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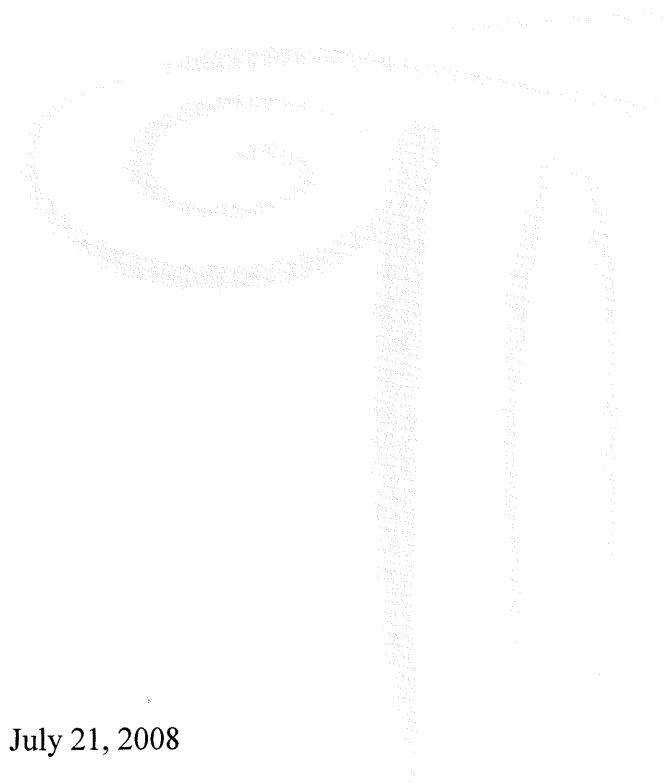
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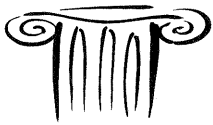
1111 14th Street, NW  
Suite 500  
Washington, DC 20005  
202.785.5917 Fax: 202.785.5922  
<http://www.courtexcellence.org>

Statement of  
the Council for Court Excellence  
before the  
Committee on the Judiciary,  
Council of the District of Columbia

Bill 17-750  
Parole Credit Maintenance Amendment Act of 2008



July 21, 2008



The Council for Court Excellence ("CCE") is a local nonpartisan civic organization founded in 1982 to improve the administration of justice in the courts and related justice agencies in the District of Columbia. For 26 years, CCE has been a unique resource that brings together members of the civic, legal, business, and judicial communities to work in common purpose to identify and promote court reforms, improve public access to justice, and increase public understanding and support of our justice system. It should be noted, however, that no judicial member of CCE participated in the formulation of this testimony.

### **Overview of the Act**

The Parole Credit Maintenance Amendment Act of 2008 (the "Act") would make certain changes to the law governing D.C. offenders who are on parole for crimes committed before August 5, 2000. It would change existing law by giving them credit toward their sentences for "street time" already served on parole in the event that they are returned to prison for a violation of their parole. It would make additional changes that could affect the length and conditions of their parole. In general, the Act would bring D.C. law governing its parolees more into line with federal law, although in certain respects it would be more advantageous to parolees and in other respects it would be less advantageous.

CCE does not take a position on whether this legislation should be enacted or amended. That is a public policy issue for the Council to decide. We do, however, want to provide relevant information and analysis to assist the Council in its assessing the proposed Act, and also to highlight certain issues regarding the Act.

### **Background**

The Sentencing Reform Amendment Act of 2000 made a number of changes to sentencing in criminal cases prosecuted under the D.C. Code. One of the principal changes was



to shift the District from an "indeterminate" sentencing system to a "determinate" sentencing system and to abolish parole.

Under the old system, a judge would impose an "indeterminate" sentence with a minimum and a maximum term. The minimum could not be greater than one-third of the maximum.<sup>1</sup> Thus typical sentences would be 2-6 years, 3-9 years, 4-12 years, or 10-30 years. The defendant had to serve at least the minimum term before becoming eligible for parole. Once released on parole, he would remain on parole until the expiration of the maximum term. This sentencing system created lengthy periods of parole that usually were much longer than the period of incarceration.

Under the new "determinate" system, which became effective on August 5, 2000, the judge imposes a fixed sentence such as 2 years, or 5 years, or 8 years. The court also imposes a term of "supervised release" to follow the offender's release from prison. The length of the term of supervised release is up to either 3 years or 5 years, depending on the severity of the offense.<sup>2</sup>

Meanwhile, the D.C. Parole Board was abolished and the U.S. Parole Commission was given responsibility to supervise the parole of District offenders convicted of crimes committed before August 5, 2000. Previously, federal criminal law had also shifted from an indeterminate to a determinate sentencing system on November 1, 1987. The U.S. Parole Commission is therefore also responsible for supervising the parole of federal offenders convicted of crimes committed before that date.

In addition to D.C. and the federal system, many states are phasing out parole. "By the end of 1998, fourteen states had abolished discretionary parole release for all inmates. In addition, in twenty-one states, parole authorities are operating under what might be called a

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<sup>1</sup> D.C. Code § 24-403 (2008).

