

Army Regulation 15–130

Boards, Commissions, and Committees

Army Clemency and Parole Board

**Headquarters
Department of the Army
Washington, DC
23 October 1998**

UNCLASSIFIED

SUMMARY of CHANGE

AR 15-130

Army Clemency and Parole Board

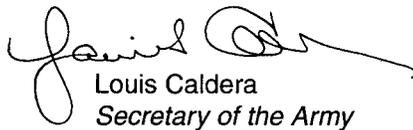
This revision--

- o Changes the composition of the Army Clemency and Parole Board to five members assigned to the Army Review Boards Agency (para 2-3).
- o Allows the board to develop and utilize a salient factor score system to help assess a candidate's suitability for parole (para 3-2a).
- o Permits personal appearances before the Board by victims or their families or persons on behalf of a prisoner (para 4-1c).
- o Addresses authority for a Convening Authority to grant clemency.

Effective 23 November 1998

Boards, Commissions, and Committees

Army Clemency and Parole Board



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Secretary of the Army

History. This regulation was last revised on 9 August 1989. Because the publication has been revised extensively, the changed portions have not been highlighted.

Summary. The Army Clemency and Parole Board is established under the authority of sections 951-954, Title 10, United States Code, and paragraph J.2 of enclosure 1 of

DOD Directive 1325.4. This regulation prescribes the procedures by which the Army Clemency and Parole Board makes recommendations and parole determinations.

Applicability. This regulation applies to the Active Army, the Army National Guard of the U.S. (ARNGUS), and the U.S. Army Reserve (USAR). This regulation is applicable during full mobilization.

Proponent and exception authority. The proponent of this regulation is the Assistant Secretary of the Army for Manpower and Reserve Affairs. The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. The Chairperson of the Army Clemency and Parole Board has been delegated authority to approve exceptions to this regulation.

Army management control process. This regulation contains management control provisions but does not identify key management controls that must be evaluated.

Supplementation. Supplementation of this

regulation and establishment of command and local forms are prohibited without prior approval from the Assistant Secretary of the Army for Manpower and Reserve Affairs (SFMR-RBC), 111 Army Pentagon, Washington, DC 20310-0111.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Assistant Secretary of the Army for Manpower and Reserve Affairs (SFMR-RBC), 111 Army Pentagon, Washington, DC 20310-0111.

Distribution. Distribution of this publication is made in accordance with initial distribution requirements number (IDN) 093136, intended for command levels C, D, and E for Active Army, Army National Guard of the U. S., and the U.S. Army Reserve.

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*This regulation supersedes AR 15-130, dated 9 August 1989.

RESERVED

Chapter 1 Introduction

1-1. Purpose

This regulation prescribes the policies, procedures, and functions of the Army Clemency and Parole Board (ACPB) in considering individuals for clemency and parole. This regulation provides internal guidance and direction for the ACPB. Unless clearly stated otherwise, this regulation does not create any right or other entitlement for any person. There is no constitutional, statutory, or regulatory right or entitlement for an individual to be granted clemency or to be released on parole.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the Glossary.

1-4. Responsibilities

a. Secretary of the Army. The Secretary of the Army or designee will retain the authority to—

(1) Remit or suspend any unexecuted portion of any sentence adjudged by a court-martial, including all uncollected forfeitures, other than a sentence approved by the President.

(2) Remit or suspend any remaining part or amount of the unexecuted portion of a sentence adjudged by a court-martial extending to death that, as approved by the President, has been commuted to a lesser punishment.

(3) Substitute for good cause an administrative discharge for an executed punitive discharge or dismissal.

(4) Restore to duty an individual whose court-martial sentence does not include a punitive discharge or includes a punitive discharge that is either suspended or unexecuted.

(5) Direct reenlistment of an individual whose court-martial sentence includes an executed punitive discharge.

(6) Make parole determinations concerning military prisoners and parolees.

(7) Commute a dismissal adjudged by a court-martial to a reduction to any enlisted grade in time of war or national emergency. A person so reduced may be required to serve the duration of the war or national emergency and 6 months thereafter.

b. Deputy Assistant Secretary of the Army (Army Review Boards Agency). The Deputy Assistant Secretary of the Army (Army Review Boards Agency), DASA (ARBA), as delegated by the Secretary of the Army, will—

(1) Take final action on clemency actions recommended by the ACPB.

(2) Decide all appeals from military prisoners denied parole by the ACPB.

(3) Supervise the ACPB Chairperson and the operation of the ACPB.

(4) Retain the authority to take final action on selected parole determinations by the ACPB as set forth in paragraph 4-2*b*.

Chapter 2 ACPB Organization

2-1. Establishment

The ACPB is established as an Army departmental committee under the authority of sections 951-954, Title 10, United States Code, and Department of Defense Directive (DODD) 1325.4, enclosure 1, paragraph J.2. The ACPB is the primary agency charged with responsibility for the exercise of Secretarial clemency and parole authority.

