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## LEGISLATIVE SUMMARY



***Bill C-39:***  
***An Act to amend the Corrections and  
Conditional Release Act and to make  
consequential amendments to other Acts***

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## ***Legislative Summary of Bill C-39***

HTML and PDF versions of this publication are available on IntraParl (the parliamentary intranet) and on the Parliament of Canada website.

In the electronic versions, a number of the endnote entries contain hyperlinks to referenced resources.

*Ce document est également publié en français.*

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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# LEGISLATIVE SUMMARY OF BILL C-39: AN ACT TO AMEND THE CORRECTIONS AND CONDITIONAL RELEASE ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

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## 1 BACKGROUND

Bill C-39, An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts (short title: Ending Early Release for Criminals and Increasing Offender Accountability Act) was introduced and received first reading in the House of Commons on 15 June 2010.<sup>1</sup>

The bill is designed to increase offenders' accountability and tighten the rules governing eligibility dates<sup>2</sup> for parole (that is, day parole and full parole) and statutory release by:

- stating that the active participation of offenders in attaining the objectives of their correctional plan and their progress will be considered in decisions regarding their conditional release or any other privilege (clause 5);
- abolishing accelerated parole reviews (clause 30);
- extending the length of time that offenders convicted of a subsequent offence must serve before being eligible for parole (clause 25);
- expanding the categories of offenders subject to continued detention after their statutory release date when they have served two thirds of their sentence (e.g., offenders convicted of child pornography, luring a child or breaking and entering to steal a firearm) (clause 55);
- increasing the waiting period from six months to a year following the Parole Board of Canada's decision to refuse a parole application (clause 27).

The bill seeks to increase public safety by:

- authorizing a peace officer to arrest without a warrant an offender who is on conditional release for a breach of conditions (clause 42);
- granting the Correctional Service of Canada permission to oblige an offender to wear a monitoring device as a condition of release, when release is subject to special conditions regarding restrictions on access to a victims or geographical areas (clause 14); and
- increasing the number of reasons for the search of vehicles at a penitentiary to prevent the entry of contraband or the commission of an offence (clause 15).

Finally, the bill also focuses specifically on the interests of victims, by:

- expanding the definition of victim to anyone who has custody of or is responsible for a dependant of the main victim if the main victim is dead, ill or otherwise incapacitated (clause 2);

- allowing disclosure to a victim of the programs in which an offender has participated for the purpose of reintegration into society, the location of an institution to which an offender is transferred, and the reasons for the transfer (clause 7); and
- entrenching in the Act the right of victims to present a statement at parole hearings (clause 46).

A number of the sections in the bill make minor amendments to the *Corrections and Conditional Release Act*, such as linguistic modifications or reformulations designed to clarify the legislative intent (see for examples changes made by clauses 4, 18, 19 and 23 of the bill). Some sections are also designed to make the administration of sentences more effective, for example, by increasing the maximum number of members that may sit on the Parole Board of Canada.

Finally, it should be noted that many of the bill's provisions are based on the recommendations formulated in the report entitled *A Roadmap to Strengthening Public Safety*,<sup>3</sup> presented in October 2007 by the Correctional Service of Canada Review Panel in response to the mandate it received from the federal government on 20 April 2007, i.e. to review Correctional Service of Canada operations. Michael Jackson,<sup>4</sup> a law professor at the University of British Columbia, and Graham Stewart, former Director General of the John Howard Society of Canada, severely criticized this report in a document entitled *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*,<sup>5</sup> which appeared in September 2009. Generally, the authors argue that the suggested transformation of the correctional system fails to respect human rights. They also feel that it is based not on empirically validated evidence but on ideological myths.

## 1.1 THE FEDERAL CORRECTIONAL SYSTEM AND THE *CORRECTIONS AND CONDITIONAL RELEASE ACT*

In Canada, responsibility for corrections is divided between the federal and the provincial and territorial governments based on the sentence imposed by the court. Individuals sentenced to two years or more are the responsibility of the Correctional Service of Canada, while those sentenced to less than two years or to a conditional sentence or who are detained while awaiting trial are the responsibility of the provincial and territorial correctional systems.