<sup>2</sup> D.C. Code § 24-403.01.



‘sundown provision,’ in that they have discretion over a small or diminished parole eligible population. Today, just fifteen states have given their parole boards full authority to release inmates through a discretionary process.”<sup>3</sup>

### **Comparing the Act With Existing D.C. Law, Federal Law, and State Law**

It is helpful to assess the provisions of the Act by comparing them to existing D.C. law, comparable federal law, and the law in some nearby states. We will do so on an issue-by-issue basis.

#### **"Street Time" Credit**

Under existing D.C. law, as construed by the D.C. Court of Appeals in the Noble decision, a parolee does not receive any credit for "street time" already served on parole in the event his parole is revoked and he is re-imprisoned.<sup>4</sup> For example, if an offender was released on parole with 10 years remaining on his sentence and successfully completed 5 years before his parole was revoked (which could be for a number of reasons ranging from drug use to a new arrest or conviction), he would not receive any credit for the 5 years in computing how much of his original sentence remained to be served.

This rule is contrary to current federal law, as discussed in more detail below, and to the law of most states. 24 states automatically award credit for street time, 14 states have the discretion to award credit for street time, and 10 states deny credit for street time.<sup>5</sup> But the D.C. rule is not out of line with most nearby states whose law we surveyed.

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<sup>3</sup> Joan Petersilia, Parole and Prisoner Reentry in the United States, 26 Crime & Just. 479, 495 (1999).

<sup>4</sup> See United States Parole Comm'n v. Noble, 693 A.2d 1084, 1105 (D.C. 1997); D.C. Code § 24-406(a)(formerly 24-206(a)).

<sup>5</sup> Testimony Before the District of Columbia City Council Committee on Public Safety and the Judiciary on Bill 17-750, ‘Parole Credit Maintenance Amendment Act of 2008.’ Michael Nonaka, July 10, 2008, p. 2.



A. Virginia

Under Virginia law, if an offender's parole is revoked, the offender does not receive any credit for street time served on parole before revocation.<sup>6</sup>

B. Maryland

Under Maryland law, if an offender's parole is revoked, the offender does not receive any credit for street time served on parole before revocation unless the commissioner hearing the parole revocation makes a discretionary grant of credit.<sup>7</sup>

C. Pennsylvania

Under Pennsylvania law, if an offender's parole is revoked, the offender does not receive any credit for street time served on parole before revocation.<sup>8</sup>

D. New Jersey

Under New Jersey law, if an offender's parole is revoked, the offender does not receive any credit for street time served on parole before revocation and is not eligible for parole during the remainder of his sentence.<sup>9</sup>

E. New York

Under New York law, if an offender's parole is revoked, the offender receives full credit for all street time served between the time of release on parole and the time of revocation.<sup>10</sup>

F. Federal Law

If a federal offender's parole is revoked, he receives credit for street time served on parole before revocation with two exceptions.<sup>11</sup> First, if the offender "intentionally refused or

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<sup>6</sup> See Va. Code Ann. § 53.1-156 (2008).

<sup>7</sup> See Md. Correctional Services Code Ann. § 7-401(d)(1) (2008).

<sup>8</sup> See 61 Pa.Stat. § 331.21a (a) (2007).

<sup>9</sup> See N.J. Stat. § 30:4-123.51a (2008).

<sup>10</sup> See NY CLS Penal § 70.40(3)(a) (2008).



failed to respond to any reasonable request, order, summons or warrant of the [Parole] Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond.”<sup>12</sup> Second, if an offender “is convicted of a new offense committed subsequent to his release on parole, which is punishable by any term of imprisonment, detention, or incarceration in any penal facility,” the offender forfeits the credit he would have received for street time performed from the date of his release on parole to the date of execution of the warrant.<sup>13</sup>

### **Proposed Act**

Under the Act, if a D.C. Code offender’s parole is revoked, the offender would receive full credit for all street time served on parole before revocation.<sup>14</sup> The Act goes beyond current federal law because the offender does not face possible forfeiture of some or all of his street time credit if he fails to cooperate with the Parole Commission or is convicted of a new offense. In terms of state law comparison, as noted the act mirrors the approach utilized by New York, and is more favorable to parolees than any other nearby jurisdiction.

### **Good Time Credits**

Under current federal and D.C. law, an incarcerated felony offender may receive "good time" credit of 54 days (15%) toward service of his or her sentence for each year served. In other words, the length of the sentence is reduced by 15% a year as a reward for good behavior while in prison. There is no such good time credit awarded once an offender is released on parole in the federal or DC systems. As discussed above, currently a federal offender receives

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<sup>11</sup> United States Parole Commission, United States Parole Commission’s Rules and Procedures Manual (August 15, 2003) § 2.52(c) *available at* [http://www.usdoj.gov/uspc/rules\\_procedures/rulesmanual.htm](http://www.usdoj.gov/uspc/rules_procedures/rulesmanual.htm).