2-2. ACPB purpose

The ACPB is established to—

a. Make recommendations to the Secretary of the Army or designee for eligible individuals sentenced by courts-martial, concerning the following clemency actions:

(1) Remission or suspension of the unexecuted portion of any sentence adjudged by a court-martial, including all uncollected forfeitures, other than a sentence approved by the President.

(2) Remission or suspension of the unexecuted portion of a sentence adjudged by a court-martial extending to death that, as approved by the President, has been commuted to a lesser punishment.

(3) Upgrading, for good cause, of an unexecuted discharge.

(4) Restoration to duty of an individual whose court-martial sentence does not include a punitive discharge or includes a punitive discharge that is either suspended or unexecuted.

(5) Effect uniformity in sentences for similar offenders so far as practical.

(6) Reenlistment of an individual whose court-martial sentence includes an executed punitive discharge.

b. For those prisoners confined in or paroled from military correctional facilities, make parole determinations such as—

(1) Approving parole.

(2) Disapproving parole.

(3) Rescinding parole.

(4) Suspending parole.

(5) Revoking parole.

(6) Advancing parole eligibility.

c. Develop and recommend the adoption of uniform clemency and parole policies. The programs established by this regulation are primarily for the benefit of the Government. There is no right to clemency, parole, or restoration.

d. Perform other duties as directed by the DASA (ARBA).

2-3. Composition

The ACPB consists of five members who are assigned to the Army Review Boards Agency. The ACPB Chairperson will be a civilian with extensive experience in the corrections field and will possess a knowledge of military personnel policies and practices. The other members will be active duty field grade officers. At least one of the field grade officers will be from The Judge Advocate General Corps.

2-4. Direction and control

a. Chairperson. The Army Clemency and Parole Board Chairperson—

(1) Establishes meeting dates for the ACPB and presides at such meetings.

(2) Authenticates and reports ACPB clemency and parole actions.

(3) Supervises the staff of the ACPB.

(4) Represents the ACPB and the Department of the Army, as appropriate, before Government agencies or committees concerned with corrections and before professional organizations in the corrections field.

(5) Acts as liaison between Army corrections officials and the Assistant Secretary of the Army (M&RA) or the DASA (ARBA), concerning matters related to the custody, control, training, education, discipline, and welfare of Army prisoners and parolees.

(6) Maintains liaison with the Federal Bureau of Prisons, the United States Parole Commission, the Administrative Office of the United States Courts (Probation Division), and the clemency and parole boards and board officials of the other military departments.

b. Reporting. Reporting requirements are as specified in AR 5-5.

2-5. Administrative support

The ACPB is a component of the Department of the Army Review Boards Agency. The Department of the Army Review Boards Agency will provide the ACPB with all administrative support to include clerical support, office space, and travel funds.

Chapter 3 Clemency and Parole Considerations

3-1. Clemency and parole eligibility

a. Clemency petition authority of the Secretary of the Army. The Secretary of the Army or designee, is empowered by article 74(a), of the Uniform Code of Military Justice (UCMJ) to remit or suspend any part or amount of a court-martial sentence, other than a sentence approved by the President, and by article 74(b), UCMJ, for good cause, to substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. Petitions to the Secretary of the Army for clemency under article 74, UCMJ, should be addressed to The Judge Advocate General (DAJA-CL), 2200 Army Pentagon, Washington, DC 20310-2200, and must be submitted by the convicted soldier or his/her attorney or a recognized veterans' organization acting on the soldier's behalf. If the soldier is in confinement, the petition shall be forwarded through the confinement facility. The confinement facility shall forward the petition, along with copies of relevant records reflecting on the soldiers record in confinement. Petitioners not in confinement shall forward the petition directly.

b. Other clemency petition authorities. Any general court-martial convening authority with personal jurisdiction over a convicted soldier may exercise clemency pursuant to article 74a, UCMJ, as designated by the Secretary of the Army. Once a convening authority has taken action on the record of trial pursuant to article 60, UCMJ, any clemency action affecting a punitive discharge or dismissal is withheld to the Secretary of the Army, Assistant Secretary of the Army (M&RA), or in the case of clemency and parole petitions under chapter 48 of Title 10, U.S. Code, the Deputy Assistant Secretary of the Army (ARBA) or designee. Clemency for U.S. Army soldiers confined in non-Army confinement facilities will be forwarded with appropriate confinement records and commander's recommendation to the Army general court-martial convening authority for the command to which the prisoner is currently assigned.

c. Conditions for consideration. Normally, the ACPB will not consider a case for clemency or parole unless all of the following conditions are met:

(1) The individual meets the clemency or parole eligibility criteria listed in *d* and *e* below.

(2) The individual clemency or parole case file has been reviewed by a disposition board and the correctional facility commander or the commander's designee or by an appropriate Federal correctional or probation official.

