of title 5, United States Code, other than sections 554, 555, 556, and 557 the Commission is an ‘agency’ as defined in such chapter.

“(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, United States Code, relating to rule-making, shall be deemed not to include the phrase ‘general statements of policy’.

“(c) To the extent that actions of the Commission pursuant to section 4203(a)(1) are not in accord with the provisions of section 553 of title 5, United States Code, they shall be reviewable in accordance with the provisions of sections 701 through 706 of title 5, United States Code.

“(d) Actions of the Commission pursuant to paragraphs (1), (2) and (3) of section 4203(b) shall be considered actions committed to agency discretion for purposes of section 701(a)(2) of title 5, United States Code.

SEC. 3. Section 5005 of title 18, United States Code, is amended to read as follows:

“§ 5005. Youth correction decisions

“The Commission and, where appropriate, its authorized representatives as provided in section 4203(c), may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title.”

SEC. 4. Section 5006 of title 18, United States Code, is amended to read as follows:

“§ 5006. Definitions

“As used in this chapter—

“(a) ‘Commission’ means the United States Parole Commission;

“(b) ‘Bureau’ means the Bureau of Prisons;

“(c) ‘Director’ means the Director of the Bureau of Prisons;

“(d) ‘youth offender’ means a person under the age of twenty-two years at the time of conviction;

“(e) ‘committed youth offender’ is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

“(f) ‘treatment’ means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

“(g) ‘conviction’ means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.”

SEC. 5. Section 5007, 5008, and 5009 of title 18, United States Code, are repealed.

SEC. 6. Section 5014 of title 18, United States Code, is amended to read as follows:

“§ 5014. Classification studies and reports

“The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview.”

SEC. 7. Section 5017(a) of title 18, United States Code, is amended to read as follows:

“(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth

offender in accordance with the provisions of section 4206 of this title. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission."

SEC. 8. Section 5020 of title 18, United States Code, is amended to read as follows:

"§ 5020. Apprehension of released offenders

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission."

SEC. 9. Chapter 402 of title 18, United States Code, is amended by deleting the term "division" whenever it appears therein and inserting in lieu thereof the word "Commission."

SEC. 10. The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

"Sec.

"5005. Youth correction decisions.

"5006. Definitions.

"5010. Sentence.

"5011. Treatment.

"5012. Certificate as to availability of facilities.

"5013. Provision of facilities.

"5014. Classification studies and reports.

"5015. Powers of Director as to placement of youth offenders.

"5016. Reports concerning offenders.

"5017. Release of youth offenders.

"5018. Revocation of Commission orders.

"5019. Supervision of released youth offenders.

"5020. Apprehension for released offenders.

"5021. Certificate setting aside conviction.

"5022. Applicable date.

"5023. Relationship to Probation and Juvenile Delinquency Acts.

"5024. Where applicable.

"5025. Applicability to the District of Columbia.

"5026. Parole of other offenders not affected.

SEC. 11. Section 5041 of title 18, United States Code, is amended to read as follows:

"§ 5041. Parole

"A juvenile delinquent who has been committed may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper in accordance with the provisions in section 4206 of this title."

SEC. 12. Whenever in any of the laws of the United States or the District of Columbia the term "United States Parole Board", or any other term referring thereto, is used, such term or terms, on and after the date of the effective date of this Act, shall be deemed to refer to the United States Parole Commission as established by the amendments made by this Act.

SEC. 13. Section 5108(c)(7) of title 5, United States Code, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons in GS-16".

SEC. 14. Section 3655 of title 18, United States Code, relating to duties of probation officers, is amended by striking out "Attorney General" in the last sentence and inserting in lieu thereof "United States Parole Commission".

SEC. 15. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of the amendments made by this Act.

SEC. 16. (a) There are hereby transferred to the Chairman of the U.S. Parole Commission, all personnel, liabilities, contracts, property and records as are employed, held, used, arising from, available or to be made available of the U.S. Board of Parole with respect to all functions, powers, and duties transferred by this Act to the U.S. Parole Commission.

(b) This Act shall take effect sixty days after the date of enactment, except that the provisions of section 4208(h) of this Act shall take effect 120 days after the date of enactment.

(c) Each person holding office as a member of the United States Board of Parole on the day before the effective date of the Parole Commission and Reorganization Act shall be a Commissioner whose term as such shall expire on the date of the expiration of the term for which such person was appointed as a member of the Board of Parole.

(d) For the purpose of section 4202 of title 18, United States Code, service by an individual as a member of the United States Board of Parole shall not constitute service as a Commissioner.

And the Senate agree to the same.

ROBERT W. KASTENMEIER,
 GEORGE DANIELSON,
 ROBERT F. DRINAN,
 HERMAN BADILLO,
 EDWARD W. PATTISON,
 TOM RAILSBACK,
 CHARLES E. WIGGINS,
Managers on the Part of the House.
 QUENTIN N. BURDICK,
 ROMAN L. HRUSKA,
 JOHN L. MCCLELLAN,
 CHARLES MCC. MATHIAS, Jr.,
 EDWARD KENNEDY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5727) to establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommend in the accompanying conference report:

Nearly all men and women sent to prison as law breakers are eventually released, and the decision as to when they are released is shared by the three branches of government. Wrapped up in the decision to release an individual from incarceration are all of the emotions and fears of both the individual and society.

Parole may be a greater or lesser factor in the decision to release a criminal offender. It depends upon the importance of parole in the complex of criminal justice institutions. In the Federal system, parole is a key factor because most Federal prisoners become eligible for parole, and approximately 35 per cent of all Federal offenders who are released, are released on parole. Because of the scope of authority conferred upon the Parole Board, its responsibilities are great.

From an historical perspective, parole originated as a form of clemency; to mitigate unusually harsh sentences, or to reward prison inmates for their exemplary behavior while incarcerated. Parole today, however, has taken a much broader goal in correctional policy, fulfilling different specific objectives of the correctional system. The sentences of nearly all offenders include minimum and maximum terms, ordinarily set by the sentencing court within a range of discretion provided by statute. The final determination of precisely how much time an offender must serve is made by the parole authority. The parole agency must weigh several complex factors in making its decision, not all of which are necessarily complementary. In the first instance, parole has the practical effect of balancing differences in sentencing policies and practices between judges and courts in a system that is as wide and diverse as the Federal criminal justice system. In performing this function, the parole authority must have in mind some notion of the appropriate range of time for an offense which will satisfy the legitimate needs of society to hold the offender accountable for his own acts.

The parole authority must also have in mind some reasonable system for judging the probability that an offender will refrain from future criminal acts. The use of guidelines and the narrowing of geographical areas of consideration will sharpen this process and improve the likelihood of good decisions.

The parole authority must also take into consideration whether or not continuing incarceration of an offender will serve a worthwhile purpose. Incarceration is the most expensive of all of the alternative types of sentences available to the criminal justice system, as well as the most corrosive because it can destroy whatever family and community ties an offender may have which would be the foundation of his eventual return as a law-abiding citizen. Once sentence has been imposed, parole is the agency responsible for keeping in prison those who because of the need for accountability to society or for the protection of society must be retained in prison. Of equal importance, however, parole provides a means of releasing those inmates who are ready to be responsible citizens, and whose continued incarceration, in terms of the needs of law enforcement, represents a misapplication of tax dollars.

These purposes which parole serves may at times conflict and at the very least are complicated in their administration by the lack of tools to accurately predict human behavior and judge human motivation.

Because these decisions are so difficult from both the standpoint of the inmate denied parole, as well as the concerns of a larger public about the impact of a rising crime rate, there was almost universal dissatisfaction with the parole process at the beginning of this decade. As a result, both the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee, and the Subcommittee on National Penitentiaries of the Senate Judiciary Committee began seeking legislative answers to the problems raised. In the case of both Subcommittees a major effort was mounted to make parole a workable process.

Following the appointment of Maurice H. Sigler as Chairman of the U.S. Board of Parole in 1972, a working relationship developed between the Board and the two Subcommittees. As a result of this relationship, and with the support of the two Subcommittee chairmen, the Parole Board began reorganization in 1973 along the lines of the legislation presented here.

The organization of parole decision-making along regional lines, the use of hearing examiners to prepare recommendations for action, and, most importantly, the promulgation of guidelines to make parole less disparate and more understandable has met with such success that this legislation incorporates the system into the statute, removes doubt as to the legality of changes implemented by administrative reorganization, and makes the improvements permanent.

It is not the purpose of this legislation to either encourage or discourage the parole of any prisoner or group of prisoners. Rather, the purpose is to assure the newly-constituted Parole Commission the tools required for the burgeoning caseload of required decisions and to assure the public and imprisoned inmates that parole decisions are openly reached by a fair and reasonable process after due consideration has been given the salient information.