<sup>12</sup> *Id.* at § 2.52(c)(1).

<sup>13</sup> *Id.* at § 2.52(c)(2).

<sup>14</sup> Draft Committee Print: Bill 17-750 at 1: 32-34, 2: 4-7, 3: 10-13.



credit for his street time if probation is revoked but he does not receive an additional 15% reduction of his sentence as a reward for good behavior for street time.

The proposed Act thus goes farther than current federal law (and any state law that we have examined) by awarding “good time” credit in addition to permitting the offender to get credit for his street time if parole is revoked.<sup>15</sup> The Act does empower the Parole Commission to forfeit some or all of these “good time” credits, but it does not provide any guidelines for doing so.<sup>16</sup>

### **Early Termination of Parole & Release From Active Supervision**

Currently, there is no provision for a D.C. offender to have his parole terminated early, meaning before the expiration of his maximum sentence. In contrast, federal offenders may receive early termination of parole if the Parole Commission decides to do so either upon its own motion or upon request of the parolee.<sup>17</sup> Moreover, five years after a federal offender’s release on parole, the Parole Commission terminates supervision over the parolee unless it determines that it should not do so because of a likelihood that the parolee will engage in conduct violating criminal law.<sup>18</sup> In other words, there is a presumption that parole will be terminated after a maximum of five years, and the Parole Commission has discretion to terminate it even earlier.

Early termination of parole does not simply mean that the offender remains on parole but is released from active supervision. Rather, his parole completely ends.

In contrast, the only relief D.C. offenders currently can receive from the Parole Commission is release from active supervision, *i.e.* a change from supervised parole to

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<sup>15</sup> *Id.*, at 1: 32-34.

<sup>16</sup> *Id.*, at 2: 1-3.

<sup>17</sup> United States Parole Commission’s Rules and Procedures Manual § 2.43(a)(1).

<sup>18</sup> *Id.* at § 2.43(c)(1).



unsupervised parole, but not a termination of the parole.<sup>19</sup> The Parole Commission reviews parolees' cases two years after release on supervision and at least annually thereafter to determine the need for continued supervision.<sup>20</sup>

The Act, as currently drafted, does not appear to authorize the early termination of parole for District offenders. It is unclear whether this is a deliberate policy choice or simply an oversight. The Parole Commission's rule that permits early termination of parole for federal offenders provides that: "Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence."<sup>21</sup> The proposed amendment of Section 24-404(b) mirrors this language but omits the phrase "and thus jurisdiction."<sup>22</sup> Accordingly, it appears to authorize termination of supervision but not termination of the parole, itself.<sup>23</sup>

Further, there is no provision in the Act comparable to the provision for federal offenders which establishes a presumption that parole will be terminated after a maximum of five years unless the Commission determines there is a likelihood that the parolee will engage in conduct violating criminal law.

The new Section 24-404(c) proposed in the Act<sup>24</sup> appears to be identical to the Parole Commission's existing provision regarding shifting release from active supervision for D.C. offenders.<sup>25</sup> It thus does not create any new right or benefit to D.C. offenders, but simply codifies the Parole Commission's existing regulation.

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<sup>19</sup> D.C. Code § 24-404(a); see Allen v. District of Columbia Hackers' License Appeal Bd., 471 A.2d 271 (D.C. 1984).

<sup>20</sup> United States Parole Commission's Rules and Procedures Manual § 2.95(b).

<sup>21</sup> Id. at § 2.43(a)(1) (emphasis added).

<sup>22</sup> Draft Committee Print: Bill 17-750, page 2 at 13-17.

<sup>23</sup> See Allen v. District of Columbia Hackers' License Appeal Bd., 471 A.2d 271 (D.C. 1984).

<sup>24</sup> Id., page 2 at 18-22.

<sup>25</sup> U.S. Parole Commission's Rules and Procedures Manual § 2.95(b).





Finally, proposed Section 24-404(d) provides that "the Council of the District of Columbia may promulgate rules and regulations under which the Parole Commission, in its discretion, may discharge a parolee from supervision prior to the expiration of the maximum term or terms for which he was sentenced."<sup>26</sup> This provision, which is based on current Section 24-404(b), appears to be unnecessary and should either be deleted or amended. The Parole Commission already has the ability to discharge a parolee from active supervision. If the Council desires to authorize the Commission to terminate parole altogether, then the wording of proposed Section 24-404(b) and/or this section should be changed accordingly.

Additionally, there is no need for the Council to reserve authority to modify the law regarding the discharge of a parolee from supervision or the termination of parole. The Council already has that authority. And the Council is not in the business of promulgating "rules and regulations." It enacts laws; administrative agencies thereafter promulgate rules and regulations pursuant to those laws. If the Council wishes to provide guidance to the Parole Commission as to factors to consider in making decisions about early termination of parole for D.C. offenders, it can certainly set forth those factors in either section 24-404(b) or elsewhere.

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<sup>26</sup> Draft Committee Print: Bill 17-750 at 3:1-4.