(3) Action on the adjudged sentence has been taken by the court-martial convening authority pursuant to Rule for Courts-Martial 1107, Manual for Courts-Martial, United States.

d. Clemency. The ACPB will consider an eligible individual for clemency as follows:

(1) When the approved sentence to confinement is less than 12 months, there will be no clemency consideration, except as noted below.

(2) When the approved sentence to confinement is 12 months or more but less than 10 years, clemency consideration will be not later than 9 months from the date confinement began and at least annually thereafter.

(3) When the approved sentence to confinement is 10 years or more but less than 20 years, clemency consideration will be no later than 24 months from the date confinement began and at least annually thereafter.

(4) When the approved sentence to confinement is 20 years or more but less than 30 years, clemency consideration will be not later than 3 years from the date confinement began and at least annually thereafter.

(5) When the approved sentence to confinement is 30 years or more, to include a sentence to confinement for life, clemency consideration will be not later than 5 years from the date confinement began and at least annually thereafter.

(6) A prisoner sentenced to death is not eligible for clemency

consideration unless the sentence has been commuted to a lesser punishment.

(7) An individual confined in or paroled from a military or Federal correctional facility—even when serving less than 12 months' confinement—may be considered for clemency by the ACPB for good cause as shown on the individual's written application for special consideration for clemency. An application for special consideration for clemency will be submitted through the appropriate correctional facility commander or Federal correctional official for a recommendation prior to consideration by the ACPB.

(8) An individual released on parole will be considered for clemency 12 months after release on parole and upon request annually thereafter until expiration of the sentence.

(9) An individual returned to military control as a parole violator will be considered for clemency no earlier than 12 months from the date the individual is returned to the control of a military correctional facility.

(10) When exceptional circumstances exist or for other good cause, the ACPB may consider a person serving a sentence of any length for clemency at any time prior to completion of an approved sentence. The ACPB may not consider a person whose sentence extends to death.

(11) Prisoners may elect not to request clemency; however, a local disposition board will consider the prisoner's file and make recommendations for measures of clemency as appropriate. The prisoner's waiver and the disposition board's recommendations will be forwarded to the ACPB.

e. Parole. A prisoner in a military correctional facility will be considered for parole when the prisoner first becomes eligible and annually thereafter.

(1) A prisoner is eligible for parole when requested by the prisoner and when the following conditions are met:

(a) The prisoner has an approved court-martial sentence that includes an unsuspended dismissal or punitive discharge or the prisoner has been administratively discharged or retired.

(b) The prisoner has an unsuspended court-martial sentence or aggregate court-martial sentence to confinement for 12 months or more.

(c) The prisoner has served one-third of the term of confinement, but in no case less than 6 months, or the prisoner has served 10 years of a sentence to confinement for 30 years or more or a sentence to life.

(2) A prisoner sentenced to death is not eligible for parole unless the sentence is commuted to a lesser punishment.

(3) A prisoner who is otherwise eligible for parole with an approved sentence including confinement and a fine and containing a provision for further confinement if the fine is not paid will be considered for parole based upon the initial sentence to confinement. Any confinement resulting from a failure to pay a fine will not be considered in computing eligibility for parole.

(4) A prisoner who is otherwise eligible for parole with an approved sentence including a fine and no confinement and containing a provision for confinement if the fine is not paid will be considered for parole upon imprisonment for nonpayment of the fine.

(5) Good conduct time and any other sentence reductions will be excluded in computing eligibility for parole.

(6) A prisoner returned to military control as a parole violator normally will be considered for parole no earlier than 12 months from the date the individual is returned to military control.

(7) When exceptional circumstances exist or for other good cause, the ACPB may waive any parole eligibility requirement with the exception of (2) above.

(8) If prisoners waive parole, sections I, II, and IV of DA Form 1704-R (Parole Statement) will be completed by confinement facility personnel, signed by the prisoner to acknowledge waiver, and forwarded to the ACPB. Despite a waiver of parole, a local disposition board may consider parole.

(9) Prisoners transferred to Federal facilities are under the control

of the U.S. Parole Commission, unless otherwise designated in writing. As such, Federal and Commission policies and procedures apply, not those of this regulation.

3-2. Clemency and parole considerations

a. Criteria. When considering a case for clemency or parole, the ACPB will consider each case on its own merits. When applicable, the ACPB may consider the criteria listed in (1) through (6) below. Determination of the relevance and weight to be accorded any factor is within the broad discretion of the ACPB. In addition, the ACPB will use a salient factor score and evaluation guidelines when considering prisoners for parole suitability. The salient factor guidelines provide a customary range of time to be served in confinement before release on parole. The customary ranges determined by salient factors serve as guidelines only. The guidelines are not legal or regulatory mandates and the ACPB is not bound by them. The guidelines are established to identify and recognize good institutional adjustment and program progress. The salient factor guidelines assist the ACPB in determining parole prognosis. Mitigating or aggravating circumstances may justify decisions above or below the guidelines. The ACPB shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(1) The ACPB may consider the nature and circumstances of the offense to determine whether clemency or parole would depreciate the seriousness of the offense or promote disrespect for the law. In that regard, the ACPB may consider any of the following:

- (a) The effect its decision may have on the deterrence of the offender and others from committing other or similar crimes.
- (b) The protection and welfare of society.
- (c) The need for good order and discipline within the Army.
- (d) The rehabilitation of the offender.
- (e) The extent and nature of any violence or the potential for violence, associated with the offense.
- (f) If a weapon was involved, the type of weapon and how it was used.
- (g) The physical, financial, social, psychological, and emotional harm done to or loss suffered by, any victim of the offense.
- (h) The motive of the offender.
- (i) Whether the offender received any gain from the offense.
- (j) The extent of the offender's participation in the offense.
- (k) The criminal or administrative disposition of any co-accused and the degree of that co-accused's complicity in the offense.

(l) Whether the offender committed other or similar offenses.

(2) The ACPB may consider the individual's civilian history and the quality of the prisoner's prior military service when considering a case for clemency or parole. The ACPB may give whatever weight it deems appropriate to any of the following:

- (a) Prior honorable discharges.
- (b) Combat service.
- (c) Awards and decorations.
- (d) Favorable personnel actions.
- (e) Prior criminal activity or evidence of misconduct. In determining the probative value of prior criminal activity or evidence of misconduct, the ACPB may consider the nature and circumstances of the prior act and the lapse of time between the act and the current offense.

(3) The ACPB may review the conduct and disciplinary records of the prisoner's confinement to determine whether the prisoner has achieved the degree of rehabilitation necessary to warrant clemency or parole. Prisoners are expected to comply with all institutional rules and to participate meaningfully in available correctional treatment programs. Relevant to this review are the following:

- (a) Comments by institution counselors.
- (b) Reports of institution boards.
- (c) Evaluations by institution cadre.
- (d) Evidence of enrollment in or completion of available education, vocational, and correctional treatment programs.

(4) The ACPB may consider any of the following personal characteristics of the prisoner:

(a) The prisoner's age, education, experience, psychological profile, medical condition, and marital and family status.

(b) The prisoner's need for specialized treatment.

(c) Whether the prisoner has recognized the wrongfulness of his or her confining offense, shown genuine remorse, achieved a sense of purpose, demonstrated a desire for self-improvement, or exhibited self-discipline.

(5) The ACPB will consider the prisoner's parole plan before granting parole. Prisoners eligible for parole must agree to abide by the parole plan before their parole release. A parole plan should be tailored to motivate the prisoner for continued socialization. The parole plan will include, at a minimum, the following:

(a) A residence requirement stating where and with whom a parolee will live.

(b) Except in the case of a medically disabled prisoner, a requirement that the prisoner have an offer of guaranteed employment, an offer of effective assistance to obtain employment, or acceptance in a bona fide educational or vocational program.

(c) A signed agreement by the prisoner that the prisoner will abide by the parole plan and the conditions of parole.

(d) Any conditions of parole deemed reasonable and appropriate. These may include a requirement to begin or continue treatment for alcohol or drug abuse, the payment of restitution, or the payment of a fine ordered executed as part of the prisoner's court-martial sentence.

(6) The ACPB may obtain the views of any victim of the prisoner's offense. The victim, the victim's family members or the victim's representatives may submit matters in writing or by audio tape or video tape or by a combination of all methods for consideration by the ACPB.

b. Restoration or reenlistment. The ACPB may recommend the restoration or reenlistment of a prisoner or parolee who demonstrates potential for further military service.

(1) In selecting a prisoner or parolee for restoration or reenlistment, consideration may be given to the following:

- (a) The individual's motivation for future honorable service.
- (b) The individual's ability to perform military duties in a creditable manner.
- (c) The individual's mental and physical fitness for continued service.

(d) The impact of the individual's restoration or reenlistment on the morale, good order, and discipline of the Army.

(2) The ACPB may recommend that the individual be required to successfully complete a restoration training program as a condition for restoration or reenlistment. Restoration training programs will follow the guidelines outlined in AR 190-47. A prisoner is afforded no right by this regulation to participate in any particular restoration training program. Moreover, the needs of the Service govern restoration and reenlistment programs, not the desires of individual prisoners. A prisoner who is not selected for such a program may not appeal or otherwise contest nonselection. Neither restoration nor reenlistment affects any aspect of an approved, adjudged sentence, including the character of any approved, executed discharge.

c. Courts-martial findings. The Board shall refrain from developing conclusions as to guilt or innocence and shall accept the findings of Courts-Martial as approved or affirmed as final.