To achieve this, the legislation provides for creation of regions, assigning a commissioner to each region, and delegation of broad decisionmaking authority to each regional commissioner and to a national appellate panel. The bill also makes the Parole Commission, the agency succeeding the Parole Board, independent of the Department of Justice for decision-making purposes.

In the area of parole decision-making, the legislation establishes clear standards as to the process and the safeguards incorporated into it to insure fair consideration of all relevant material, including that offered by the prisoner. The legislation provides a new statement of criteria for parole determinations, which are within the discretion of the agency, but reaffirms existing caselaw as to judicial review of individual case decisions.

The legislation also reaffirms caselaw insuring a full panoply of due process to the individual threatened with return to prison for violation of technical conditions of his parole supervision, and provides that the time served by the individual without violation of conditions be credited toward service of sentence. It goes beyond present law in insuring appointment of counsel to indigents threatened with reimprisonment.

SECTION-BY-SECTION ANALYSIS

Section 4201. Definitions

This section defines certain terminology which is used throughout the Conference Report.

Subparagraph (6) provides that certain rule-making procedures in section 553 of title 5, United States Code, apply to rules and regulations promulgated by the full Commission pursuant to section 4203(a)(1). Guidelines for parole decision making promulgated by the full Commission are rules and regulations within the meaning of this definition.

Section 4202. Parole commission created

This section establishes a nine-member U.S. Parole Commission as an independent agency in the Department of Justice. The Commission is attached to the Department solely for administrative purposes. It is the intent of the Conferees that parole decisionmaking be independent of, and not governed by, the investigative and prosecutorial functions of the Department of Justice. Commissioners serve a term of six years under Presidential appointment by and with the advice and consent of the Senate. The President shall from time to time designate one commissioner to serve as Chairman. Each commissioner appointment shall be for a full six year term with commission members continuing to serve until their successors have been qualified, except that no one may serve more than twelve years as a commissioner. The rate of pay for a member of the Commission shall be the highest step of G.S. level 18.

Section 4203. Powers and duties of the Commission

(a) The full Commission shall meet at least quarterly as a policy making group to: (1) establish guidelines and procedural rules for parole determinations so that the administration of parole throughout the Federal system will be uniform; (2) set boundaries for the nation's five parole regions; and (3) act upon budget recommendations, which shall be separate from other agencies of the Department of Justice.

(b) The Commission by majority vote and pursuant to procedures set out in this chapter has the authority to: (1) grant or deny parole to any Federal prisoner who is eligible for parole; (2) impose conditions under which any prisoner may be released on parole; (3)

modify or revoke the parole of any individual who violated the conditions of his release; and (4) request probation officers to perform certain duties with respect to parole supervision.

It is the intent of the Conferees that subparagraphs (1) through (3) of this subsection vest authority for parole decision making in the discretion of the U.S. Parole Commission, and that parole decisions made under other sections of this Act are pursuant to authority delegated from section 4203(b) (1)-(3).

The Conferees do not intend that subparagraph (4) of this subsection be construed as a reduction of Commission authority provided in section 3655 of title 18, United States Code, as amended by this Act. Subparagraph (4) simply reflects Congressional policy encouraging U.S. Probation Officers to consult with the Parole Commission to ensure that parole supervision is geared to the protection of the public as well as the needs of the parolee.

(c) Subparagraph (1) enables the Commission to delegate its decisionmaking workload to regional commissioners who are responsible for initial parole determinations and to the three commissioners on the National Appeals Board who review these decisions on appeal.

It is contemplated by the Conferees that the Parole Commission will delegate decisionmaking power to the regional commissioners, and when so delegated, the regional commissioner may adopt the recommendation of the hearing examiners and enter a decision, or make a decision of his own. The Commission should provide appropriate review procedures for delegated decision-making, particularly where the regional commissioner's decision deviates from the recommendation of the two-member panel of hearing examiners, in order to carry out the national parole policies required by this Act. An appropriate procedure might, for example, provide that a regional commissioner's decision that deviates from the recommendation of the hearing examiners would not become effective until the expiration of the time for appeal or until the regional commissioner's reasons for such decision have been reviewed by a member of the National Appeals Board and such member has declined to certify the case to that body for decision, whichever occurs first. Such a procedure would recognize the authority and responsibility of the regional commissioners while providing appropriate appellate oversight of the regions. Review procedures should be designed to identify and resolve decision patterns involving significant inconsistencies between regions or involving departures from national parole policies promulgated by the Commission.

Although the statutory language is flexible enough to permit the Commission by regulation to reserve special categories of cases for initial parole decision by the Commission as a whole, it is contemplated that the normal procedure to be followed will involve an orderly process of decision making delegated to regional commissioners, subject to review by the National Appeals Board. In appropriate cases, en banc consideration of cases will be held by the full Commission. The necessity of decision by the full Commission, whether as a matter of original jurisdiction or on appeal, should occur only in cases involving special circumstances.

Subparagraph (2) sets out the responsibility of hearing examiners for compiling the information upon which the decisions of regional commissioners are based. In performing this function, hearing exam-

iners conduct proceedings and hearings, take sworn testimony, make a record of the pertinent evidence presented at parole proceedings and hearings, make findings of probable cause and issue subpoenas in parole revocation hearings, and make specific recommendations for each parole decision to be made by the regional commissioner. In decisions involving the grant or denial of parole under section 4206, or the revocation of parole under section 4214 (a) and (c), findings and recommendations must be based upon the concurrence of at least two examiners. In the event of a split between the two examiners concerning such findings or recommendations, however, another examiner may cast the deciding vote based upon a review of the case record, findings and recommendations. Parole determination proceedings and revocation hearings are to be conducted in the federal institutions on a regular schedule by panels of two examiners. However, other situations will from time to time arise involving the duties of the Commission where it is appropriate for one examiner to conduct the examination, with the concurrence requirement met by review of the case record, findings and recommendations. An exception to this is findings of probable cause in local revocation hearings, which may be made by an individual hearing examiner upon the record before him.

It is recognized that in most instances the recommendation of the hearing examiners will be followed by the regional commissioner. This recognizes the crucial role of hearing examiners in the parole process without detracting from the regional commissioner's executive responsibility for the actions of those under his supervision. Since most recommendations will probably fall within the guidelines for decision-making promulgated by the full Commission the regional commissioner's primary obligation in such cases is to ensure that the guidelines have been properly interpreted and followed. It is the intent of the Conferees that the hearing examiners may recommend a disposition notwithstanding the guidelines only when they determine that there is good cause to do so and that the regional commissioner shall review the case and determine whether such good cause exists which justifies this exception to the guidelines.

Subparagraph (3) permits the Commission to delegate power to conduct hearings and make findings and recommendations in certain parole revocation proceedings to Federal and State officials. This provision is in response to the time limitations and administrative problems involved in holding local preliminary and revocation hearings pursuant to section 4214 of this Act. The reference to judicial branch officers is a recognition that under the Federal system, the executive function of parole supervision is carried out by U.S. Probation Officers, who are court employees. Under present law and practice, certain U.S. Probation Officers from time to time conduct probable cause hearings for parolees supervised by other officers. This language permits the practice to continue, to the extent that the court employees involved are not judges who might at some later date consider litigation arising from the revocation proceedings.

Subparagraph (4) enables the Commission to review any delegated decision on its own motion and permits the Commission to delegate this review authority to the National Appeals Board.

(d) In promulgating guidelines and other regulations, creating regions and acting on the agency's budget pursuant to subsection (a)

of this section, the Commission shall operate by majority vote. Records of the final vote of the commissioners on these policy making actions shall be available for public inspection. In such determinations, each member shall have an equal voice, be provided with all necessary information, and have one vote.

Section 4204. Powers and duties of the Chairman

(a) The Chairman, who functions as the chief executive officer of the Commission, is authorized to: (1) preside at the regular meetings of the full Commission as well as special meetings that are called upon his own request or that of any three commissioners; (2) make all personnel decisions except that the full Commission must confirm the appointment of any hearing examiner before his probationary status as a first-year government employee terminates and each regional commissioner will be responsible for the appointment and supervision of certain clerical personnel employed in his region (except that this provision is not intended to exempt the Commission from such Civil Service regulations as are presently applicable); (3) delegate work among the Commissioners and the various units and employees of the Commission; (4) carry out fiscal responsibilities including preparation of appropriation requests and oversight of Commission expenditures; (5) designate three commissioners to serve on a National Appellate Board, one of whom shall also serve as Vice Chairman, and designate one commissioner to serve in each of the parole regions as regional commissioner, except that in making any such designation the Chairman must consider certain pertinent criteria and must obtain the concurrence of the President or his designee (in recognition of the need for effective and swift administrative action due to the heavy workload of the Commission, the concurrence should be prompt); (6) serve as spokesman for the Commission and report annually to each house of Congress on its activities (except that such Annual report shall be approved by the Commission and shall contain such additional views of commissioners as may be submitted); and (7) perform such other duties as are necessary to carry out any other responsibilities and functions of the Commission.