The federal correctional system consists of the Correctional Service of Canada (CSC), the Parole Board of Canada (PBC) (also known as the National Parole Board) and the Office of the Correctional Investigator (OCI). The *Corrections and Conditional Release Act* (CCRA), in force since 1992,<sup>6</sup> forms the legislative basis of the CSC (Part I), PBC (Part II) and OCI (Part III). It sets out their respective responsibilities and the principles that must guide their actions, and provides the definitions and rules for applying conditions of release, as well as the security requirements for high-risk offenders. It also contains the rules designed to ensure the transparency of the correctional system and the participation of victims. The CCRA is complemented by the *Corrections and Conditional Release Regulations* (CCRR).<sup>7</sup>

The CSC is headed by the commissioner of the Correctional Service of Canada, who reports to the minister of Public Safety. The CSC is charged with incarcerating offenders and preparing them for eventual release into the community. In addition to enforcing sentences, the CSC is responsible for supervising offenders on conditional release in the community. To that end, it enters into contracts with numerous private-sector agencies that operate halfway houses.

Created in 1959,<sup>8</sup> the PBC is an independent administrative tribunal with the exclusive authority to grant, refuse, cancel or revoke offenders' parole, that is, day parole and full parole. The PBC also makes decisions on the parole of offenders in the provinces and territories without their own parole boards.<sup>9</sup>

The Correctional Investigator, whose position was created in 1973 but not formally provided for in legislation before the adoption of the CCRA in 1992, serves as ombudsman for offenders under federal responsibility. The OCI's primary function is to investigate complaints made by or on behalf of offenders and to follow up on them. The OCI also examines CSC policies and practices to identify systemic problems and their solutions, and makes recommendations to that end.

## 1.2 TYPES OF CONDITIONAL RELEASE

Under the terms of the CCRA, at any time after their admission to a penitentiary, offenders may be granted escorted temporary absences and, after the applicable eligibility date, unescorted temporary absences, work release, day parole, full parole and statutory release.<sup>10</sup>

### 1.2.1 TEMPORARY ABSENCES

A temporary absence is generally the first form of release that an inmate in the federal system may be granted. The purpose of this form of release is to integrate certain inmates temporarily into the community for very specific purposes.<sup>11</sup> There are two types of temporary absences: escorted temporary absences (ETAs) and unescorted temporary absences (UTAs), both of which are forms of release into the community that generally last for a maximum of 15 days.

Inmates under federal responsibility may request an ETA at any time during their sentence. The power to grant this type of release lies with the institutional head, except in the case of individuals sentenced to imprisonment for life, where the institutional head must obtain the approval of the PBC.

For UTAs, the eligibility criteria vary depending on the nature and length of the sentence:

- Inmates serving their sentences in a maximum-security institution are not eligible.
- Other inmates,
  - if they have been sentenced to three years or more, become eligible for a UTA after having served one sixth of their sentence;

- if they have been sentenced to less than three years, become eligible after having served six months of their sentence; and
- if they have been sentenced to life or are serving an indeterminate sentence may not request a UTA until three years before their full parole eligibility date.

Depending on the circumstances under which the request is made, the power to authorize UTAs lies with the PBC, the commissioner of the CSC or the institutional head.

### 1.2.2 WORK RELEASE

Work release is a program of release that enables inmates to work in the community. The maximum length of a work release is 60 days. Inmates may generally request this type of release after serving six months or one sixth of their sentence, whichever is longer.

This type of release is granted by the institutional head. However, only inmates who do not present an undue risk of reoffending may participate in this kind of program, and only for the purpose of performing community service, such as work in a community centre, a hospital or a home for the aged.

### 1.2.3 DAY PAROLE

Day parole is a form of parole whose purpose is to prepare the inmate for full parole or statutory release. It is generally granted for a maximum of six months and provides offenders with an opportunity to participate in supervised activities in the community. The power to authorize day parole lies exclusively with the PBC.

This form of parole is more limited than full parole, given that, unless special authorization is given by the PBC, inmates on day parole must return to a correctional institution or halfway house every night.

Eligibility for this type of release also varies, depending on the length and type of sentence:

- Inmates serving life sentences may apply for day parole three years before the date on which they are eligible for full parole.
- Inmates sentenced to a term of three years or more are eligible for this type of release six months before the date on which they are eligible for full parole.
- Inmates serving a sentence of two to three years may apply for day parole after serving six months of their sentence.

The CCRA provides for an accelerated parole review procedure for granting day parole for certain offenders, a procedure that Bill C-39 would eliminate. To be eligible for accelerated parole reviews, offenders must currently meet a number of requirements. They must:

- be serving their first sentence in a penitentiary;

- not have been sentenced for murder or conspiracy to commit murder;
- not have been sentenced to life in prison;
- not have been sentenced for an offence set out in schedules I or II of the CCRA;<sup>12</sup>
- not have committed an offence linked to organized crime;
- not have been sentenced for an offence where the court ordered that they serve at least half their sentence before being eligible for parole.

