

WHAT EVERY TRIAL ATTORNEY SHOULD KNOW ABOUT THEIR CLIENTS ON SUPERVISED RELEASE OR PAROLE

1. **The Parole Commission must credit a consecutive sentence received in a pending criminal case towards the client's guidelines in the parole case based upon the same charge.** This is the most important reason for trailing the criminal case. While the sentences imposed are consecutive, the Commission must credit the consecutive sentence toward the parole guidelines. If your client has the revocation hearing before the sentencing in court, he/she will not receive this credit.¹
2. **All clients on supervised release and most clients on parole will lose their street time if they are convicted on a new charge.** Under the new street time law, only parolees with convictions lose street time. Consequently, it may be of great benefit for a parolee (particularly someone who is nearing the end of his/her parole term) to resolve the parole matter prior to the court case to avoid losing street time. All clients on supervised release lose credit for the time they have been on supervised release. Be aware that upon a conviction, clients will not only receive a revocation sentence, but their time on supervision will very likely be significantly extended.
3. **The credit your clients receive towards their guidelines do not apply toward their remaining back-up time on their supervised release.**² This is a difficult concept and an important one. **Example:** Client is on supervised release for escape, which has 2 years of back-up time. The client is charged with robbery, which has parole guidelines of 60-72 months, and receives a sentence of 36 months in court. The 36 months does not reduce the 2 years of back-up time; it only applies to the guidelines of 60-72 months. After serving the 36 months, your client will likely receive the 24 months of back-up time from the Parole Commission because the 36 months plus 24 months adds up to 60 months, the bottom of the 60-72 month guideline range for robbery.
4. **Often the benefit of pleading to receive a lesser sentence in court only results in a greater sentence from the Parole Commission.** This is especially true when a client's guidelines in the parole case are greater than his/her guidelines in court. **Example:** Client pleads guilty to simple assault and receives a sentence of 30 days. His parole guidelines are 16-22 months for the charge. The Commission will likely sentence him to 15-21 additional months. The same client goes to trial and receives a sentence of 6 months after a guilty finding. The Commission will now likely sentence him to 10-16 additional months. This is particularly true of misdemeanors where the parole guidelines are much higher than the sentences in court.
5. **The benefit of pleading to a lesser charge can be of far greater benefit to a client's parole consequences.** A conviction in court results in an automatic finding before the Parole Commission on the charge of conviction. If the Parole Commission seeks any charge with a greater offense severity than the conviction, the client retains the right to a local hearing and the Parole Commission must prove the charge at a contested hearing. If your client is charged with ADW and you are able to secure a plea to simple assault it is very unlikely the Commission can find your client guilty of ADW without an independent local hearing.

¹ A client on supervised release cannot seek a corrected Notice of Action because he/she subsequently receives a consecutive sentence from the court. However, by filing a written request, a parolee can.

² Back-up time for underlying convictions for offenses committed on or after August 5, 2000 can be determined in a number of ways, including by reference to D.C. Code §24-403.01.

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6. **Some pleas are very helpful to reduce revocation exposure, while others are not.** For example, on drug cases, reducing a distribution or PWID to simple possession is of great benefit; on a robbery case, a plea to assault and theft may be of great benefit; on a gun charge, reducing CPWL to UF/UA is of no benefit. A plea to attempt of the underlying charge is never of any benefit in reducing client's parole guidelines. The best way to ensure your plea has the maximum benefit for parole is to consult with your client's parole attorney and to consult the Parole Commission's regulations, which are easily accessible on the United States Parole Commission's website.
7. **In case of pleas, control the facts contained in proffers.** The facts in a proffer can be important in determining how the Parole Commission will rate offense severity. Details in the proffer such as the value of property, amount of drugs, circumstances of an unlawful entry, number of guns or caliber of ammunition, or injuries in an assault can raise or lower guidelines. **Example:** Client is charged with robbery and pleads to assault and theft: a proffer which does not present the assault and theft as simultaneous, would be very helpful. Generally, the Commission will not receive the proffer, but the parole attorney can provide it to the Commission if it is helpful.
8. **It is almost always helpful to have a client's parole warrant executed at the outset of the case.** When requesting a nominal bond for a client with a parole warrant, make certain that the parole warrant is executed first. A release to halfway house will generally not serve to execute the warrant nor result in your client being placed in a halfway house. Client must be released to HISP or PR to execute the parole warrant. If your client remains held on the new criminal case, the parole warrant will be held as a detainer, usually even through the completion of the new sentence if there is one.
9. **When the judge will not release a client so the parole warrant can execute, the client will serve the sentence with a detainer.** The detainer will execute upon the completion of the sentence. As a result, your client will not be eligible for halfway house, and will have to wait in the institution, often for months, prior to seeing the Commission. Because in many cases, the new court sentence exceeds the parole guidelines, this can result in your client serving additional time in prison.
10. **Most importantly, communicate with the attorney representing your client on the parole revocation matter.** The consequences of the parole violation often are greater than the court case itself. Make sure to analyze those consequences and advise your client of them as part of your trial strategy. If your client's parole hearing precedes the trial, get a copy of the CD of the parole hearing; you will have the witnesses' testimony recorded under oath. If your client has been sentenced by the Parole Commission, or you have learned the likely sentence from the Commission in advance of your sentencing, you can provide that information to the judge in mitigation. There are countless ways in which we can help each other help our clients. When the trial attorney and parole attorney communicate and coordinate, our clients win!

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