(b) In addition to above duties, the Chairman has responsibility for a research and training component in the Commission which may provide studies and information concerning the parole process to public and private agencies, and has certain other conventional administrative powers. These include procuring, contracting, utilizing and accepting services, including the use of Federal, State and other governmental resources as well as private agencies.

(c) The Chairman shall carry out his administrative duties and responsibilities in line with the national parole policies promulgated by the Commission.

Section 4205. Time of eligibility for release on parole

(a) This subsection provides that a prisoner serving a sentence of more than one year is eligible for parole consideration after having served one-third of his sentence; or in the case of a prisoner sentenced to life or more than 30 years, after serving 10 years of his sentence.

(b) Existing provisions of law are reenacted to enable the court to:

(1) direct that the prisoner be eligible for parole at any time up to one-

third of his maximum sentence, or (2) specify that the Commission shall decide when the prisoner shall be considered for parole.

(c) Existing provisions of law are reenacted to allow judges to have the Bureau of Prisons conduct a study of the individual before the final sentencing disposition is made.

(d) Existing provisions of law are reenacted relating to the preparation of a progress report by the Bureau of Prisons which is considered by the Commission during the parole release determination. In addition to the material provided by the Bureau of Prisons, the Commission is authorized to make such other investigations as it may deem appropriate.

(e) The Commission is authorized to seek information from other government agencies such as the U.S. Probation Service and the Federal Bureau of Investigation. Upon request, these agencies shall furnish available information, and, where appropriate, their views and recommendations with respect to Commission matters.

(f) Individuals sentenced to a maximum term or terms of more than six months, but not more than one year, shall be released at the expiration of their sentence less good time earned. The sentencing court may, however, at the time of sentencing, authorize release of the offender as if on parole after service of one-third the sentence. The phrase "at the time of sentencing" includes the 120-day time period for sentence modification provided by Rule 35 of the Federal Rules of Criminal Procedures.

(g) This subsection provides a means by which the minimum term of any federal prisoner may be reduced to make the individual eligible for parole consideration.

(h) Existing powers of the sentencing court and certain special provisions relating to eligibility for parole are preserved.

Section 4206. Parole determination criteria

This section provides the standards and criteria to be used by the Parole Commission in making parole release determinations for federal prisoners who are eligible for parole.

It is the intent of the Conferees that the Parole Commission make certain judgments pursuant to this section, and that the substance of those judgments is committed to the discretion of the Commission.

First, it is the intent of the Conferees that the Parole Commission reach a judgment on the institutional behavior of each prospective parolee. It is the view of the Conferees that understanding by the prisoner of the importance of his institutional behavior is crucial to the maintenance of safe and orderly prisons.

Second, it is the intent of the Conferees that the Parole Commission review and consider both the nature and circumstances of the offense and the history and characteristics of the prisoner. It is the view of the Conferees that these two items are most significant in making equitable release determinations and are a viable basis, when considered together, for making other judgments required by this section.

It is the intent of the Conferees that the Parole Commission, in making each parole determination, shall recognize and make a determination as to the relative severity of the prospective parolee's offense and that in so doing shall be cognizant of the public perception of and respect for the law. It is the view of the Conferees that the U.S.

Parole Commission is joined in purpose by the Courts, the Congress and the other Executive agencies in a continuing effort to instill respect for the law. The Parole Commission efforts in this regard are fundamental and shall be manifested by parole determinations which result in the release on parole of only those who meet the criteria of this Act.

Determinations of just punishment are part of the parole process, and these determinations cannot be easily made because they require an even-handed sense of justice. There is no body of competent empirical knowledge upon which parole decision-makers can rely, yet it is important for the parole process to achieve an aura of fairness by basing determinations of just punishment on comparable periods of incarceration for similar offenses committed under similar circumstances. The parole decision-makers must weigh the concepts of general and special deterrence, retribution and punishment, all of which are matters of judgment, and come up with determinations of what is meant by "would not depreciate the seriousness of his offense or promote disrespect for the law" that, to the extent possible, are not inconsistent with the findings in other parole decisions.

The phrase "release would not depreciate the seriousness of his offense or promote disrespect for the law" involves two separate criterion and there may be situations in which one criterion is met but the other remains unsatisfied. For example, if a public official was convicted of fraud which involved a violation of the public trust and was sentenced to three years imprisonment, his release on parole after one year might satisfy the depreciate the seriousness criterion but the Commission could justify denying release on the grounds that such release "would promote disrespect for the law."

The use of the phrase "release would not jeopardize the public welfare," is intended by the Conferees to recognize the incapacitative aspect of the use of imprisonment which has the effect of denying the opportunity for future criminality, at least for a time. It is the view of the Conferees that the Parole Commission must make judgments as to the probability that any offender would commit a new offense based upon considerations which include comparisons of the offender with other offenders who have similar backgrounds. The use of predictive devices is at best an inexact science, and caution should be utilized. Such items as prior criminal records, employment history and stability of living patterns have demonstrated their usefulness in making determinations of probability over a substantial period of time. These are not written into the statute, however, as it is the intent of the Conferees to encourage the newly created Parole Commission to continue to refine both the criteria which are used and the means for obtaining the information used therein.

Further, this section provides that Parole Commission guidelines, shall provide a fundamental gauge by which parole determinations are made.

It is the intent of the Conferees that the guidelines serve as a national parole policy which seeks to achieve both equity between individual cases and a uniform measure of justice. The Parole Commission shall actively seek the counsel and comment of the corrections and criminal justice communications prior to promulgation of guidelines and shall be cognizant of past criticism of parole decision making.

Further, this section provides that when parole is denied, that the prisoner be given a written notice which states with particularity the reasons for such denial.

The phrase "shall be released" includes release at expiration as if on parole or without parole supervision as provided in section 4164 of title 18, United States Code. The term "holidays" as used in this section refers to congressionally declared Federal holidays.

This section also permits the Commission to grant or deny parole notwithstanding the guidelines only when the Commission has determined that there is good cause to do so, and then requires that the prisoner be provided "with particularity the reasons for the Commission's determination, including a summary of the information relied upon." For example, if a prisoner who has served the time required to be released on parole according to the guidelines is denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he shall receive a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines.

For the purposes of this section "good cause" means substantial reason and includes only those grounds put forward by the Commission in good faith and which are not arbitrary, irrational, unreasonable, irrelevant or capricious.

The definition of what constitutes good cause to go outside the established guidelines can not be a precise one, because it must be broad enough to cover many circumstances.

For example, in making a parole release determination above the guidelines, the Commission would consider factors which include whether or not the prisoner was involved in an offense with an unusual degree of sophistication or planning, or has a lengthy prior record, or was part of a large scale conspiracy or continuing criminal enterprise.

On the other hand, the Commission would consider factors such as a prisoner's adverse family or health situation in deciding to make a parole release determination below guidelines. By focusing on the justifications for exceptions to the guidelines, subsequent administrative review by the National Appellate Board will be facilitated and there will be more uniformity and greater precision in the grant or denial of parole.

If decisions to go above or below parole guidelines are frequent, the Commission should reevaluate its guidelines.

Lastly, this section provides more liberal criteria for release on parole for prisoners with long sentences after they have completed two-thirds of any sentence or thirty years, whichever occurs first. In calculating two-thirds of a term, all sentences imposed consecutively should be considered separately and the time on each sentence added together. The purpose of this provision is to insure at least some minimum period of parole supervision for all except those offenders who have the greatest probability of committing violent offenses following their release so that parole supervision is part of their transition from the institutional life of imprisonment to living in the community. For any prisoner whose parole, once granted pursuant to subsection (d), has been revoked any future parole consideration would be based upon subsections (a), (b) and (c) of this section, and he would not be con-

sidered under subsection (d) until two-thirds of his remaining term had been served.

Section 4207. Information considered

The Commission shall consider the following information, if available and relevant, in parole release determinations: (1) reports and recommendations of prison staff; (2) prior criminal record; (3) presentence investigation reports; (4) recommendations of the sentencing judge; (5) reports of physical, mental, or psychiatric examination; and (6) such other additional relevant information as is available, including information submitted by the prisoner.

It is also the intent of the Conferees that availability and relevance act as limitations on the Commission's responsibility to consider this material. In terms of availability, for example, if a judge has not commented on the sentence or parole of the offender, the Commission is under no duty to solicit such commentary.

The relevance of material before the Commission is a determination committed to the agency's discretion. Moreover, this provision should not be construed as setting out priorities or assigning weights to the information before the Commission in the parole release process. The Conferees are in complete agreement with the Fifth Circuit holding in *Scarpa v. U.S. Board of Parole*, 477 F.2d 281 (1973), vacated as moot, 414 U.S. 809, that the weight assigned to individual factors (in parole decision making) is solely within the province of the (commission's) broad discretion.