If an inmate meets these conditions, the PBC conducts a simplified review of his or her case under the accelerated parole review procedure to determine whether it will grant the offender day parole. In order to do so, the PBC must be satisfied that there is no risk of the inmate's committing one of the violent offences referred to in Schedule I of the CCRA if released before the expiration of the sentence. The determining criterion in this case is not the general risk of the inmate's reoffending if released, as in the case of inmates who are not eligible for the accelerated parole review; rather, it is the assessment of the risk of reoffending with violence. Where the assessment is positive, the PBC grants day parole after the longer of these two periods of time served of six months or one sixth of the sentence, and the inmate is released on the date of day parole eligibility without a hearing before the PBC.<sup>13</sup>

#### 1.2.4 FULL PAROLE

Full parole allows offenders to serve the rest of their sentence under supervision in the community. Because this is a form of parole, the power to grant it lies exclusively with the PBC. Inmates on full parole must report regularly to a parole supervisor and advise the parole supervisor of any major change in their personal or employment situation. Except for offenders sentenced to life imprisonment for murder, who must serve between 10 and 25 years of their sentence before applying,<sup>14</sup> a majority of offenders may apply for full parole after serving one third of their sentence (unless the judge had ordered, in imposing sentence, that a minimum of 10 years or one half of the sentence be served before the inmate might be granted this type of release).

The accelerated parole review procedure also applies in this case. Accordingly, offenders who meet the requirements set out above in respect of the accelerated parole review procedure for day parole, and who have not already had day parole revoked, are automatically eligible for the accelerated review procedure. This simplified process for reviewing cases with a view to granting full parole ensures that, if the PBC is satisfied that the offender will not commit a violent offence referred to in Schedule I of the CCRA, that offender will automatically be granted full parole after having served one third of his or her sentence, without a hearing before the Board.

#### 1.2.5 STATUTORY RELEASE

Statutory release is a last resort. Unlike the other forms of conditional release, statutory release is automatically granted to most offenders after they have served two thirds of their sentence. Under statutory release, offenders may finish serving their sentence under supervision in the community, subject to strict conditions, as do inmates on parole.

Under the CCRA, most inmates under federal responsibility must be given statutory release if they have not been granted full parole; however, the Act stipulates that inmates serving a life sentence or an indeterminate sentence cannot be granted statutory release. As well, to protect public safety, the CSC may submit an offender's file to the PBC for analysis if the CSC considers that the offender is likely to commit an offence causing death or serious harm to another person, a sexual offence involving a child, or a serious drug offence before the expiration of his or her sentence.

Normally, a case is referred to the PBC six months before the planned statutory release date. The PBC can then authorize the inmate's statutory release, a "one-chance" statutory release (i.e. if the release is revoked for any reason, the offender will automatically serve the rest of the sentence in detention), attach residency requirements to the statutory release or decide, by means of an order, to keep the offender in detention until the end of the sentence. Any such order is reviewed annually, at which time the PBC either confirms or cancels the order. If the order is cancelled, the inmate will receive statutory release, which may be accompanied by a requirement to reside in a community-based residential facility.

Detention is an instrument that serves the correctional system in its role of protecting the public, by making it possible to keep offenders deemed dangerous to society in detention until the end of their sentence.

In all cases and for all types of release, the CSC is responsible for the supervision of offenders in the community. The CSC's parole officers therefore have the power to return inmates on release to custody if they believe that the inmates present too high a risk to the community. Members of the PBC have the power to revoke an individual's conditional release if they do not comply with requirements in their release plan.

## 2 DESCRIPTION AND ANALYSIS

Bill C-39 contains 66 clauses. The following description highlights selected aspects of the bill; it does not review every clause.

### 2.1 PART I – THE CORRECTIONAL SYSTEM

#### 2.1.1 PURPOSE AND PRINCIPLES (CLAUSES 3 AND 4)

Under section 3 of the CCRA, the correctional system must contribute to the maintenance of a just society by carrying out sentences through the safe and humane custody and supervision of offenders. The correctional system must also provide adequate programs in penitentiaries and in the community, since all rehabilitation must promote the reintegration of offenders into the community as law-abiding citizens.