Chapter 4 Clemency and Parole Review Guidance

4-1. General

a. Impartial vote basis. The ACPB will review each clemency or parole case on an individual and impartial basis. Clemency recommendations and parole determinations will be made by a majority vote. At the discretion of the ACPB, a minority opinion may be included with its decision.

b. Analyst review. Prior to the presentation of a case to the ACPB, an ACPB case analyst will conduct an independent evaluation of the case. The case analyst will make a recommendation to

the ACPB, using DA Form 4449 (Clemency Action Record) or DA Form 4459 (Parole Action Record).

c. Appearance before the ACPB. The ACPB proceedings are nonadversarial. Individuals being considered by the ACPB are not authorized to make personal appearance before the Board. Others, including family members, friends, or professional associates, or private attorneys may, at no expense to the Government, appear on behalf of an individual being considered for clemency or parole. The ACPB retains absolute authority to determine who may be permitted to appear in any case, to limit the time of any presentation before the ACPB, and to ensure the orderly nature of the proceedings. In addition to personal appearances made on behalf of the individual being considered for clemency or parole, victims, victim's families, and representatives may also appear, at no expense to the Government, to present information concerning the impact of the offenses committed by the individual being considered for clemency or parole on the victim or the victim's family. The ACPB retains absolute authority to determine who may be permitted to appear, to limit the time of any presentation before the ACPB, and to ensure the orderly nature of the proceedings in connection with the victims and their families, as well.

d. Notification and privacy rights. The ACPB Chairperson and his or her staff may discuss clemency or parole cases with the following individuals consistent with the privacy rights of the individual concerned:

- (1) The individual concerned.
- (2) The individual's family, next of kin, or authorized representative.
- (3) The victim, victim's family, next of kin, or authorized representative. Department of Defense Directive 1030.1 requires notice to victims and witnesses, who so request, whenever there is any change in prisoner status. Changes in status that may require such notification include clemency that results in parole or other release from confinement, including restoration to duty. Correctional facility commanders will ensure that victims are notified of their right to personal appearance before the ACPB, or to submit matters in writing or by audio/video tape.

(4) Any person having a need to know in the performance of his or her official duties or having information required by the ACPB.

e. Documentation required. The following documentation (or its computer-generated equivalent) will be made available to the ACPB during deliberations when considering a case for clemency or parole:

- (1) DD Form 1476 (Prisoner's Admission Summary Data).
- (2) DD Form 1477 (Prisoner's Progress Summary Data).
- (3) DD Form 1478 (Prisoner's Summary Continuation Sheet).
- (4) DD Form 1479 (Prisoner's Assignment and Clemency Board Action).
- (5) DA Form 1704-R (Parole Statement) for parole cases only.
- (6) Correspondence received or sent by the ACPB concerning the clemency or parole case.
- (7) Statements presented by the prisoner detailing the prisoner's preferences concerning reenlistment, restoration, clemency, and parole.

(8) Any other data relevant to the consideration of the ACPB including but not limited to the following:

- (a) Pertinent extracts from the prisoner's correctional treatment file.
- (b) Medical, psychological, or psychiatric reports.
- (c) A summary of the court-martial record of trial, the court-martial record of trial, or court-martial promulgating orders, exhibits, and allied papers.
- (d) Analyses and recommendations of correctional facility disposition boards and command and staff personnel.
- (e) Matters submitted by or on behalf of the individual being considered.

f. Elimination of discrimination. Clemency and parole case files will not contain a photograph of the individual being considered nor

will the ACPB consider the individual's race, color, religion, gender, or national origin as a factor in determining the appropriateness of clemency or parole.

4-2. Clemency and parole actions

a. Clemency. The ACPB's clemency recommendations are subject to final approval by the ACPB Chairperson.

(1) When the ACPB recommends an individual for restoration or reenlistment, the ACPB will also recommend whether that individual should attend an appropriate course of military training or instruction prior to that individual's restoration or reenlistment.

(2) When the ACPB recommends an individual for reenlistment, the ACPB will also recommend the pay grade at which the individual should be reenlisted.

(3) The ACPB Chairperson is the approval authority for clemency recommended by the ACPB. Action by the ACPB Chairperson does not limit petitions under Article 74, UCMJ.

(4) The ACPB Chairperson will notify the individual concerned in writing of final clemency actions.

b. Secretary of the Army parole authority. The ACPB will submit cases with recommendations utilizing DA Form 4459 to the Secretary of the Army or designee for action when they are of a special nature or embody special circumstances. Included in this category are the following:

(1) Cases in which either the Secretary of the Army or designee has indicated a personal interest.

(2) Cases involving national security matters as determined by the Secretary of the Army or designee.

(3) Any individual whose parole may be the subject of controversy or substantial congressional or press interest as determined by either the Secretary of the Army, designee, or the Chairperson of the ACPB.

(4) Cases in which the ACPB recommends parole for any individual convicted of any single offense for which the maximum authorized confinement as determined by the current Manual for Courts-Martial is in excess of 35 years.

c. Parole authority of the ACPB. The ACPB is the approval authority in all parole cases other than those included in *b* above.

