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General Government Division

B-280564

July 14, 1998

The Honorable Bill McCollum, Chairman
Subcommittee on Crime
Committee on the Judiciary
House of Representatives

Subject: Federal Corrections: Information on Bureau of Prison Inmates
Whose Release Dates Are Determined by the U.S. Parole Commission
and Who Have Served at Least One-Third of Their Prison Sentences

Dear Mr. Chairman:

On June 16, 1998, you requested that we obtain information on inmates in the custody of the federal Bureau of Prisons (BOP) whose date of release from prison is determined by the U.S. Parole Commission (the Parole Commission). With few exceptions, the Parole Commission determines the prison release date of federal inmates who were convicted of crimes committed prior to November 1, 1987, and has jurisdiction over all BOP inmates eligible for parole. Generally, parole-eligible inmates may first be eligible for release on parole after serving one-third of their prison sentences and must be released after serving two-thirds of their sentences.¹ The release date of federal inmates convicted of crimes committed on or after November 1, 1987, is governed by the federal sentencing guidelines. Inmates governed by the guidelines must serve a minimum of about 85 percent of their prison sentences. Inmates sentenced under the guidelines may have their prison terms reduced by a maximum of 54 days per year for satisfactory behavior. Federal inmates who fall under the jurisdiction of the Parole Commission are usually referred to as "old law" inmates to distinguish them from the "guidelines" inmates who were sentenced under the federal sentencing guidelines.

As agreed with your office, our objectives for this letter are to (1) obtain information on the time served, estimated time remaining to serve, gender, security classification, and offense of conviction of "old law" inmates in BOP

¹Certain inmates may be eligible for parole at any time after beginning their prison sentences. Some parole-eligible inmates, such as those who have frequently violated prison rules and regulations, may be denied prison release after serving two-thirds of their sentences.

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custody as of June 1, 1998, who had served at least one-third of their prison sentences; and (2) provide a description of the Parole Commission's process for determining inmate prison release dates. To address the first objective, we obtained data from BOP's Office of Research on "old law" inmates in BOP custody as of June 1, 1998. We did not validate these data. Data were missing for some inmates for some variables we requested, such as estimated release date. Missing data are noted in the tables where appropriate. To address our second objective, we obtained information from the Parole Commission on its responsibilities and process for determining inmate release dates, and reviewed recent statutes concerning the Parole Commission.

RESULTS IN BRIEF

As of June 1, 1998, there were 7,817 "old law" inmates in BOP custody, including 7,452 male and 365 female inmates. Of the 7,817 "old law" inmates, about 55 percent (4,271) had served at least one-third of their prison sentences—a number which includes both parole eligible and parole ineligible inmates. BOP provided data on the estimated prison time remaining to serve for 4,042 of the 4,271 inmates who had served at least one-third of their sentences. BOP estimated that about 55 percent of these 4,042 inmates had 2 years or less of their sentences remaining to serve, about 24 percent had between 2 years and 1 day and 5 years remaining to serve, and about 22 percent had more than 5 years remaining to serve.² Data on time remaining to serve were unavailable for 229 inmates. BOP provided data on the offense and security classification for 4,032 of the 4,271 inmates who had served more than one-third of their sentences. About 61 percent of these inmates were convicted of robbery or drug crimes, and about 54 percent were classified as medium or high security risks.

According to the Parole Commission, about 75 percent of the 7,817 "old law" inmates in BOP custody as of June 1, 1998, were eligible for release from prison on parole,³ with the remaining parole ineligible inmates generally required to serve at least two-thirds of their prison terms prior to release from prison. Of those inmates eligible for parole, some had served less and some more than one-third of their sentences.

The Parole Commission has instituted guidelines that are to be used to determine a parole-eligible inmate's prison release date. These guidelines describe customary ranges of time to be served before an inmate is released from prison. The guidelines consider

²Estimated release dates are those calculated by BOP based on such factors as jail time already served and credited, estimated reductions for "good time," and whether the inmate is serving prison sentences that are to be served consecutively. BOP's estimates are not based on the Parole Commission's presumptive release dates for "old law" inmates.

³This total included 165 District of Columbia (D.C.) inmates housed in BOP facilities who are eligible for parole under D.C. law, and whose parole date is determined by the Parole Commission. The Parole Commission will assume responsibility for determining the prison release date of all parole-eligible inmates convicted of D.C. offenses—whether they are in D.C. or BOP prisons—on August 5, 1998.

the severity of the offense for which the inmate was incarcerated, the prognosis for the inmate's safe reintegration into society, and the inmate's conduct within the correctional facility. The Parole Commission's policy is that all parole-eligible inmates, except those with a minimum sentence of 10 years or more, are to receive an initial parole hearing before a hearing examiner within 120 days after the inmate's prison sentence commences. The purpose of this hearing is to gather information and to make a recommendation for the inmate's "presumptive release date" from prison. This is the date at which the inmate can be expected to be released from prison, contingent upon good institutional conduct and adequate post-release plans. This presumptive release date is based on the Commission's applicable parole release guidelines. Parole-eligible "old law" inmates are generally first eligible for parole after serving one-third of their prison sentences. However, under the Parole Commission's guidelines, an inmate's presumptive release date may be later than this date.