Section 4 of the CCRA sets out the principles that guide the CSC in achieving its purpose, notably that the protection of society be the paramount concern in the

correctional system. The bill moves this principle to a new section 3.1 under the new heading, “Purpose and Principles,” which also includes sections 3 and 4 of the CCRA (currently under the headings “Purpose” and “Principles,” respectively).

It is important to note that the concept of mental health has been added to the principles, which means that the CSC, in achieving its purpose, must be responsive in its policies, programs and practices to the special needs of persons requiring mental health care, among others. The CSC is facing an enormous challenge regarding the management of offenders with mental health issues. According to the Correctional Investigator of Canada, Howard Sapers, the incidence of mental health problems among federally sentenced offenders is as much as three times higher than it is in the general population. He also notes that, upon reception at a correctional facility, 10% of male offenders and more than 20% of female offenders suffer from serious mental health problems.<sup>15</sup>

### 2.1.2 CORRECTIONAL PLAN (CLAUSE 5)

Clause 5 modifies the CCRA to expressly provide for the concept of a “correctional plan.” This concept is not new; it is already provided for in section 102 of the regulations. The bill provides for the correctional plan to be more specific as regards the characteristics and objectives for offenders, in particular to ensure their rehabilitation and reintegration as law abiding citizens.

To develop a correctional plan, the offender meets a correctional officer as soon as possible after his or her reception at the penitentiary. At that time, the offender is informed of the objectives concerning participation in programs and court-ordered obligations, in particular regarding restitution and compensation for victims and regarding child support.<sup>16</sup> The correctional plan is aimed at fostering rehabilitation and reintegration into the community, and it sets out the administration’s expectations. It is expected that the offender will actively participate to fulfil the objectives of his or her correctional plan. To achieve this goal, clause 5 of the bill states that the commissioner of the CSC can “provide offenders with incentives to encourage them to make progress towards meeting the objectives of their correctional plans” and “shall take into account the offender’s progress towards meeting the objectives of their correctional plan.”<sup>17</sup>

### 2.1.3 VICTIMS OF CRIME

In order to give greater consideration to the victims of crime, the bill provides for their attendance at parole hearings and seeks to broaden the range of information that CSC and the PBC can disclose to them. While the Federal Ombudsman considered these new procedures, which were also in the former Bill C-43, a good starting point, he still finds them insufficient. In his report entitled *Toward a Greater Respect for Victims in the Corrections and Conditional Release Act*, the ombudsman has stated that “While the Office of the Federal Ombudsman for Victims of Crime supported the Bill [C-43] as a step forward in responding to victims’ needs and concerns, there are a number of important issues that continue to remain unaddressed within it.” The ombudsman notes that the recommendations made in his report published in 2010 seek to better address victims’ needs and increase the effectiveness of the CCRA in their regard.<sup>18</sup>

### 2.1.3.1 DEFINITIONS, DISCLOSURE OF INFORMATION TO VICTIMS, PBC HEARINGS AND VICTIM STATEMENTS (CLAUSES 2, 7, 46 AND 48)

Subsection 2(1) of the CCRA defines a “victim” as a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence. If the person dies or becomes ill or otherwise incapacitated, any of the following people may be considered a “victim”: the person’s spouse or the person with whom the deceased or incapacitated person was cohabitating for at least one year in a conjugal relationship, a relative or a dependant of the person, or anyone who in law or in fact had custody of or was responsible for the care or support of the person. The bill broadens the definition to include anyone who, in law or in fact, has custody of or who is responsible for the care and support of a dependant of the primary victim, if that person is deceased, ill or otherwise incapacitated.

Subclause 7(1) amends subparagraph 26(1)(b)(ii) of the CCRA, which authorizes the CSC to disclose certain information to a victim. When the interest of a victim clearly outweighs an invasion of the offender’s privacy, the victim now has the right to know not only the location of the penitentiary in which the sentence is being served but also the name of the penitentiary, the reasons for the offender’s transfer to another penitentiary and the name and location of that penitentiary. To the extent possible, the victim is also entitled to be notified ahead of time of the offender’s transfer to a minimum security institution, the name and location of that institution and the reasons for the transfer. In addition, the victim may be notified of the offender’s participation in programs designed to meet his or her needs and to contribute to the reintegration of the offender into the community. The victim may also be informed of any serious disciplinary offences the offender has committed as well as the reasons for any temporary absence.