It would not be practical or desirable for the Commission to make a record of the relevance or weight accorded to each piece of information before it. This section in combination with the requirement for reasons for denial of parole under subsection (b) of section 4206 or the requirement for reasons "including a summary of the information relied upon" under subsection (c) of section 4206 should not be construed as requiring the Commission to make a written evaluation of every piece of information considered.

The phrase "at the time of sentencing" in subparagraph (4) includes the 120-day time period for sentence modification provided by Rule 35 of the Federal Rules of Criminal Procedure.

Section 4208. Parole determination proceeding; time

(a) A parole determination proceeding shall be held, unless the Commission decides to grant release on the basis of the prisoner's record. The phrase "prisoner's record" refers to the information considered by the Commission in parole determination proceedings.

In the case of a prisoner with a minimum sentence, the parole determination proceeding shall be held, whenever feasible, not later than 30 days prior to the expiration of the minimum sentence. In the case of a prisoner with no minimum sentence or who has been reimprisoned following a revocation proceeding, the parole determination proceeding shall be held, whenever feasible, not later than 120 days following imprisonment or reimprisonment, as the case may be, in a federal institution. It is the intent of the Conferees that the Commission attempt, whenever feasible, to give prisoner's serving all or any part of their sentences in State or local prison facilities prompt parole determination proceedings.

In addition, this subsection permits a prisoner to waive any parole determination proceeding. The phrase "knowingly and intelligently" requires the prisoner to acknowledge in writing that he understands what it is that he is waiving and that he do so consciously and intentionally and without coercion.

(b) Notice of pending release proceedings and access to information considered by the Commission in such proceedings must be given to the inmate at least 30 days prior thereto. Where an inmate has just arrived at an institution, however, it may be impossible to meet this time period. Provision is made therefore for waiver, at the inmate's option, of the time requirement. But, if an inmate refuses to waive notice, the Commission is under no duty to schedule special sessions to make up for such proceedings, although they may. In such cases, the inmate shall be heard by the Commission at the next regularly scheduled parole proceedings at that institution. The phrase "report or other documents" in section 4208(b)(2) refers to those materials in the institution's files which the Commission looks at in making its parole release determinations.

(c) An eligible federal prisoner shall have reasonable access to certain documents which are utilized by the Commission in determining parole eligibility. Three categories of documents, however, may be excluded: (1) diagnostic opinions such as psychological or psychiatric reports which if revealed to the individual might cause a serious disruption of his institutional program; (2) documents which contain information obtained upon the basis of a pledge of confidentiality, or (3) any other information which, if revealed, might result in harm, physical or otherwise, to any person.

Subparagraphs (1), (2) and (3) of this subsection closely parallel the provisions of Rule 32 of the Federal Rules of Criminal Procedure relating to the court's power to refuse disclosure of certain information in the presentence investigation report. The Commission, the Bureau of Prisons, or any other agency which deems the document excludable under subparagraphs (1), (2), or (3) of this subsection shall be responsible for preparing a summary of such document. Such summary should give the inmate an idea of the basic contents of the excluded material, but should not reveal information which might violate any need for confidentiality involved. The phrase "bearing in mind the need for confidentiality" includes consideration of possible harm to any person. In addition, in summarizing material excluded under subparagraph (1) of this subsection, an effort shall be made to avoid unnecessary disruption of the prisoner's institutional program.

(d) Subparagraph (1) permits the prisoner to consult by mail, or otherwise, with a representative or any other person concerning his forthcoming proceeding. The phrase "as provided by the Director" simply acknowledges that such communications must be in accordance with institutional policies and regulations promulgated by the Bureau of Prisons for prisoner mail, visiting, etc.

Subparagraph (2) permits the inmate to select a representative to assist him both before and during the parole determination proceeding. The Commission is authorized to promulgate rules and regulations as to who a representative may be. It is the intent of the Con-

ferrees that the use of the term "representative" not be construed as support for analogizing the parole determination process to formal judicial proceedings.

(e) This subsection permits the prisoner to appear and testify in his own behalf at the parole determination proceeding. The term "testify" is not intended to require testimony under oath, and should not be construed as analogous to formal judicial process.

(f) The Commission must maintain and make available upon request a complete record of every parole determination proceeding. Availability of the record does not entail preparation of a transcript in every case. When the Commission has prepared a transcript for its own use, a copy shall be provided the inmate if he so requests. If, however, the proceeding was tape recorded and never transcribed, or written notes of the proceeding were retained, then the availability requirement is satisfied if the agency forwards a copy of the tape to the institution where the inmate is permitted to listen to it, or, in the case of notes, forwards a copy of such notes as it has retained.

(g) If parole is denied, the hearing examiners shall, where feasible, personally explain to the eligible prisoner the reasons for their recommendation. The phrase "if feasible" simply acknowledges that every hearing examiner recommendation is subject to review by the regional commissioner, the possibility of a split recommendation requiring a third hearing examiner's vote who may not be present, and that there is no requirement that the inmate listen to such explanation if he chooses not to. Also, when feasible, the hearing examiners shall advise the prisoner of what he could do to enhance his prospects for parole. The Conferees intend that this requirement for advice on future parole prospects be narrowly construed. In situations in which the prisoner has been convicted of a serious offense, there may well be nothing that he can do to enhance his parole potential until service of some period of time has been completed. Moreover, promises of parole should not be used to coerce inmate participation in institutional programming.

(h) If a prisoner is denied parole, he shall receive additional parole determination proceedings not less frequently than every 18 months if he is sentenced to a term or terms of imprisonment of more than one year but less than seven years, or every 24 months if he is sentenced to a term or terms of imprisonment of seven years or more.

It is the intent of the Conferees that all of the items which bear upon the parole decision are considered at the initial determination proceeding, but that the subsequent proceedings required by this section focus upon those items which have changed, or which may have changed, in the intervening time.

Section 4209. Conditions of parole

(a) Every parolee shall have as a condition of parole that he not commit any criminal offense during his parole. The Commission may impose or modify any other condition of parole only to the extent that there is a reasonable relationship between such condition and the nature and circumstances of the offense and the history and characteristics of the parolee, except that, the Commission may impose conditions of parole that limit the parolee's liberty (short of incarceration) if in the Commission's judgment such conditions are reasonably necessary to protect the public welfare. The phrase "Federal, State or

local crime" excludes such petty violations as minor traffic offenses except where a pattern of such violations indicates disrespect for the law.

(b) Conditions imposed by the Commission must be specific so that they can serve as a guide to behavior. In addition, upon release the parolee is given a certificate setting forth in writing his conditions. An effort shall be made to ensure that parolees understand the nature and limitations involved in such conditions. It is the intent of the Conferees that when feasible such services as translation to a language other than English should be made to assist in the understanding of conditions of parole.

(c) As provided under present law, the conditions of parole may require that an individual reside in or participate in the program of a community treatment center or addict treatment program.

(d) This subsection provides a process by which the condition of parole may be modified in accordance with the standards established in this section.

Should a probation officer wish to modify conditions of parole of a parolee under his supervision he may apply to the Commission for such modification. He shall give the parolee notice of proposed modification, and the parolee shall have 10 days in which to comment on or object to the proposed modification. The Commission shall then review the application and consider any relevant information which the parolee may present.

The proposed modification shall take effect within 21 days following the 10 day period in which the parolee may object or comment if the Commission has determined that the modification is warranted.

Further, the Commission may modify parole conditions on its own motion provided the parolee has been given 10 days in which to comment on the proposed modification.

Also, the parolee may petition the Commission in his own behalf for a modification of his parole conditions. The Commission shall act with due deliberation on such petitions, but shall not be required to respond within the 21 day period required for petitions of parole officers, in order to deter parolees from submitting repeated or unwarranted applications.

The Commission may not modify the provision that all parolees shall have as a condition of parole that there be no violation of criminal law.

Parole modification pursuant to a revocation proceeding under section 4214 is not governed by the provisions of this subsection.

Section 4210. Jurisdiction of the Commission

(a) An individual released on parole remains in the legal custody of the Attorney General until expiration of the sentence or the Commission terminates parole supervision pursuant to this Act.

(b) This subsection provides that the jurisdiction of the Parole Commission over a parolee terminates no later than the date of the expiration of the sentence imposed by the court except under circumstances cited in this section. Section 4164 of Title 18 and section 4211 of the bill establish means for termination of jurisdiction over persons released on parole or as if on parole prior to the expiration of the sentence.