(1) The ACPB will make written parole determinations using DA Form 4459.

(2) The ACPB will furnish the individual concerned with written notice of a final parole determination not later than 15 working days from the date the determination is made. If parole is approved, a DA Form 1707 (Certificate of Parole), signed by the ACPB Chairperson will accompany the notice. If parole is denied the notice will state the reasons for the denial.

4-3. Parole denial appeal

A prisoner who is denied parole may submit a written appeal within 30 calendar days of receipt of the written notification of the denial. New or additional material or information that was not previously considered by the ACPB may be included in the appeal.

a. Initiation of appeal. An appeal will be submitted through the commander of the correctional facility in which the prisoner is confined. The correctional facility commander will take the following actions:

- (1) Review the appeal.
- (2) Recommend an appropriate disposition and explain the basis for that recommendation.
- (3) Forward the appeal to the ACPB for referral to the DASA (ARBA).

b. Appeal response. Final action on all appeals of a parole denial by the ACPB is taken by the DASA (ARBA), except for an offender serving a sentence of confinement for life that has not been reduced to a number of years. The DASA (ARBA) may affirm a denial of parole in such cases, but only the President or the Secretary of the Army may grant parole on appeal of a parole denial for an offender serving a sentence of confinement for life that has not been reduced to a term of years.

c. Notification of action. The DASA (ARBA) will furnish the individual concerned with written notice of final action on a parole

appeal. If the parole appeal is approved, a DA Form 1707 signed by the ACPB Chairperson will accompany the notice. If the parole appeal is denied, the notice will state with particularity the reasons for the denial.

4-4. Parole rescission

When an effective date for parole has been set, release on that date is conditional upon the continued satisfactory conduct by the prisoner. The ACPB will review any reported prisoner misconduct occurring while the prisoner is awaiting release on an approved parole. The ACPB Chairperson may temporarily delay the release of a prisoner on parole, pending recommendations from the facility commander.

a. Correctional facility commanders will provide the ACPB with a report detailing the facts and circumstances of the prisoner misconduct. The report will include any relevant report of investigation or other documents. The correctional facility commander will recommend an appropriate disposition of the prisoner's case.

b. The correctional facility commander will provide the prisoner with the following:

(1) Written notice of the basis for the parole rescission proceedings.

(2) A reasonable opportunity to present written matters in the prisoner's behalf relevant to the parole rescission proceedings.

c. Upon review of the correctional facility commander's report and recommendation, the ACPB may take the following actions:

(1) Make no change to the original parole determination.

(2) Rescind parole and direct the date upon which the prisoner will next be eligible for parole consideration.

(3) Take any other appropriate parole determination action.

(4) In cases when a prisoner has been approved for parole and subsequently declines such release, the prisoner's declination will be forwarded to the ACPB to rescind the parole.

d. Parole rescission actions by the ACPB are final and not subject to appeal.

e. The ACPB will furnish the prisoner concerned with written notice of a final parole rescission action. If parole is rescinded, the notice will state the reasons for the rescission.

4-5. Parole revocation

A parolee will remain on parole provided that the parolee substantially complies with the conditions of the parole. When the ACPB determines that a parolee has violated a condition of parole, the ACPB may take action to revoke that parole.

a. *Standard.* A determination to revoke parole will be supported by a preponderance of the evidence that the parolee has violated a condition of parole and that the violation warrants parole revocation. The fact that a parolee has neither committed a criminal offense nor has been convicted of committing a criminal offense does not preclude a decision to revoke parole. In cases of suspension or revocation of parole, this regulation provides no benefit or right to any prisoner whose parole is suspended or revoked. Computation of any sentence remaining to be served will be done in accordance with applicable provisions of this regulation and other Army regulations (ARs), primarily AR 633-30. Prisoners who have been transferred to the Federal Bureau of Prisons, however, shall have their remaining sentences and related issues computed according to Army regulations when parole is suspended or revoked.

b. *Suspension of parole.* Upon receipt of information that a parolee may have violated a condition of parole, the ACPB Chairperson will, prior to initiating further parole revocation proceedings, determine whether parole should be suspended pending resolution of the alleged violation. Upon reviewing the facts and circumstances of the alleged parole violation, the ACPB Chairperson may take the following actions:

(1) Direct that parole not be suspended.

(2) Direct that parole be suspended and that the parolee remain released under supervision.

(3) Direct that parole be suspended and that a detainer be placed

against the parolee, if already confined, with the appropriate confining authority.

(4) Direct that parole be suspended and that the appropriate military authority return the parolee to custody at a military confinement facility. This action will be taken only if the ACPB Chairperson finds either that the parolee is a danger to the public safety, is a threat to him/herself, is a risk to flee supervision, or is not in compliance with the conditions of parole.

(5) Modify the conditions of parole upon the recommendation of the supervising U.S. Parole Officer.