Under the CCRA, the PBC is required to hold a hearing in certain cases, such as at first reviews for regular day parole in the case of offenders serving more than two years, first reviews for full parole, reviews for continued detention rather than statutory release, and reviews following the suspension or termination of parole or statutory release.<sup>19</sup>

Subclause 46(2) of the bill amends the CCRA to allow victims to present statements at PBC hearings. If attending the hearing, a victim may comment on the harm or damage resulting from the offence and its continuing impact, including concerns for his or her safety and the possible release of the offender. Even if the victim does not attend, the PBC may authorize presentation of the statement in an alternative format. In either case, a transcript of the statement must be provided to the PBC prior to the hearing. Also authorized to present a statement are persons described in subsection 142(3) of the CCRA, who were harmed or suffered a loss due to an act of the offender in respect of which a complaint was made to the police or Crown attorney or an information laid under the Criminal Code, citing the continuing impact of the offender’s act, including any safety concerns and concerns regarding the offender’s potential release.

Clause 48 of the bill amends paragraph 142(1)(b) by providing for the notification of the victim if the offender waives the right to a hearing under subsection 140(1) and the offender's reason for doing so where applicable.

#### 2.1.4 ADMINISTRATIVE SEGREGATION (CLAUSE 10)

The purpose of administrative segregation is set out in section 31 of the CCRA: to keep an inmate from associating with the general inmate population. The bill amends this provision, making the purpose of administrative segregation to maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates.

#### 2.1.5 RELEASE OF INMATES (CLAUSE 14)

Clause 14 adds a provision to the CCRA stating that the CSC may demand that an offender wear a monitoring device to monitor compliance with a condition of a temporary absence, work release, parole, statutory release or long-term supervision that restricts their access to a person or a specific region or requires the offender to remain within a geographical area. The offender is entitled to make representations in relation to the duration of the requirement.

#### 2.1.6 SEARCH AND SEIZURE (CLAUSE 15)

Clause 15 of the bill amends section 61 of the CCRA to allow an institutional head to authorize, in writing, the search of vehicles at a penitentiary. The institutional head must have reasonable grounds to believe that there is a clear and substantial danger to the life or safety of persons or to the security of the penitentiary because evidence exists that there is contraband at the penitentiary or evidence of the planning or commission of a criminal offence. Authorization may also be given if it is necessary to search the vehicles in order to locate and seize the contraband or other evidence and avert the danger.

It should be noted that section 61 of the CCRA already provides that, in reasonable circumstances for security purposes, a staff member may, without individualized suspicion, conduct routine searches of vehicles at a penitentiary. In circumstances constituting an offence under section 45,<sup>20</sup> a staff member who believes on reasonable grounds that contraband<sup>21</sup> is located in a vehicle at a penitentiary may, with prior authorization from the institutional head, search the vehicle. Where the delay in obtaining the authorization would result in danger to human life or safety or the loss or destruction of the contraband, the staff member may search the vehicle without that prior authorization.

#### 2.1.7 AUTHORITY TO MAKE REGULATIONS (CLAUSE 19)

The CCRA provides that the Governor in Council may make regulations. Clause 19 modifies section 96 of the CCRA to authorize the following:

- "... the Commissioner to, by Commissioner's Directive, make rules regarding the consequences of tampering with or refusing to wear a monitoring device referred to in [new] section 57.1;"

- with respect to publications, video and audio materials, films and computer programs, the institutional head or a staff member designated by him or her, to restrict or prohibit the removal from a penitentiary of these materials, in the prescribed circumstances;
- the Minister to make rules regarding the penitentiary industry, including establishing advisory boards and appointing members to these boards and determining their remuneration and reimbursement of travel expenses incurred in performing their duties;
- the CSC to pay transportation, funeral, cremation and burial expenses for a deceased inmate under approved circumstances;
- the Commissioner of the CSC to make rules regarding the security classifications and subclassifications of inmates;
- the institutional head or a staff member designated by him or her to monitor, intercept or prevent communications, in the prescribed circumstances, between an inmate and another person; and
- the Commissioner of the CSC to make rules regarding the circumstances in which the institutional head may authorize escorted temporary absences and work releases.

## 2.2 PART II – CONDITIONAL RELEASE, DETENTION AND LONG-TERM SUPERVISION

### 2.2.1 THE PAROLE BOARD OF CANADA

As previously mentioned, the PBC is an independent administrative tribunal that has authority to make parole decisions, based on hearings that it conducts or information provided by the CSC, or both.