HISTORY OF U.S. PAROLE COMMISSION

Congress created the United States Board of Parole in 1930. The Parole Commission and Reorganization Act of 1976 (P.L. 94-233) replaced the agency with the United States Parole Commission. The Parole Commission has parole jurisdiction over all federal prison inmates eligible for parole, which includes responsibility for determining their prison release dates, and has continuing jurisdiction over those inmates who are released on parole or mandatory release.⁴

The Sentencing Reform Act of 1984 (P.L. 98-47) abolished parole for federal inmates and required, in effect, that federal prison inmates convicted of crimes committed on or after November 1, 1987, serve at least 85 percent of their prison sentences. The act also provided, in effect, that the Parole Commission would be phased out by November 1, 1992. However, the Judicial Improvements Act of 1990 (P.L. 101-650) extended the life of the Parole Commission to November 1, 1997. There were certain constitutional questions regarding parole determinations for the remaining "old law" prisoners after the expiration of the Parole Commission. In 1996, under the Parole Commission Phaseout Act (P.L. 104-232), Congress extended the Parole Commission until November 1, 2002. The act also requires the Attorney General to report to Congress annually, beginning in 1998, on (1) whether continuing the Parole Commission is the most effective and cost-efficient manner for carrying out the Parole Commission's functions, and (2) whether the Parole Commission's functions should be transferred to another agency. This same statute reduced the number of commissioners from nine to no more than two by December 31, 1999. However, in August 1997, the National Capital Revitalization and Self-Government Improvement Act (P.L. 105-33) expanded the number of commissioners to no more than five. The statute granted the Parole Commission jurisdiction, beginning August 5, 1998, over certain aspects of prison release determinations for the approximately 7,000 parole-eligible inmates in D.C. and BOP prisons and for certain aspects of parole supervision and revocations for the approximately 6,000 D.C. parolees.

⁴"Mandatory release" is the term used for the release of inmates who have served two-thirds of their prison sentences.

DATA ON "OLD LAW" INMATES
IN BOP CUSTODY AS OF JUNE 1, 1998

As of June 1, 1998, there were 7,817 "old law" inmates in BOP custody, including 7,452 male and 365 female inmates. This total included 165 D.C. inmates housed in BOP facilities who are eligible for parole under D.C. law and whose prison release dates are determined by the Parole Commission. Within this total, 4,271 inmates (about 55 percent) had served at least one-third of their prison sentences—4,152 male and 119 female. These 4,271 inmates included both parole eligible and parole-ineligible inmates. The vast majority of these inmates—93 percent of males and 90 percent of females—had served more than 5 years in prison as of June 1, 1998 (see table 1). For the 4,042 "old law" inmates for which BOP could estimate release dates, more than half—about 55 percent—had 2 years or less remaining before release, and about 22 percent had more than 5 years to serve before release (see table 2). There was little difference between male and female inmates in estimated time remaining to serve.

Table 1: Number of Years Already Served, by Gender, by "Old Law" BOP Inmates Who Had Served at Least One-Third of Their Prison Sentences as of June 1, 1998

Gender	Years already served as of June 1, 1998						Total
	Up to 1 year	More than 1 year but no more than 2 years	More than 2 years but no more than 3 years	More than 3 years but no more than 4 years	More than 4 years but no more than 5 years	More than 5 years	
Male							
Number	127	40	36	49	57	3,843	4,152
Percent	3%	1%	1%	1%	1%	93%	100%
Female							
Number	4	1	3	1	3	107	119
Percent	3%	1%	3%	1%	3%	90%	100%
Total							
Number	131	41	39	50	60	3,950	4,271
Percent	3%	1%	1%	1%	1%	93%	100%

Note 1: Individual percentages may not add to 100 due to rounding.

Note 2: Data include 165 inmates convicted of D.C. offenses and housed in BOP facilities. The Parole Commission determines the parole date of these inmates, using the applicable provisions of D.C. law. The Parole Commission assumes responsibility for determining the parole date of all D.C. offenders, whether in federal or D.C. prisons, on August 5, 1998.

Source: BOP data.