This subsection also provides that an individual whose parole has been revoked upon conviction of any new criminal offense that is punishable by a term of detention, incarceration or imprisonment in any penal institution shall receive no credit for service of his sentence from the day he is released on parole until he either returns to Federal custody following completion of any sentence of incarceration or upon the Commission determining that the sentence run concurrently with any new sentence that may have been imposed, pursuant to section 4214(b) or (c) of this Act. In computing the date of expiration of the sentence, the Commission shall take into account the time the parolee previously served in connection with the original offense at commitment prior to his release on parole together with the time served for such offense following his revocation and the time together shall not be longer than the maximum term for which he was sentenced in connection with the original offense.

The phrase "punishable by a term of imprisonment, detention or incarceration in a penal facility" is intended by the Conferees to mean any term of confinement which may be levied upon adjudication of guilt or delinquency and does not include detention prior to adjudication. For example, a person convicted of any offense punishable by even one day of imprisonment would not automatically receive credit toward service of his sentence, even if no sentence of imprisonment was imposed.

This subsection also provides that an individual whose parole has been revoked for the violation of any condition of release other than commission of any Federal, State or local crime punishable by any term of imprisonment, detention or incarceration shall receive credit toward service of his sentence for time previously served in prison and for time spent on parole prior to the date that a warrant or summons is issued pursuant to Section 4213 of this Act.

(c) This subsection provides that the Commission may extend its jurisdiction over any parolee who is an absconder or who has refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof for such time as the parolee refused or failed to respond. In calculating time under this subsection, the Parole Commission shall consider the length of time the parolee served prior to his release on parole and may consider all time which he served while released on parole prior to refusing or failing to respond to the Commission or any of its agents, and any continuous period of time thereafter during which the parolee did not refuse or fail to respond to the Commission or any of its agents.

(d) Parole shall run concurrently with any other term of parole or probation.

(e) This subsection protects the eligibility of any prisoner remaining in the federal system who was sentenced prior to June 29, 1932, in order to preserve the possibility that he may be released under applicable provisions of law.

(f) When the Commission's jurisdiction over a parolee terminates or otherwise expires, it must issue a certificate of discharge to the parolee and may provide such additional copies of the document to other agencies as it may deem appropriate.

Section 4211. Early termination of parole

This section provides that the Parole Commission may upon its own motion or upon petition of a parolee terminate supervision over the parolee at any time.

This section also provides for periodic reviews of the status of each parolee in order to determine if continued supervision on parole is necessary. Such reviews will take place two years after each parolee's release on parole and annually thereafter.

This section further provides that after 5 years of parole supervision each parolee shall be released from further supervision, unless the Parole Commission determines that there is a likelihood that the parolee will engage in criminal behavior.

The phrase "likelihood that the parolee will engage in conduct violating any criminal law" is a phrase closely related to the term "release would not jeopardize the public welfare" from section 4206. Both rely on the use of probability in making the judgments required of the Commission by this section. Likelihood is a higher standard upon which the judgment is to be based, but this is only recognition by the Conferees that the Commission has five continuous years of supervision in the community on which to base its comparisons with other offenders who have similar backgrounds.

Periods of parole supervision occurring prior to the most recent release on parole as well as periods of confinement on any other sentence shall not be included in the calculation of the two and five year periods of continuous parole supervision used in this section.

Section 4212

The conference report provides that existing law with respect to delivery of convicted aliens for deportation is reenacted under a new section number.

Section 4213. Summons to appear or warrant for retaking of parolee

This section provides that the Commission may initiate revocation proceedings using either a summons or a warrant procedure. It is the intent of the Conferees that the Commission should minimize the disruption of the parolee's life in any revocation proceeding. One means by which this intent has been implemented in giving the Commission discretion to use either a summons or warrant when a condition of parole has alleged to have been violated. However, the Conferees recognize that use of a summons for parolees with prior adult or juvenile records may simply be inappropriate.

The phrase "except when delay is deemed necessary" in subsection (b) of this section recognizes that the decision as to when the revocation process should be initiated is committed to the Commission's discretion. It is the intent of the Conferees that it shall not be a defense to a revocation that previous parole violations were either ignored or not acted upon.

Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of the conditions of parole he is alleged to have violated, his rights, and possible action which may be taken by the Commission, except that the Commission may satisfy the last two notice requirements with a printed form that sets forth the necessary information. Any federal correctional officer or other federal

officer authorized to serve criminal process within the United States shall execute warrants under this section if so directed by the Commission.

Section 4214. Parole revocation

This section provides a process for the consideration of parole revocation following the issuance of a summons or warrant. The process established by this section reflects certain due process safeguards required by the Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 788 (1973) and Congressional cognizance of the potential for deprivation of liberty in parole revocation and the resultant need for procedural safeguards.

The process established by this section for individuals whose revocation is not based on a new criminal conviction involves two hearings: (1) a preliminary hearing held near the place of the alleged violation to determine if there is probable cause to believe that the parolee has violated a condition of his parole, and if such a finding is reached, (2) a revocation hearing to determine if a violation has taken place, and, if it did, whether or not there are circumstances in mitigation which suggest that the violation does not warrant revocation. The probable cause hearing must be held without unnecessary delay.

After a finding of probable cause at the preliminary hearing, the Commission may release the parolee to supervision, if the Commission believes that continuation of revocation proceedings is not warranted, or that incarceration is not warranted by any of the following considerations: the alleged frequency or seriousness of a violation, the degree of likelihood that the parolee will not appear at the revocation proceeding, or the degree of danger that the parolee represents to any person.

Both the preliminary and revocation hearing shall be conducted in accordance with the following procedures:

(a) notice to the parolee as to the allegations and the time, place, and purpose of the scheduled hearing;

(b) the right to be represented by retained counsel or if he is unable to retain counsel, counsel shall be provided pursuant to the Criminal Justice Act (18 U.S.C. 3006A) or another representative as provided by rules and regulations;

(c) opportunity for the parolee to appear and testify and present witnesses and relevant evidence on his own behalf; and

(d) opportunity for the parolee to be apprised of the evidence against him and to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reason for not allowing confrontation. The phrase "apprised of the evidence against him" shall be construed in accordance with the disclosure requirements of present law with respect to parole revocation proceedings. In addition, the Conferees acknowledge that there is often simply no adequate alternative to live testimony, but recognize that in some cases it may be appropriate for the Commission to use conventional substitutes for live testimony including affidavits, depositions and documentary evidence. *Gagnon v. Scarpelli*, 411 U.S. 783 n.5 (1973). The phrase "substantial reason" includes but is not necessarily limited to situations involving the potential of harm to any person, physical or otherwise, testimony which is irrelevant or duplicative, and considerations of availability such as illness or distance.

This section also makes provision for the Commission to subpoena witnesses and evidence for parole revocation proceedings. In exercising its discretion to issue a subpoena the Commission shall take into consideration factors which include relevance of the testimony, or evidence sought, and whether or not such testimony or evidence is duplicative.

If the Commission determines that a preponderance of the evidence indicates that the parolee has violated a condition of his parole, the Commission may restore the parolee to supervision, reprimand the parolee, modify any condition of his release, refer him to a halfway house, or revoke his parole.

Provision is also made for abbreviated revocation proceedings in cases in which the parolee has a new criminal conviction. It is the intent of the Conferees that the new criminal conviction satisfies the probable cause requirement in parole revocation proceedings. *U.S. v. Tucker*, 524 F.2d 77 (Fifth Cir. 1975).

A procedure is provided for Commission review of detainers placed against parolees who have been imprisoned after conviction for a crime committed subsequent to their release on parole. After being notified that a parole detainer has been lodged against a parolee in an institution where he is serving his new sentence, the Commission shall review such detainer within 180 days. It is the intent of the Conferees that notice of the pending review be sent to the parolee as soon as practical after notification to the Commission that a detainer has been lodged. No dispositional hearing shall be required to determine the existence of mitigating circumstances. However, if the Commission decides that more information is necessary for the detainer review, a dispositional hearing may be held at the institution in which the parolee is serving his new sentence. Legal representation, as described in subsection (a)(2)(B) of this section is provided to assist the parolee in the dispositional process.

Following the dispositional review, the Commission may let the detainer stand or withdraw the detainer. If the detainer is withdrawn, the case can be closed. The Commission may also withdraw the detainer and reinstate the parolee to supervision; thus permitting the federal sentence time to run uninterruptedly from the time of the parolee's original release on parole or mandatory release.

Any alleged parole violator who waives his right to revocation proceedings under subsection (a) of this section or who admits to a violation at a preliminary hearing held under subsection (a)(1)(A) of this section, or who is retaken under subsection (b) of this section shall receive a parole revocation hearing within 90 days of being retaken in Federal custody. The alleged parole violator shall have notice of such hearing, be permitted to appear and testify on his own behalf and has the right to counsel or a representative as provided in subsection (a)(2)(B) of this section.

Section 4215. Reconsideration and appeal

This section provides that action imposing conditions of parole or modifying or denying release or revoking parole, may be appealed not later than 30 days after receiving written notice of such action. The regional commissioner shall decide the appeal within 30 days after receipt of the appellant's papers and shall inform the appellant in writing of his decision and the reasons therefor.