The jurisdiction of the PBC is set out in section 107 of Part II of the CCRA. The PBC:

- may grant, cancel, revoke or terminate parole;
- may terminate, revoke or cancel statutory release;
- may also cancel or suspend parole, or terminate or revoke parole or statutory release;
- may also review and make decisions regarding cases referred to it under section 129;
- may also in certain cases authorize or cancel unescorted temporary absences;
- has jurisdiction with respect to offenders who, pursuant to section 743.1 of the Criminal Code (the Code), are sentenced for an offence under a provincial Act and are serving the sentence in a penitentiary; and
- has jurisdiction in respect of an offender serving a sentence in a provincial facility when the province in question does not have a provincial parole board.

### 2.2.1.1 PURPOSE OF CONDITIONAL RELEASES AND PRINCIPLES GUIDING THE PBC AND PROVINCIAL PAROLE BOARDS (CLAUSE 21)

The principles that guide the PBC (and the provincial parole boards in Ontario and Quebec) in achieving the purpose of conditional release, set out in section 101 of the CCRA, are amended by the bill to reflect the amendments made to the principles guiding the CSC set out in Part I of the Act. The bill amends the CCRA to ensure that, in determining cases, the protection of society is the paramount consideration for the PBC and the provincial boards and to ensure that the nature and gravity of the offence and the degree of responsibility of the offender are taken into consideration.

### 2.2.1.2 MEMBERSHIP (CLAUSE 22)

Clause 22 amends section 103 of the CCRA, increasing from 45 to 60 the maximum number of full-time members on the PBC (the maximum number of part-time members remains indeterminate).

### 2.2.1.3 ELIGIBILITY FOR PAROLE (CLAUSES 24 AND 25)

Clause 24 adds section 119.2 to the CCRA to clarify the date for eligibility for full parole under sections 120 to 120.3. Unless the context requires otherwise, a sentence is not one determined pursuant to section 139(1) (clause 45 of the bill) that is the result of merging two or more sentences. Rather, the rules for determining eligibility dates for offenders serving subsequent sentences are set out in sections 120.1 to 120.3 of the CCRA (clause 25 of the bill).

### 2.2.1.4 PAROLE REVIEWS (CLAUSES 27 AND 28)

Clauses 27 and 28 increase the waiting time for new parole applications (day parole and full parole). When an application for day parole is denied or when parole is cancelled or terminated, no new application for day parole may be made until one year after the date of the PBC's decision, or until any earlier time that the regulations prescribe or the PBC determines.

Under subclause 28(2) of the bill, if the PBC refuses to direct or grant full parole to the offender or cancels or terminates their parole, the offender must wait for one year after the date of refusal, cancellation or termination or for another shorter period prescribed by regulation or determined by the PBC.

For new applications for day or full parole, an offender may not withdraw an application within 14 days before the beginning of the review unless the withdrawal is necessary and it was not possible to do so earlier due to circumstances beyond the offender's control.<sup>22</sup>

### 2.2.2 ABOLITION OF ACCELERATED PAROLE REVIEWS (CLAUSE 30)

Clause 30 of the bill is essentially a repetition of Bill C-53, introduced on 26 October 2009; this bill died on the *Order Paper* on 30 December 2009 when Parliament was prorogued.<sup>23</sup>

### 2.2.2.1 OVERVIEW OF ACCELERATED PAROLE REVIEWS

The accelerated parole review (APR) procedure was incorporated into the conditional release scheme in 1992, with the enactment of the CCRA. The aim of the APR procedure is to accelerate the processing of parole applications for offenders serving their first sentence of imprisonment in a penitentiary who have not been convicted of an offence involving violence or a serious drug-related offence for which the court has made an order delaying the parole eligibility date.

APR guarantees that the offender's case is reviewed in advance by the PBC so that the offender may be granted parole as soon as possible, that is, on the eligibility date, without the PBC having to hold a parole hearing. An offender who is entitled to APR also benefits from a presumption in favour of parole: the PBC may not refuse parole unless it is of the opinion that there are reasonable grounds to believe that the offender will commit an offence involving violence before the expiration of the sentence.

As mentioned previously, to benefit from APR, offenders must meet a number of conditions:

- they must be serving their first sentence in a penitentiary;
- they must not have been convicted of murder or of being an accomplice to murder;
- they must not have been sentenced to imprisonment for life;
- they must not have committed an offence related to terrorism or organized crime;
- they must not have been sentenced for an offence set out in Schedule I to the CCRA;<sup>24</sup>
- they must not have been convicted of an offence set out in Schedule II to the CCRA in respect of which the court has ordered that the offender will not be eligible for parole before serving at least half of the sentence; and
- they must not have been the subject of a decision revoking day parole.

