# Department of Justice

**STATEMENT OF**

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**UNITED STATES DEPARTMENT OF JUSTICE**

**BEFORE THE**

**UNITED STATES HOUSE OF REPRESENTATIVES**
**COMMITTEE ON THE JUDICIARY**
**SUBCOMMITTEE ON CRIME, TERRORISM**
**AND HOMELAND SECURITY**

**HEARING ENTITLED**

**"REAUTHORIZATION OF THE U.S. PAROLE COMMISSION"**

**PRESENTED**

**July 16, 2008**

Mr. Chairman, Members of the Subcommittee, I am pleased to be here today to testify about reauthorization of the United States Parole Commission (Parole Commission). I commend the Subcommittee for its interest in this matter, and I appreciate the opportunity to testify.

Some people may wonder why it is necessary to reauthorize the Parole Commission. After all, parole has been abolished for most federal offenders for more than 20 years. The matter of reauthorization raises three questions that must be answered. First, what does the Parole Commission do? Second, is it necessary to continue to carry out those functions? Third, is there an alternative to the Parole Commission for carrying out those functions?

Let me address the first question. In 1984, federal offenders were sentenced to indeterminate prison terms. The sentencing court imposed a maximum prison term on a convicted offender, and for most offenders the Parole Commission determined the offender's release date using its own decision-making guidelines. Offenders received hearings on a schedule set by statute to determine whether any change should be made in the release decision. The Commission set and enforced the conditions of parole under which the person was released to the community, and the Commission's enforcement authority included the power to revoke parole and return an offender to prison.

The Sentencing Reform Act of 1984 (the Act) dramatically altered the federal sentencing system. The Act established a determinate sentencing system in which the sentencing court set the prison time the offender would serve, guided by sentencing guidelines promulgated by the United States Sentencing Commission.[1] The Act abolished parole and replaced it with a new form of post-incarceration supervision called

supervised release. The abolition of parole took effect when the sentencing guidelines took effect, November 1, 1987.[2]

Because it was expected that the existing functions of the Parole Commission – granting parole, determining and modifying conditions of parole, and revoking parole – would apply to a limited and diminishing class of federal offenders sentenced under the old indeterminate sentencing laws, the Act provided for abolition of the Parole Commission effective November 1, 1992, five years after parole was eliminated.[3] For those parole-eligible federal offenders not released before the Parole Commission expired, the Act, in what has come to be known as the "winding-down" provision, required that the Parole Commission give each such offender a release date before going out of existence. However, the Act made no provision for periodic hearings for such offenders after the Commission went out of existence. The opportunity for periodic review and modification of a parole-release decision is a critical feature of federal parole law and any parole-release system.

The expected substantial decline in the number of parole-eligible federal offenders did not materialize. People continued to be convicted of offenses committed before the sentencing guidelines took effect, and many old-law offenders were not released on parole in the five-year transition period. For many old-law offenders, parole within that five-year period would have resulted in premature release to the community of persons who committed extremely serious crimes or were clearly dangerous. Further, Congress recognized that the winding-down mechanism raised serious constitutional issues by converting indeterminate terms into determinate terms. Offenders who remained incarcerated after the Commission went out of existence would be deprived of

periodic review of their cases. Their opportunity for an earlier release date would be eliminated, possibly raising ex post facto questions under the Constitution.[4]

Because a significant number of federal offenders were still under Commission jurisdiction, and in light of the constitutional questions surrounding the winding-down mechanism, Congress has extended the life of the Parole Commission several times.[5] The current closure date for the Parole Commission is November 1, 2008.

As Congress periodically extended the life of the Commission, Congress also gave the Commission new duties. The most significant new duties concerned offenders convicted of crimes in the District of Columbia Superior Court. The National Capital Revitalization and Self-Government Improvement Act of 1997[6], together with related District of Columbia legislation, instituted reforms in the sentencing system for District of Columbia offenders that in many respects are similar to the reforms to federal law made by the Sentencing Reform Act of 1984.

As a result of those legislative efforts, the Parole Commission became the paroling authority for parole-eligible District of Columbia offenders.[7] Parole for District of Columbia offenders was abolished effective August 4, 2000, and replaced with supervised release.[8] The Parole Commission was given a role in the District of Columbia supervised release process. While the District of Columbia Superior Court sets the term of supervised release for an offender, the Parole Commission determines and enforces the conditions of supervised release. The Parole Commission's enforcement authority includes the power to revoke supervised release and send an offender back to prison.[9]

There were other additions to the Parole Commission's duties as well. Even before 1984, Congress had given the Parole Commission the duty of granting or denying

parole for United States citizens convicted of a crime in a foreign country who elected to return to the United States to complete sentence.[10] Congress subsequently determined that transferred offenders convicted of a foreign offense committed after October 31, 1987, should be treated as if sentenced in this country under the federal determinate sentencing system. The Anti-Drug Abuse Act of 1988, therefore, directed the Parole Commission to determine a release date and a period and conditions for supervised release as if the offender were convicted in the United States and taking into consideration the applicable sentencing guideline range as recommended by the Probation Service. *See* 18 U.S.C. § 4106A(b)(1).[11] This function is appropriately handled by an Executive Branch agency because, if a United States court were to set a release date after referring to the sentencing guidelines, it might appear to be a violation of transfer treaty provisions. The bilateral prisoner transfer treaty with Mexico, for example, gives the courts of the sentencing country the "exclusive jurisdiction over any proceedings, regardless of their form intended to challenge, modify or set aside sentences handed down by its courts."