(6) Direct a letter of reprimand/warning be issued. When a letter of reprimand is issued, it does not negate consideration of the identified misconduct at future preliminary or parole violation hearings. Additionally, it does not shield that portion of time on parole from forfeiture as a result of a future parole revocation.

c. *Preliminary interview.* When parole has been suspended, a preliminary interview will be held to determine whether there is probable cause that the parolee violated a condition of parole.

(1) Absconding parole or conviction of a Federal, State, or local crime for which confinement is an authorized punishment will constitute probable cause that the parolee has violated a condition of parole. The ACPB Chairperson may waive the preliminary interview when such a cause exists.

(2) Preliminary interviews will normally be conducted by a U.S. Probation Officer in the district where the parolee is supervised, provided that the probation officer has not previously supervised the parolee. The ACPB Chairperson may appoint an ACPB hearing examiner or another neutral and detached official to conduct a preliminary interview.

(3) The parolee will be provided with the following rights:

(a) Written notice of the preliminary interview, to include the purpose of that interview.

(b) An opportunity to inspect the evidence upon which the preliminary hearing is based.

(c) An opportunity to be heard and to present relevant matters in the parolee's behalf. Witnesses called by the parolee will be at no expense to the Government.

(d) The parolee may be represented at the preliminary interview by an attorney at no expense to the Government. The role of an attorney's representative at a preliminary interview will be limited in accordance with d(5) below.

(4) The report of the preliminary interview together with a recommended disposition will be forwarded to the ACPB Chairperson.

d. *Parole violation hearing.* The ACPB Chairperson will review the preliminary interview report and any other relevant matters. If the ACPB Chairperson finds that there is probable cause that the parolee violated a condition of parole, the ACPB Chairperson will direct that a parole violation hearing be held. If the ACPB Chairperson finds probable cause does not exist to believe that the parolee violated a condition of parole, the ACPB Chairperson will return the parolee to the original parole status.

(1) The purpose of a parole violation hearing is to determine whether the parolee has violated a condition of parole and, if so, whether parole should be revoked.

(2) The parole violation hearing will normally be held at or near the place of the alleged parole violation to afford the parolee access to witnesses and documentary evidence. Where the parolee has been returned to a military confinement facility or is otherwise confined by civil authorities, the parole violation hearing may be held at the place of confinement.

(3) The ACPB Chairperson will appoint a hearing officer to conduct the parole violation hearing. The hearing officer normally will be experienced in the corrections field and will be a field grade officer or a General Schedule (GS) civilian in the grade of GS-12 or above. The hearing officer will be neutral and detached.

(4) Formal rules of evidence do not apply to parole violation hearings. The hearing officer and the ACPB may use any relevant evidence when considering a case for parole revocation.

(5) The parolee will be afforded the following rights:

(a) Written notice of the time and place of the parole violation hearing, informing the parolee of the alleged violation, the purpose

of the parole violation hearing, the evidence upon which the parole violation hearing is based, the parolee's rights at the parole violation hearing, and the options available to the ACPB.

(b) Disclosure of the evidence upon which a finding of violation may be based, at least 10 days before the parole violation hearing.

(c) The parolee may present witnesses and documentary evidence and may cross-examine adverse witnesses. A parolee request for witnesses will be made 10 working days prior to the hearing and will be subject to the approval of the hearing officer. The hearing officer need not delay the parole violation hearing if a witness requested by the parolee declines to appear or fails to appear at the hearing. The hearing officer may limit or exclude any irrelevant or repetitious witness, statement, question, or documentary evidence. The attendance of witnesses on behalf of the parolee is voluntary and will be at no expense to the Government.

(d) The parolee may be represented at a parole violation hearing by an civilian attorney or by a person of the parolee's choice, at no expense to the Government. If requested by the parolee, a military attorney will be detailed by the U.S. Army Trial Defense Service. The parolee has no right to a military attorney of the parolee's choice. The role of the parolee's representative will be limited to the examination of witnesses, presentation of evidence, and the offering of a statement on the parolee's behalf with regard to whether parole should be revoked. During the hearing, the parolee's representative will not be permitted to enter objections or challenges. Objections or challenges may be submitted in writing to the hearing officer for attachment to the hearing record. For good cause, the hearing officer may deny a parolee's choice of a non-attorney representative.

(6) The hearing officer will forward a summarized transcript of the parole violation hearing, all documentary evidence and allied papers considered, and a recommended disposition to the ACPB Chairperson.

e. Parole revocation determination. The ACPB Chairperson will present to the ACPB the parole violation hearing record and the recommendation of the hearing officer, together with those matters normally considered by the ACPB in making parole determinations. The ACPB may take any of the following actions:

(1) Revoke parole.

(2) Revoke parole and reparole the violator.

(3) Return the parolee to the original parole status, to include removal of any detainer placed against the parolee as a result of the alleged violation.

(4) Direct that the violator be reprimanded and that a record of the reprimand be placed in the violator's clemency and parole records.