From 1992 to 1997, APR applied solely to full parole, that is, it applied after the offender had served one third or seven years of the sentence, whichever was shorter. The CCRA was amended in 1997<sup>25</sup> to extend APR to apply to day parole<sup>26</sup> and to shorten the eligibility time for offenders who met APR conditions. Instead of being eligible six months before the full parole eligibility date, like the majority of offenders incarcerated in the federal correctional system, since 1997, offenders entitled to APR have been eligible for day parole after serving one sixth of their sentence or six months, whichever is longer.

The amendment to the CCRA, the effect of which was to accelerate the granting of parole for offenders entitled to APR, was probably a result of the fact that the CSC had realized that these offenders were less inclined to apply for day parole than others.<sup>27</sup> They therefore remained in custody longer than some offenders who were not eligible for APR.

APR was designed to allow non-violent offenders at low risk of reoffending to be released as early as possible to serve the rest of their sentences under supervision in the community. By accelerating release of those offenders, APR was intended to enable the CSC and the PBC to focus their efforts and correctional resources on offenders sentenced for offences involving violence or serious drug-related offences and considered to be at high risk of reoffending.<sup>28</sup>

Application of this measure was supposed to produce significant savings for the correctional system, since the cost of incarceration is much higher than the cost of supervising offenders in the community. In 2006–2007, an offender on conditional release cost the CSC an average of \$23,076 per year, as compared to an average of \$93,030 for an incarcerated offender.<sup>29</sup>

The financial consideration of introducing APR was significant, since other legislative amendments had had the effect of lengthening incarceration periods for violent and dangerous offenders,<sup>30</sup> thus greatly increasing the funds allocated each year to the incarceration of offenders in the federal correctional system.

#### 2.2.2.2 IMPACT OF CLAUSE 30 OF THE BILL

Clause 30 of the bill abolishes APR. If the bill is passed, offenders incarcerated in the federal correctional system will no longer be eligible for day parole after serving one sixth of their sentence. Instead, the earliest date that they will be eligible will be six months before their full parole eligibility date, or after having served six months of their sentence, whichever is longer.

The abolishment of APR also means that the PBC will no longer be required to grant parole to offenders whom it has reasonable grounds to believe will commit a non-violent offence before their sentence ends. At present, the PBC has no choice but to grant parole to offenders who are entitled to APR if it considers that there are no reasonable grounds to believe they will commit an offence involving violence before the sentence ends.

Finally, in order to be granted parole, whether day parole or full parole, all offenders will now have to satisfy the PBC, at a hearing, that they are able to live in society as law-abiding citizens and that they will comply with the conditions imposed.

The abolition of APR will affect only offenders who have been sentenced or transferred to a penitentiary for the first time *after the bill comes into force* (clause 58 of the bill). An offender who is currently incarcerated in a federal correctional institution and who meets the APR criteria will therefore not be affected by this legislative amendment and will continue to have access to APR as it stands today.

#### 2.2.3 STATUTORY RELEASE (CLAUSES 31 TO 35)

Subject to a contrary order following a detention review, there is a presumption that all offenders not serving life or indeterminate sentences are entitled, after serving two thirds of their sentence, to be released and remain at large until the expiration of their sentence, sometimes referred to as “warrant expiry” (section 127 of the CCRA).

Clause 31 clarifies when an offender whose parole or statutory release has been revoked becomes eligible for statutory release. It is the day on which the offender has served either two thirds of the sentence remaining on the day the offender is recommitted to custody or, if an additional prison sentence is imposed after the offender is recommitted to custody, two thirds of the sentence starting on the date of recommitment and ending on expiration of the sentence, including the additional sentence.

Clause 31 also adds a subsection establishing the new statutory release date for offenders who receive an additional sentence while on release, and whose parole or statutory release is suspended rather than revoked. They are required to serve from the earlier of the day on which they are recommitted to custody as a result of suspension of their parole or statutory release and the day on which they are recommitted to custody as a result of the additional sentence:

- a) any time remaining before the statutory release date in respect of the sentence they are serving when the additional sentence is imposed; and
- b) two thirds of the period equal to the difference between the length of the sentence that includes the additional sentence and the length of the sentence that they are serving when the additional sentence is imposed.

Clause 32 adds a section regarding statutory release provisions for young people who are convicted under paragraph 42(2)(n), (o), (q) or (r) of the *Youth Criminal Justice Act* and who are transferred to a penitentiary under subsection 89(2), 92(2) or 93(2) of that Act. The new provision provides that these young people are entitled to statutory release on the day on which the custodial portion of their youth sentence would have expired.