Appeal from an adverse decision on the part of the regional commissioner may be taken to the National Appellate Board within 30 days of the decision of such regional commissioner and such appeal will be decided within 60 days by a majority vote of the three commissioners on the National Appellate Board.

Also this section provides that the National Appellate Board may review any decision of a regional commissioner upon the written request of the Attorney General.

Section 4216. Young adult offenders

This section provides that existing law which permits certain offenders to be sentenced under the provisions of the Youth Corrections Act is reenacted under a new section number.

Section 4217. Warrant to retake Canal Zone offenders

This section provides that existing law with respect to revocation of Canal Zone offenders is reenacted under a new section number.

Section 4218. Applicability of Administrative Procedure Act

This section brings the Commission's rulemaking process within the coverage of the Administrative Procedure Act, including the Chapter 7 judicial review procedures. In this regard the Conferees recognize the principles established in *Pickus v. United States*, 507 F.2d 1107 (1974).

It is the intent of the Conferees that Commission decisions involving the grant, denial, modification or revocation of parole shall be considered actions committed to agency discretion for the purpose of section 701(a)(2) of title 5, United States Code. It is the Conferees understanding that the exclusion of such decisions from the judicial review provisions of Chapter 7 of title 5, United States Code, reflects the present law with respect to limitations on judicial review of individual parole decisions.

SEC. 3. Section 5005 of title 18, United States Code, is amended to make certain parole procedures for individuals sentenced under the provisions of the Youth Corrections Act parallel with those provided under Chapter 311 of title 18, United States Code, as amended by this Act.

SEC. 4. Section 5006 of title 18, United States Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

SEC. 5. Sections 5007, 5008 and 5009 of title 18, United States Code, which conflict with the provisions of Chapter 311 of title 18, United States Code, as amended by this Act, are repealed.

SEC. 6. Section 5014 of title 18, United States Code, is amended to provide that parole interviews for individuals sentenced under the provisions of the Youth Corrections Act are conducted in the same manner as prescribed for other eligible prisoners.

SEC. 7. Section 5017(a) of title 18, United States Code, is amended to provide for parallel parole release criteria for all eligible prisoners.

SEC. 8. Section 5020 of title 18, United States Code, is amended to provide that parole revocations for individuals sentenced under the provisions of the Youth Corrections Act are conducted in the same manner as prescribed for other parolees.

SEC. 9. Chapter 402 of title 18, United States Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

SEC. 10. This section amends the Table of Sections of Chapter 402 of title 18, United States Code.

SEC. 11. Section 5041 of title 18, United States Code, is amended to provide for parallel parole release criteria for all eligible prisoners.

SEC. 12. This section provides that wherever the term "United States Parole Board" is used in any law it shall be replaced with the term "United States Parole Commission."

SEC. 13. Section 5108(c)(7) of title 5, United States Code, is amended to delete from the control of the Attorney General the salary of members of the U.S. Parole Commission which shall be set by the Congress under the provisions of section 4202 of title 18, United States Code.

SEC. 14. Section 3655 of title 18, United States Code, is amended to replace the term "Attorney General" with the term "United States Parole Commission."

SEC. 15. This section authorizes the appropriation of such sums as are necessary to carry out the purposes of this Act.

SEC. 16. (a) This subsection transfers personnel, liabilities, etc., of the U.S. Board of Parole to the Chairman of the U.S. Parole Commission.

(b) This legislation takes effect 60 days after enactment, except that the provisions of section 4208(h) shall take effect 120 days after enactment.

(c) All members of the U.S. Board of Parole on the effective date of this legislation would become commissioners entitled to serve for the remainder of the terms for which they were appointed as members of the U.S. Board of Parole.

(d) The purpose of this section is to insure that service as a member of the United States Board of Parole prior to the effective date of this Act shall not be counted toward the twelve-year limitation on terms of U.S. Parole Commissioners provided by this Act. It is the intent of the Conferees that this provision be liberally construed so that a person who has two years of his term as a U.S. Parole Commissioner, be eligible for reappointment for a six-year term as a member of the U.S. Parole Commission and be eligible again for reappointment for whatever period of time would be necessary so that he would be entitled to twelve years of service as a U.S. Parole Commissioner.

ROBERT W. KASTENMEIER,
GEORGE DANIELSON,
ROBERT F. DRINAN,
HERMAN BADILLO,
EDWARD W. PATTISON,
TOM RAILSBACK,
CHARLES E. WIGGINS,

Managers on the Part of the House.

QUENTIN N. BURDICK,
ROMAN L. HRUSKA,
JOHN L. MCCLELLAN,
CHARLES McC. MATHIAS, Jr.,
EDWARD KENNEDY,

Managers on the Part of the Senate.

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Parole Commission and Reorganization Act".

UNITED STATES PAROLE COMMISSION ; PAROLE PROCEDURES, CONDITIONS, ETC.

SEC. 2. Title 18 of the United States Code is amended by repealing chapter 311 (relating to parole) and inserting in lieu thereof the following new chapter to read as follows:

"Chapter 311—PAROLE

- "Sec.
- "4201. Definitions.
- "4202. Parole Commission created.
- "4203. Powers and duties of the Commission.
- "4204. Powers and duties of the Chairman.
- "4205. Time of eligibility for release on parole.
- "4206. Parole determination criteria.
- "4207. Information considered.
- "4208. Parole determination proceeding ; time.
- "4209. Conditions of parole.
- "4210. Jurisdiction of Commission.
- "4211. Early termination of parole.
- "4212. Aliens.
- "4213. Summons to appear or warrant for retaking of parolee.
- "4214. Revocation of parole.
- "4215. Reconsideration and appeal.
- "4216. Young adult offenders.
- "4217. Warrants to retake Canal Zone parole violators.
- "4218. Applicability of Administrative Procedure Act.

"§ 4201. Definitions

"As used in this chapter—

- "(1) 'Commission' means the United States Parole Commission ;
- "(2) 'Commissioner' means any member of the United States Parole Commission ;
- "(3) 'Director' means the Director of the Bureau of Prisons ;
- "(4) 'Eligible prisoner' means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole ;
- "(5) 'Parolee' means any eligible prisoner who has been released on parole or deemed as if released on parole under section 4164 or section 4205 (f) ; and
- "(6) 'Rules and regulations' means rules and regulations promulgated by the Commission pursuant to section 4203 and section 553 of title 5, United States Code.

"§ 4202. Parole Commission created

"There is hereby established, as an independent agency in the Department of Justice, a United States Parole Commission which shall

be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. The President shall designate from among the Commissioners one to serve as Chairman. The term of office of a Commissioner shall be six years, except that the term of a person appointed as a Commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a Commissioner, the Commissioner shall continue to act until a successor has been appointed and qualified, except that no Commissioner may serve in excess of twelve years. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).

“§ 4203. Powers and duties of the Commission

“(a) The Commission shall meet at least quarterly, and by majority vote shall—

“(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (b) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

“(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five; and

“(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

“(b) The Commission, by majority vote, and pursuant to the procedures set out in this chapter, shall have the power to—

“(1) grant or deny an application or recommendation to parole any eligible prisoner;

“(2) impose reasonable conditions on an order granting parole;

“(3) modify or revoke an order paroling any eligible prisoner; and

“(4) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the Commission deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations, or agencies shall bear excessive caseloads.

“(c) The Commission, by majority vote, and pursuant to rules and regulations—

“(1) may delegate to any Commissioner or commissioners powers enumerated in subsection (b) of this section;

“(2) may delegate to hearing examiners any powers necessary to conduct hearings and proceedings, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause and issue subpoenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (b) of this section, except that any such findings or recommendations shall be based upon the concurrence of not less than two hearing examiners;

“(3) may delegate authority to conduct hearings held pursuant to section 4214 to any officer or employee of the executive or judicial branch of Federal or State government; and

“(4) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision

so reviewed must be reaffirmed, modified or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

“(d) Except as otherwise provided by law, any action taken by the Commission pursuant to subsection (a) of this section shall be taken by a majority vote of all individuals currently holding office as members of the Commission which shall maintain and make available for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it. In so acting, each Commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

“§ 4204. Powers and duties of the Chairman

“(a) The Chairman shall—

“(1) convene and preside at meetings of the Commission pursuant to section 4203 and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three Commissioners;

“(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that—

“(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner's employment; and

“(B) regional Commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

“(3) assign duties among officers and employees of the Commission, including Commissioners, so as to balance the workload and provide for orderly administration;

“(4) direct the preparation of requests for appropriations for the Commission, and the use of funds made available to the Commission;

“(5) designate three Commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as vice chairman of the Commission (who shall act as Chairman of the Commission in the absence or disability of the Chairman or in the event of the vacancy of the Chairmanship), and designate, for each such region established pursuant to section 4203, one Commissioner to serve as regional Commissioner in each such region; except that in each such designation the Chairman shall consider years of service, personal preference and fitness, and no such designation shall take effect unless concurred in by the President, or his designee;

“(6) serve as spokesman for the Commission and report annually to each House of Congress on the activities of the Commission; and

“(7) exercise such other powers and duties and perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law.