(5) Modify the original conditions of parole.

(6) Revoke parole solely upon a determination that a parolee has violated a condition of parole by a failure to pay a fine or restitution, only if it finds one of the following conditions exists:

(a) The parolee has willfully refused to pay the fine or restitution when the parolee has sufficient resources to pay.

(b) The parolee has failed to make a sufficient bona fide effort to obtain employment, borrow money, or legally acquire sufficient funds with which to pay the fine or restitution.

(c) If the parolee cannot pay the fine or restitution, despite sufficient bona fide efforts to do so, parole may be revoked only if no alternative disposition exists that will adequately serve the need for good order and discipline within the Army and the correctional treatment of the parolee.

(7) Parole revocation actions by the ACPB are final and not subject to appeal.

(8) The ACPB will furnish the parolee with written notice of a final parole revocation action. If parole is revoked, the notice will state the reasons for the revocation.

f. Credit for service of sentence on parole. A prisoner whose parole is revoked will receive credit for time spent on parole except as follows:

(1) If the parolee has been convicted of a new offense committed after being released on parole, that is punishable by a term of imprisonment, the ACPB may order forfeiture of the time from the date of parole release to the date parole is suspended. An actual

term of confinement need not have been imposed. If a conviction occurs following a parole violation hearing, the ACPB may reconsider the forfeiture of time served on parole or other disposition, as appropriate.

(2) If the ACPB finds that a parolee intentionally refused or failed to respond to any reasonable request, order, or summons of the ACPB or any agent thereof, including the supervising U.S. Probation Officer, it may order the forfeiture of time during which the parolee so refused to respond.

(3) If the ACPB finds that a parolee was not materially in compliance with the conditions of parole, the ACPB may order the forfeiture of time during which the parolee was in such material noncompliance.

(4) If the ACPB finds that a parolee has failed to comply with the conditions of parole, and failed to comply with reasonable requests, orders, or summons of the ACPB, or any agent thereof, including the prisoner's supervising U.S. Probation Officer, it may order the forfeiture of up to all time spent on parole.

Appendix A References

Section I Required Publications

Misc Pub 27-7

Manual for Courts-Martial, United States, 1984. (Cited in para 3-1.)

Section II Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this publication.

AR 5-5

Army Studies and Analyses

AR 27-10

Military Justice

AR 190-47

The Army Corrections System

AR 633-30

Military Sentences to Confinement

DOD Directive 1030.1

Victim and Witness Assistance

DOD Directive 1325.4

Confinement of Military Prisoners and Administration of Military Correctional Programs and Facilities

Section III Prescribed Forms

Forms that have been designated for electronic generation (EG) must replicate exactly the content (wording), format (layout), and sequence (arrangement) of the official form.

DA Form 1707

Certificate of Parole

DA Form 4449

Clemency Action Record

DA Form 4459

Parole Action Record

Section IV Referenced Forms

DA Form 1704-R

Parole Statement (EG)

DD Form 1476 (EG)

Prisoner's Admission Summary Data

DD Form 1477 (EG)

Prisoner's Progress Summary Data

DD Form 1478 (EG)

Prisoner's Summary Continuation Sheet

DD Form 1479 (EG)

Prisoner's Assignment and Clemency Board Action

Glossary

Section I Abbreviations

ACPB

Army Clemency and Parole Board

ARNGUS

Army National Guard of the U.S.

ASA (M & RA)

Assistant Secretary of the Army (Manpower and Reserve Affairs)

DASA (DARB)

Deputy Assistant Secretary of the Army (Department of the Army Review Boards)

GS

General Schedule

IDN

initial distribution number

UCMJ

Uniform Code of Military Justice

USAR

U.S. Army Reserve

Section II Terms

Clemency

An action taken to remit or suspend the unexecuted part of a court-martial sentence, to include upgrading a discharge and the restoration or reenlistment of an individual convicted by a court-martial.

Parole Violation hearing

A hearing to determine whether a parolee has violated a condition of parole, and whether parole should be revoked.

Parole

The release of a prisoner from a correctional facility to the community under the supervision of a U.S. Probation Officer.

Restoration

The return to active duty status of an individual whose court-martial sentence does not include a punitive discharge or includes a punitive discharge that is either suspended or unexecuted.

Preliminary Interview

A hearing to determine whether there is probable cause that a parolee violated a condition of parole.

Reenlistment

The return to active duty status of an individual whose court-martial sentence includes an executed punitive discharge.

Remission

Annulling in whole or part the unexecuted

portion of a court-martial sentence that has been approved by the convening authority.

Suspension

Holding in abeyance the execution of an approved court-martial sentence.

Salient factors

A system established to aid in determining parole prognosis-potential risk of parole violation.

Time spent on parole

The number of days a parolee spends on parole in compliance of parole conditions. Commonly referred to as "Street Time."

Section III Special Abbreviations and Terms

This section contains no entries.

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