Table 2: Estimated Years of Prison Sentence Remaining to Serve, by Gender, for "Old Law" BOP Inmates Who Had Served at Least One-Third of Their Sentences as of June 1, 1998

Gender	Estimated years remaining to serve as of June 1, 1998						Total
	Up to 1 year	More than 1 year but no more than 2 years	More than 2 years but no more than 3 years	More than 3 years but no more than 4 years	More than 4 years but no more than 5 years	More than 5 years	
Male Number Percent	1,437 37%	717 18%	94 10%	302 8%	233 6%	845 22%	3,928 100%
Female Number Percent	48 42%	22 19%	11 10%	3 3%	8 7%	22 19%	114 100%
Total Number Percent	1,485 37%	739 18%	405 10%	305 8%	241 6%	867 22%	4,042 100%

Note 1: Individual percentages may not add to 100 due to rounding.

Note 2: Data missing for 229 inmates.

Note 3: Data include 165 inmates convicted of D.C. offenses and housed in BOP facilities. The Parole Commission determines the parole date of these inmates, using the applicable provisions of D.C. law. The Parole Commission assumes responsibility for determining the parole date of all D.C. offenders, whether in federal or D.C. prisons, on August 5, 1998.

Source: BOP data.

Data were available on offense and security classification for 4,032 of the 4,271 "old law" inmates who had served more than one-third of their sentences. About 61 percent of these inmates were convicted of robbery or drug crimes, and about 54 percent were classified as medium or high security risks. Inmates convicted of robbery or violent crimes, including homicide, were the most likely to be classified as medium or high security risks and accounted for 62 percent of the 2,178 inmates classified as medium or high security. Table 1 includes more information on the offense category and security classification, by gender, for "old law" inmates who have served at least one-third of their sentences.

Table 3: "Old Law" Inmates in BOP Custody as of June 1, 1998, Who Had Served At Least One-Third of Their Sentences by Offense Category, Gender, and Security Classification

Offense Category	Security Classification ^a								TOTAL
	Minimum		Low		Medium		High		
	Male	Female	Male	Female	Male	Female	Male	Female	
Illegal Drugs	264	22	510	13	248	0	63	1	1,121
Firearms	16	1	45	1	68	0	36	0	167
Violent, homicide	6	3	73	4	120	0	121	1	328
Property	72	8	130	3	104	0	60	1	378
White collar	11	2	12	0	15	0	4	0	44
Court, corrections ^b	1	1	14	1	14	0	13	0	44
Immigration	4	1	12	0	3	0	3	0	23
Extortion, fraud, bribery	103	10	66	0	40	0	17	0	236
Sex offenses	0	1	18	1	14	0	4	0	38
National security	1	0	3	0	0	0	1	0	5
Robbery	23	2	214	5	549	0	557	2	1,352
C.C.E. ^c	16	0	57	1	19	0	13	0	106
Miscellaneous	3	0	10	0	8	0	4	0	25
D.C. offenses ^d	20	16	45	9	27	0	44	4	165
TOTAL	540	67	1,209	38	1,229	0	940	9	4,032

Note: Data missing for 239 inmates, 234 male and 5 female.

^aRepresents the inmate's individual security classification. In some cases, this classification may be different from the security classification of the BOP facility in which the inmate is housed.

^bIncludes such offenses as escape and obstruction of justice.

^cContinuing Criminal Enterprise, such as racketeering.

^dInmates convicted of offenses under District of Columbia law who are housed in BOP facilities. The Parole Commission determines the parole release date of these inmates, using the applicable provisions of D.C. law. The Parole Commission will assume responsibility for determining the parole date of all D.C. offenders, whether in D.C. or federal prisons, on August 5, 1998.

Source: BOP data.

According to the Parole Commission, about 75 percent of the 7,817 "old law" inmates in BOP custody as of June 1, 1998, were eligible for release from prison on parole,⁵ with the remaining parole ineligible inmates generally required to serve at least two-thirds of their prison terms prior to release from prison. Of those inmates eligible for parole, some had served less and some more than one-third of their sentences.

COMMISSION'S PROCEDURES FOR DETERMINING PAROLE

The Parole Commission has instituted guidelines that determine an offender's qualifications for parole. These guidelines describe customary ranges of time to be served before parole consideration is granted, severity of offense for which prisoner was incarcerated, prognosis for safe reintegration into society, and conduct within the correctional facility. In addition, the Parole Commission can consider mitigating or aggravating issues in determining whether and when an inmate will be released on parole.

It is the Parole Commission's policy that all eligible inmates, except those with a prison sentence of 10 years or more, receive an initial parole hearing before a hearing examiner within 120 days after the prison sentence commences. At this hearing, each inmate is to be provided with an anticipated parole release date—the inmate's "presumptive release date"—calculated from the applicable parole release guidelines. This release date is contingent upon good institutional conduct and adequate post-release plans. Although inmates are first eligible for parole after serving one-third of their sentence, the inmate's presumptive release date may be later than that date. By statute, interim hearings for federal inmates are scheduled to consider significant positive or negative circumstances that may justify a modification of the prisoner's presumptive release date.