“(b) The Chairman shall have the power to—

“(1) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform

such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

“(2) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665 (b));

“(3) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109 (b) of title 5, United States Code;

“(4) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process;

“(5) carry out programs of research concerning the parole process to develop classification systems which describe types of offenders, and to develop theories and practices which can be applied to the different types of offenders;

“(6) publish data concerning the parole process;

“(7) devise and conduct, in various geographical locations, seminars, workshops and training programs providing continuing studies and instruction for personnel of Federal, State and local agencies and private and public organizations working with parolees and connected with the parole process; and

“(8) utilize the services, equipment, personnel, information, facilities, and instrumentalities with or without reimbursement therefor of other Federal, State, local, and private agencies with their consent.

“(c) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

“§ 4205. Time of eligibility for release on parole

“(a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

“(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

“(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (d) of this section. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed

an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section.

“(d) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsections (a) or (b) of this section, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Commission a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner’s previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary.

“(e) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

“(f) Any prisoner sentenced to imprisonment for a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner’s release as if on parole after service of one-third of such term or terms notwithstanding the provisions of section 4164. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

“(g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

“(h) Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

“§ 4206. Parole determination criteria

“(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

“(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and

“(2) that release would not jeopardize the public welfare; subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

“(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days,

excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial.

“(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing: *Provided*, That the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon.

“(d) Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier: *Provided, however*, That the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State, or local crime.

“§ 4207. Information considered

“In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

“(1) reports and recommendations which the staff of the facility in which such prisoner is confined may make;

“(2) official reports of the prisoner’s prior criminal record, including a report or record of earlier probation and parole experiences;

“(3) presentence investigation reports;

“(4) recommendations regarding the prisoner’s parole made at the time of sentencing by the sentencing judge; and

“(5) reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

“§ 4208. Parole determination proceeding; time

“(a) In making a determination under this chapter (relating to parole) the Commission shall conduct a parole determination proceeding unless it determines on the basis of the prisoner’s record that the prisoner will be released on parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsections (a) and (b) (1) of section 4205 shall be held not later than thirty days before the date of such eligibility for parole. Whenever feasible, the initial parole determination proceeding for a prisoner eligible for parole pursuant to subsection (b) (2) of section 4205 or released on parole and whose parole has been revoked shall be held not later than one hundred and twenty days following such prisoner’s imprisonment or reimprisonment in a Federal institution, as the case may be. An eligible prisoner may knowingly and intelligently waive any proceeding.

“(b) At least thirty days prior to any parole determination proceeding, the prisoner shall be provided with (1) written notice of the time and place of the proceeding, and (2) reasonable access to a report or other document to be used by the Commission in making its determination. A prisoner may waive such notice, except that if notice is not waived the proceeding shall be held during the next regularly

scheduled proceedings by the Commission at the institution in which the prisoner is confined.

“(c) Subparagraph (2) of subsection (b) shall not apply to—

“(1) diagnostic opinions which, if made known to the eligible prisoner, could lead to a serious disruption of his institutional program;

“(2) any document which reveals sources of information obtained upon a promise of confidentiality; or

“(3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person.

If any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraphs (1), (2), or (3) of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

“(d) (1) During the period prior to the parole determination proceeding as provided in subsection (b) of this section, a prisoner may consult, as provided by the director, with a representative as referred to in subparagraph (2) of this subsection, and by mail or otherwise with any person concerning such proceeding.

“(2) The prisoner shall, if he chooses, be represented at the parole determination proceeding by a representative who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

“(e) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination proceeding.

“(f) A full and complete record of every proceeding shall be retained by the Commission. Upon request, the Commission shall make available to any eligible prisoner such record as the Commission may retain of the proceeding.

“(g) If parole is denied, a personal conference to explain the reasons for such denial shall be held, if feasible, between the prisoner and the Commissioners or examiners conducting the proceeding at the conclusion of the proceeding. When feasible, the conference shall include advice to the prisoner as to what steps may be taken to enhance his chance of being released at a subsequent proceeding.

“(h) In any case in which release on parole is not granted, subsequent parole determination proceedings shall be held not less frequently than:

“(1) eighteen months in the case of a prisoner with a term or terms of more than one year but less than seven years; and

“(2) twenty-four months in the case of a prisoner with a term or terms of seven years or longer.

“§ 4209. Conditions of parole

“(a) In every case, the Commission shall impose as a condition of parole that the parolee not commit another Federal, State, or local crime. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to—

“(1) the nature and circumstances of the offense; and

“(2) the history and characteristics of the parolee;

and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

“(b) The conditions of parole should be sufficiently specific to serve as a guide to supervision and conduct, and upon release on parole the parolee shall be given a certificate setting forth the conditions of his

parole. An effort shall be made to make certain that the parolee understands the conditions of his parole.

“(c) Release on parole or release as if on parole may as a condition of such release require—

“(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole;

“(2) a parolee, who is an addict within the meaning of section 4251(a), or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 for all or part of the period of parole.

A parolee residing in a residential community treatment center pursuant to subparagraph (1) or (2) of this subsection, may be required to pay such costs incident to residence as the Commission deems appropriate.

“(d) (1) The Commission may modify conditions of parole pursuant to this section on its own motion, or on the motion of a United States probation officer supervising a parolee: *Provided*, That the parolee receives notice of such action and has ten days after receipt of such notice to express his views on the proposed modification. Following such ten-day period, the Commission shall have twenty-one days, exclusive of holidays, to act upon such motion or application.

“(2) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

“(3) The provisions of this subsection shall not apply to modifications of parole conditions pursuant to a revocation proceeding under section 4214.

“§ 4210. Jurisdiction of Commission

“(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

“(b) Except as otherwise provided in this section, the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that—

“(1) such jurisdiction shall terminate at an earlier date to the extent provided under section 4164 (relating to mandatory release) or section 4211 (relating to early termination of parole supervision), and

“(2) in the case of a parolee who has been convicted of a Federal, State, or local crime committed subsequent to his release on parole, and such crime is punishable by a term of imprisonment, detention or incarceration in any penal facility, the Commission shall determine, in accordance with the provisions of section 4214 (b) or (c), whether all or any part of the unexpired term being served at the time of parole shall run concurrently or consecutively with the sentence imposed for the new offense, but in no case shall such service together with such time as the parolee has previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense.

“(c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.

“(d) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

“(e) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

“(f) Upon the termination of the jurisdiction of the Commission over any parolee, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

“§ 4211. Early termination of parole

“(a) Upon its own motion or upon request of the parolee, the Commission may terminate supervision over a parolee prior to the termination of jurisdiction under section 4210.

“(b) Two years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of the 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 such release, nor any period served in confinement on any other sentence.

“(c) (1) Five years after each parolee's release on parole, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in section 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.

“(2) If supervision is not terminated under subparagraph (1) of this subsection the parolee may request a hearing annually thereafter, and a hearing, with procedures as provided in subparagraph (1) of this subsection shall be conducted with respect to such termination of supervision not less frequently than biennially.

“(3) In calculating the five-year period referred to in subparagraph (1), there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

“§ 4212. Aliens

“When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such prisoner on condition that such person be deported and remain outside the United States.

“Such prisoner when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

“§ 4213. Summons to appear or warrant for retaking of parolee

“(a) If any parolee is alleged to have violated his parole, the Commission may—

“(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

“(2) issue a warrant and retake the parolee as provided in this section.

“(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

“(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of—

“(1) the conditions of parole he is alleged to have violated as provided under section 4209;

“(2) his rights under this chapter; and

“(3) the possible action which may be taken by the Commission.

“(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

“§ 4214. Revocation of parole

“(a) (1) Except as provided in subsections (b) and (c), any alleged parole violator summoned or retaken under section 4213 shall be accorded the opportunity to have—

“(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time; except that after a finding of probable cause the Commission may restore any parolee to parole supervision if:

“(i) continuation of revocation proceedings is not warranted; or

“(ii) incarceration of the parolee pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations;

“(iii) the parolee is not likely to fail to appear for further proceedings; and

“(iv) the parolee does not constitute a danger to himself or others.

“(B) upon a finding of probable cause under subparagraph (1) (A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

“(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

“(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

“(B) opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to section 3006A) or, if he so chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation.

“(C) opportunity for the parolee to appear and testify, and present witnesses and relevant evidence on his own behalf; and

“(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine

adverse witnesses, unless the Commission specifically finds substantial reason for not so allowing.