The Commission also performs parole-related functions for certain military and state offenders. When the Department of Defense transfers military service personnel convicted under the Uniform Code of Military Justice to the custody of the Federal Bureau of Prisons, the Parole Commission is responsible for making parole-release and revocation decisions for them.[13] Finally, the Act gave the Parole Commission decision-making authority over state offenders who are on state probation or parole and are transferred to federal authorities under the witness security program.[14]

In terms of work-load, most of the Commission's work involves District of Columbia offenders. Here is a break-down as of the end of fiscal year 2007 (September 30, 2007). The Parole Commission had jurisdiction over a total of some 13,600 offenders. Of those, nearly 70 percent were District of Columbia offenders. Of the District of Columbia offenders, about 38 percent were incarcerated and the remainder were under supervision in the community. Of the federal offenders, again about 38 percent were incarcerated and the remainder were in the community under supervision. In terms of the type of work we do, in fiscal year 2007 the Parole Commission conducted some 4,751 hearings, about 83 percent of which involved District of Columbia offenders.

The answer, then, to the first question – what does the Parole Commission do – is (1) make parole release and revocation decisions for parole-eligible federal offenders; (2) make parole release and revocation decisions for parole-eligible District of Columbia offenders; (3) set and enforce the conditions of supervised release for District of Columbia offenders; and (4) make release decisions for United States citizens convicted of a crime in another country who elect to return to the United States for service of sentence.

The answer to the second question, do those functions need to be carried out after October 31, 2008, is yes. There are still some 5,000 offenders in prison for whom parole release decisions must be made. There are some 5,800 District of Columbia offenders under supervision in the community for whom conditions of supervised release must be enforced, and that number is unlikely to diminish and probably will grow a bit.[iv] United States citizens convicted of crimes in foreign countries can be expected to continue to

want to come to this country to serve sentence. There has to be an entity to continue to carry out these functions.

That takes me to the third question – what are the options for carrying out these functions. There is presently no entity in any branch of government, whether the federal government or the District of Columbia government, which has statutory authority to perform the functions the Parole Commission currently performs. I believe that extending the life of the Parole Commission is the best course of action to ensure the orderly administration of justice and to ensure that the public is adequately safeguarded. I urge the Congress to extend the Parole Commission for a period no greater than three years. During this time, the Department of Justice will conduct analysis on whether the Commission in its present form is the best entity to perform the functions I have discussed.

Thank you again for the opportunity to testify. I will be pleased to answer any questions you may have.

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

[2]*See* Sentencing Reform Act of 1984, Pub. L. No. 98-473, title II, ch. II, § 218(a)(5), 98 Stat. 2027; Sentencing Reform Amendments Act of 1985, Pub. L. No. 99-217, 99 Stat. 1728.

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

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

> Constitutional requirements, specifically the ex post facto clause, necessitate the extension of the Commission, or the establishment of a similar entity authorized by statute to perform its functions. Otherwise those remaining "old law"

> offenders will file habeas corpus petitions, seeking release on the grounds that their right to be considered for parole had been unconstitutionally eliminated. If such petitions were successful, public safety may be jeopardized by the release of dangerous criminals.

Id.

[5]*See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 316, 104 Stat. 5115; Parole Commission Phaseout Act of 1996, Pub. L. No. 104-232, 110 Stat. 3005; 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, § 11017, 116 Stat. 1758 (2002); United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. No. 109-76, § 2, 119 Stat. 2035.

[6]Pub. L. No. 105-33, title XI, 111 Stat. 712.

[7]*See* National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, § 11231, 111 Stat. 745; D.C. Code § 24-131(a)(1).

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

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

[10]*See* An Act to provide for the implementation of treaties for the transfer of offenders to or from foreign countries, Pub. L. No. 95-144, § 1, 91 Stat. 1216 (1977) (enacting 18 U.S.C. § 4106).

[11]Pub. L. No. 100-690, § 7101(a), 102 Stat. 4415 (enacting 18 U.S.C. § 4106A).

[12]*See* 10 U.S.C. § 858(a).

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

[14]As of September 30, 2007, there were 3,558 District of Columbia offenders in prison who will begin terms of supervised release when their prison terms expire.