A prerelease record review is to be conducted before each presumptive parole date to determine whether the prisoner has adhered to the conditions for release. Parole may be delayed up to 120 days to provide for additional consideration and development of a respective release plan. In addition, minor infractions against institutional rules can result in deferring the release for up to 90 days. When an inmate commits a gross violation that requires institutional discipline, the Parole Commission can convene a rescission hearing whereby the prisoner's presumptive release date can be voided or changed to a later date.

A single commissioner is responsible for determining if parole will be granted or, if necessary, revoked. However, cases that the Parole Commission determines involve particularly heinous crimes, are high profile, or have national security implications are

⁵This total included 165 District of Columbia (D.C.) inmates housed in BOP facilities who are eligible for parole under D.C. law, and whose parole date is determined by the Parole Commission. The Parole Commission will assume responsibility for determining the prison release date of all parole-eligible inmates convicted of D.C. offenses—whether they are in D.C. or BOP prisons—on August 5, 1998.

heard by all five commissioners. An inmate who seeks redress for a Parole Commission decision may file an appeal within 30 days from the date of receipt of the official notice of action. The National Appeals Board reviews the case and can affirm, modify, or reverse the Parole Commission's judgment. Subsequently, the Board has 60 days to complete action on the appeal. Decisions by the Board are final.

NEW PAROLE COMMISSION RESPONSIBILITIES FOR D.C. INMATES

Beginning August 5, 1998, the Parole Commission will become responsible for, among other things, granting and denying parole to the approximately 7,000 D.C. inmates in D.C. and BOP prisons. The National Capital Revitalization and Self-Government Improvement Act of 1997 (P.L. 105-33) (Revitalization Act) established a timeline for the termination of the District of Columbia Parole Board and for transferring its duties to the Parole Commission. The Revitalization Act also expanded the number of commissioners from three to no more than five.

Reallocating the functions of the D.C. Board of Parole to the Parole Commission is to be conducted in stages. According to the Parole Commission, the D.C. Board of Parole will maintain certain parole responsibilities over D.C. inmates in D.C. prisons until August 5, 1998. Any decision made by the D.C. Board of Parole before August 5, 1998, will automatically become a decision of the Parole Commission, subject to revision only for justifiable cause, such as a prison rule infraction. The D.C. Board of Parole is to be officially abolished on August 5, 2000, when the Parole Commission assumes jurisdiction over all adult D.C. code offenders. Beginning August 5, 1998, the Parole Commission is to hold all parole release hearings and adjudicate all parole cases (grants and denials) for D.C. inmates. All inmates serving sentences for violations of the District of Columbia Code must be transferred to federal Bureau of Prison facilities by October 1, 2001.

According to the Parole Commission, even though the Parole Commission will assume certain parole release responsibilities for D.C. inmates on August 5, 1998, the D.C. Board will maintain the authority to supervise and revoke parole for all D.C. Code parolees—currently, about 6,000 parolees—until the D.C. Board ceases operations on August 5, 2000. This means that D.C. Code inmates who are paroled by the Parole Commission between August 5, 1998 and August 5, 2000, will be supervised by the D.C. Board for those 2 years. If the D.C. Board revokes parole and the former parolee is returned to incarceration, the Parole Commission will have jurisdiction over further parole actions. After August 5, 2000, supervision of D.C. Code offenders on parole release is to be exercised by the newly-formed D.C. Offender Supervision, Defender, and Courts Services Agency.

Under the Revitalization Act, the Parole Commission is required is to exercise its parole authority pursuant to D.C.'s parole laws and regulations, which may be different from federal parole laws and regulations. The Revitalization Act also gave the Parole Commission the authority to amend or supplement any regulations interpreting or implementing D.C. parole laws.

AGENCY COMMENTS

On July 7, 1998, we provided a draft of this letter to officials at BOP and the Parole Commission, who provided oral comments on July 9, 1998. A BOP official commented only on our presentation of the data that BOP had provided and found it to be accurately presented. An official of the Parole Commission provided technical comments to clarify some aspects of the Parole Commission's procedures, which we incorporated into the report as appropriate.

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We are sending copies of this report to the Ranking Minority Member of the Subcommittee, and to the Chairman and Ranking Minority Members of the Senate and House Committees on the Judiciary; the Director of the Bureau of Prisons; and the Chairman of the U.S. Parole Commission. We will provide copies to other interested parties upon request.

Major contributors to his letter were William Jenkins, Jr., and Andrew Hoffman. Please contact me at (202) 512-8777 if you or your staff have any questions concerning this letter.

Sincerely yours,



Richard M. Stana
Associate Director
Administration of Justice Issues

(182834)

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