For the purposes of subparagraph (1) of this subsection, the Commission may subpoena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, or in which such person may be found.

“(b) (1) Conviction for a Federal, State, or local crime committed subsequent to release on parole shall constitute probable cause for purposes of subsection (a) of this section. In cases in which a parolee has been convicted of such a crime and is serving a new sentence in an institution, a parole revocation warrant or summons issued pursuant to section 4213 may be placed against him as a detainer. Such detainer shall be reviewed by the Commission within one hundred and eighty days of notification to the Commission of placement. The parolee shall receive notice of the pending review, have an opportunity to submit a written application containing information relative to the disposition of the detainer, and, unless waived, shall have counsel as provided in subsection (a) (2) (B) of this section to assist him in the preparation of such application.

“(2) If the Commission determines that additional information is needed to review a detainer, a dispositional hearing may be held at the institution where the parolee is confined. The parolee shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel as provided in subsection (a) (2) (B) of this section.

“(3) Following the disposition review, the Commission may:

“(A) let the detainer stand; or

“(B) withdraw the detainer.

“(c) Any alleged parole violator who is summoned or retaken by warrant under section 4213 who knowingly and intelligently waives his right to a hearing under subsection (a) of this section, or who knowingly and intelligently admits violation at a preliminary hearing held pursuant to subsection (a) (1) (A) of this section, or who is retaken pursuant to subsection (b) of this section, shall receive a revocation hearing within ninety days of the date of retaking. The Commission may conduct such hearing at the institution to which he has been returned, and the alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel or another representative as provided in subsection (a) (2) (B) of this section.

“(d) Whenever a parolee is summoned or retaken pursuant to section 4213, and the Commission finds pursuant to the procedures of this section and by a preponderance of the evidence that the parolee has violated a condition of his parole the Commission may take any of the following actions:

“(1) restore the parolee to supervision;

“(2) reprimand the parolee;

- “(3) modify the parolee’s conditions of the parole;
- “(4) refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or
- “(5) formally revoke parole or release as if on parole pursuant to this title.

The Commission may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness of the parolee’s violation of any other condition or conditions of his parole.

“(e) The Commission shall furnish the parolee with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and reasons for such action, a copy of which shall be given to the parolee.

“§ 4215. Reconsideration and appeal

“(a) Whenever parole release is denied under section 4206, parole conditions are imposed or modified under section 4209, parole discharge is denied under section 4211 (c), or parole is modified or revoked under section 4214, the individual to whom any such decision applies may have the decision reconsidered by submitting a written application to the regional commissioner not later than thirty days following the date on which the decision is rendered. The regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within thirty days to reaffirm, modify, or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefor.

“(b) Any decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. The National Appeals Board, upon receipt of the appellant’s papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify, or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

“(c) The National Appeals Board may review any decision of a regional commissioner upon the written request of the Attorney General filed not later than thirty days following the decision and, by majority vote, shall reaffirm, modify, or reverse the decision within sixty days of the receipt of the Attorney General’s request. The Board shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefor.

“§ 4216. Young adult offenders

“In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

“§ 4217. Warrants to retake Canal Zone parole violators

“An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

“§ 4218. Applicability of Administrative Procedure Act

“(a) For purposes of the provisions of chapter 5 of title 5, United States Code, other than sections 554, 555, 556, and 557, the Commission is an ‘agency’ as defined in such chapter.

“(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, United States Code, relating to rulemaking, shall be deemed not to include the phrase ‘general statements of policy’.

“(c) To the extent that actions of the Commission pursuant to section 4203(a)(1) are not in accord with the provisions of section 553 of title 5, United States Code, they shall be reviewable in accordance with the provisions of sections 701 through 706 of title 5, United States Code.

“(d) Actions of the Commission pursuant to paragraphs (1), (2), and (3) of section 4203(b) shall be considered actions committed to agency discretion for purposes of section 701(a)(2) of title 5, United States Code.”.

SEC. 3. Section 5005 of title 18, United States Code, is amended to read as follows:

“§ 5005. Youth correction decisions

“The Commission and, where appropriate, its authorized representatives as provided in section 4203(c), may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title.”.

SEC. 4. Section 5006 of title 18, United States Code, is amended to read as follows:

“§ 5006. Definitions

“As used in this chapter—

“(a) ‘Commission’ means the United States Parole Commission;

“(b) ‘Bureau’ means the Bureau of Prisons;

“(c) ‘Director’ means the Director of the Bureau of Prisons;

“(d) ‘youth offender’ means a person under the age of twenty-two years at the time of conviction;

“(e) ‘committed youth offender’ is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

“(f) ‘treatment’ means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

“(g) ‘conviction’ means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere.”.

SEC. 5. Sections 5007, 5008, and 5009 of title 18, United States Code, are repealed.

SEC. 6. Section 5014 of title 18, United States Code, is amended to read as follows:

“§ 5014. Classification studies and reports

“The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview.”

SEC. 7. Section 5017(a) of title 18, United States Code, is amended to read as follows:

“(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender in accordance with the provisions of section 4206 of this title. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission.”

SEC. 8. Section 5020 of title 18, United States Code, is amended to read as follows:

“§ 5020. Apprehension of released offenders

“If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission.”

SEC. 9. Chapter 402 of title 18, United States Code, is amended by deleting the term “division” whenever it appears therein and inserting in lieu thereof the word “Commission”.

SEC. 10. The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

- “Sec.
- “5005. Youth correction decisions.
- “5006. Definitions.
- “5010. Sentence.
- “5011. Treatment.
- “5012. Certificate as to availability of facilities.
- “5013. Provision of facilities.
- “5014. Classification studies and reports.
- “5015. Powers of Director as to placement of youth offenders.
- “5016. Reports concerning offenders.
- “5017. Release of youth offenders.
- “5018. Revocation of Commission orders.
- “5019. Supervision of released youth offenders.
- “5020. Apprehension for released offenders.
- “5021. Certificate setting aside conviction.
- “5022. Applicable date.
- “5023. Relationship to Probation and Juvenile Delinquency Acts.
- “5024. Where applicable.
- “5025. Applicability to the District of Columbia.
- “5026. Parole of other offenders not affected.”

SEC. 11. Section 5041 of title 18, United States Code, is amended to read as follows:

“§ 5041. Parole

“A juvenile delinquent who has been committed may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper in accordance with the provisions in section 4206 of this title.”

SEC. 12. Whenever in any of the laws of the United States or the District of Columbia the term “United States Parole Board”, or any other term referring thereto, is used, such term or terms, on and after the date of the effective date of this Act, shall be deemed to refer to the United States Parole Commission as established by the amendments made by this Act.

SEC. 13. Section 5108(c)(7) of title 5, United States Code, is amended to read as follows:

“(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons in GS-16;”.

SEC. 14. Section 3655 of title 18, United States Code, relating to duties of probation officers, is amended by striking out “Attorney General” in the last sentence and inserting in lieu thereof “United States Parole Commission”.

SEC. 15. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of the amendments made by this Act.

SEC. 16. (a) There are hereby transferred to the Chairman of the United States Parole Commission, all personnel, liabilities, contracts, property and records as are employed, held, used, arising from, available or to be made available of the United States Board of Parole with respect to all functions, powers, and duties transferred by this Act to the United States Parole Commission.

(b) This Act shall take effect sixty days after the date of enactment, except that the provisions of section 4208(h) of this Act shall take effect one hundred twenty days after the date of enactment.

(c) Each person holding office as a member of the United States Board of Parole on the day before the effective date of the Parole Commission and Reorganization Act shall be a Commissioner whose term as such shall expire on the date of the expiration of the term for which such person was appointed as a member of the Board of Parole.

(d) For the purpose of section 4202 of title 18, United States Code, service by an individual as a member of the United States Board of Parole shall not constitute service as a Commissioner.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

Concurrent Resolution

*Resolved by the Senate (the House of Representatives concurring),
That in the enrollment of the bill H.R. 5727, to establish an independent and regionalized United States Parole Commission, to provide fair and equitable parole procedures, and for other purposes, the Clerk of the House of Representatives is authorized and directed, in the enrollment of said bill, to make the following corrections:*

In section 4203(c)(3), as amended by section 2, strike out the word "delegate" and insert in lieu thereof "may delegate"; in section 4204(a)(5), as amended by section 2, strike out the semicolon the second time it appears in such section and insert in lieu thereof a comma; in section 4204(b)(3), as amended by section 2, strike out the period at the end of such section and insert in lieu thereof a semicolon; in section 4205(d), as amended by section 2, strike out the comma the first time it appears in such section; in section 4211(c)(3), as amended by section 2, strike out the word "paragraph" and insert in lieu thereof "subparagraph".

SEC. 2. That the Senate recede from its amendment to the title of H.R. 5727.

Attest:

Secretary of the Senate.

Attest:

Clerk of the House of Representatives.