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SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking appeared in the Federal Register for Tuesday, April 11, 1995 (60 FR 18378). Public comment received with regard to the proposal was generally favorable. The comment pointed out that the Commission was properly attempting to capture the results of the agency's own research on recidivism and "burnout" among criminal offenders. In response to a comment that suggested that the proposal was ambiguous concerning the date the current offense was "committed", the Commission has revised the final rule by specifying that the relevant date is the commencement of the offense. Thus, a parolee who initiates an illegal narcotics distribution conspiracy at age 39, and who continues that offense behavior after reaching 41 years of age, is not to be given the additional point required by the revised salient factor score. However, a parolee who committed his original offense at age 35, and who is returned to prison for a parole violation commenced after age 41, receives the additional point when his score is recalculated at his revocation hearing under 28 CFR 2.21(b).

The public comment also pointed out that the Commission's original research focused on age at release as opposed to the age at which the offense was committed, and suggested that the age of release should be used in the revised score. This suggestion is not practical. Using age at last release from prison would be too restrictive, and "age at release" on the current period of imprisonment is the result of applying the guidelines in the first instance.

Moreover, the Bureau of Prisons recently validated SFS-95 on a 1987 releasee sample (n=1205), using age at commencement of the instant offense. Using this criterion, the revised salient factor score was consistent with the original research, and displayed a high degree of predictive accuracy. (The original research was done in 1984 with research samples from 1970-72 (n=3,954) and 1978 (n=2,333).) The Mean Cost Rating in the new study increased from .54 to .56 (the highest recorded for a recidivism prediction device that has been subjected to validation) and the point biserial correlation coefficient increased from .47 to .48. Approximately 5% of the prisoners in this sample received an improved parole prognosis category placement as compared with the existing version of the salient factor score (SFS-81). The Commission

expects that these results will be reflected in future parole decisionmaking.

Moreover, the revised salient factor score improves upon the existing score by giving the Commission the equivalent of a "rate" of criminality over a prisoner's entire career. This permits an assessment of the current momentum of the prisoner's criminal career, leading to a better prediction of the prisoner's future behavior if released on parole. For example, the Parole Commission is enabled to determine that a 50 year old defendant with 3 prior convictions and commitments over a 26year career may be a better parole risk than a 25 year old defendant who has 2 prior convictions and commitments over a 6-year career. Both age and the rate of criminal conduct (over the length of his career) are factors that work in the older offender's favor, despite his more serious record. The Commission thus avoids the waste of taxpayer dollars that can result when imprisonment decisions fail to account for the probability that the current offense will turn out to be the last in an aging offender's lifetime.

In sum, the revised salient factor score permits the Commission to account for the affect of the aging process on each prisoner's prospects for committing further crimes after release from prison. At the present time, the average age of prisoners under the Commission's jurisdiction is 43, a reflection of the fact that the Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987. (See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.) Thus, it is increasingly appropriate for the Commission to revise the salient factor score at this time. This decision accords with the intent of Congress that the Parole Commission should "* * * continue to refine both the criteria which are used Ito judge the probability that an offender will commit a new offense] and the means for obtaining the information used therein." 2 U.S. Code Cong. & Admin. News at 359 (1976).

Implementation

The revised salient factor score (SFS–95) will be applied at initial parole hearings and revocation hearings held on or after October 2, 1995. It will be applied retroactively to prisoners who have already been considered for parole, or reparole, at the next scheduled statutory interim hearing under 28 CFR 2.14. If the prisoner's guideline range is reduced through application of SFS–95, the Commission will render a new

parole decision. In some cases, individual factors may warrant a decision to depart upward from the reduced guideline range on the ground that the prisoner is a poorer parole risk than SFS-95 indicates. For example, certain types of organized crime members may be expected to continue their criminal careers despite advancing age. The Commission will also apply SFS-95 in any other type of hearing wherein the length of the prisoner's incarceration is a function of the prisoner's current parole prognosis. This would not be the case, for example, at a hearing under 28 CFR 2.34, wherein the length of the prisoner's incarceration is determined by the need to sanction institutional misconduct.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant rule within the meaning of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

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

PART 2—[AMENDED]

The Amendment

1. The authority citation for 28 CFR part 2 continues to read as follows:

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

2. 28 CFR part 2, § 2.20 is amended by adding a new Item G to the Salient Factor Scoring Manual, to read as follows:

§ 2.20 Paroling Policy Guidelines: Statement of general policy.

Salient Factor Scoring Manual

Item G. Older Offenders

G.1 Score 1 if the offender was 41 years of age or more at the commencement of the current offense and the total score from Items A–F is 9 or less.

G.2 Score 0 if the offender was less than 41 years of age at the commencement of the