Subclause 34(1) requires that, more than six months before the day on which an offender serving two years or more that includes a sentence for a Schedule I or II offence is entitled to be released on statutory release, the CSC refer the case to the PBC and provide the PBC with all relevant information in its possession if it deems that:

- the offender is serving a sentence that includes a sentence for a Schedule I offence that caused death or serious harm to another person, and there are reasonable grounds to believe that the offender will commit a similar offence before expiry of the full sentence;
- the offender is serving a sentence that includes a sentence for a Schedule I offence for a sexual offence involving a child, and there are reasonable grounds to believe that the offender will commit a similar offence or (under a new provision) an offence causing death or serious harm to another person before expiry of the full sentence; or
- the offender is serving a sentence that includes a sentence for an offence set out in Schedule II and there are reasonable grounds to believe that the offender will commit a serious drug offence before expiry of the full sentence.

Under the current Act, offenders for whom the PBC has prohibited release before their sentence expires may be granted an escorted temporary absence for medical reasons only. Clause 35 of the bill adds the possibility of such an absence for administrative reasons, in addition to medical reasons.

## 2.2.4 CONDITIONS OF RELEASE (CLAUSE 36)

The PBC may impose special conditions on statutory release to protect society or facilitate the successful reintegration of the offender, including a residency condition by which the offender must live in a community-based residential or psychiatric facility.<sup>31</sup> Subsection 133(4.1) of the CCRA currently allows a residency condition only if it is believed that an offender may commit a Schedule I offence before the expiration of his or her sentence and so may present an undue risk to society. Clause 36 amends subsection 133(4.1) to allow a residency condition on the basis that the offender is likely to commit a criminal organization offence.<sup>32</sup>

## 2.2.5 SUSPENSION, TERMINATION, REVOCATION AND INOPERATIVENESS OF PAROLE, STATUTORY RELEASE OR LONG-TERM SUPERVISION (CLAUSES 39 TO 42)

Clause 39 amends section 135 of the CCRA, governing the possible suspension, termination or revocation of an offender's parole or statutory release, if he or she breaches a condition, or commits another offence and receives an additional sentence. Subclause 39(1) now provides for an automatic suspension where the offender receives an additional sentence, other than a conditional sentence being served in the community (under section 742.1 of the Code) or an intermittent sentence (under section 732 of the Code), which suspension takes effect the day the new sentence is imposed. The PBC, commissioner of the CSC or designate may issue a warrant to apprehend the offender and recommit him or her to incarceration until the suspension is cancelled, parole or statutory release is terminated or revoked, or the sentence expires. A warrant for the transfer of the offender to a federal penitentiary may also be issued, if the offender has been committed to another facility.

The automatic suspension of parole or statutory release after an additional sentence replaces automatic revocation under the current CCRA.<sup>33</sup> Clause 39 accordingly provides that a suspension due to an additional sentence be referred to the PBC within the prescribed period.<sup>34</sup> Subclause 39(5) provides that the PBC, on referral to it, may, at the request of an offender serving a sentence of two years or more, grant an adjournment. A member of the PBC or the person designated may also postpone the review if satisfied that the offender will, by reoffending before the expiration of their sentence, present an undue risk to society. The PBC can then terminate the release when the risk is due to circumstances beyond the offender's control and revoke it in any other case. If the Board is not satisfied that the risk to reoffend would present an undue risk to society, it may cancel the suspension. If the offender is no longer eligible for parole or statutory release, the PBC cancels the suspension or terminates or revokes the parole or statutory release.

As already occurs under the CCRA, the PBC may decide to cancel the suspension if it considers it necessary and reasonable and it can reprimand the offender, issue alternate release conditions or delay the cancellation for up to 30 days.

Subclause 39(5) provides that if the PBC cancels the offender's suspension of parole, the date of eligibility for parole is determined under sections 119 to 120.3 of

the CCRA. If that date is later than the cancellation date, the offender is granted day parole or full parole on the eligibility date, where applicable and subject to the new subsection 135(6.3). This subsection provides that the PBC may review the file before parole resumes and on the basis of new information, and may cancel or terminate parole. Under the new subsection 135(6.4), if the decision to cancel or terminate parole is made without a hearing, the PBC shall within the period prescribed by the regulations review and either confirm or cancel its decision.

Clause 42 adds the new section 137.1 to the CCRA to allow any peace officer to arrest an offender without warrant for a breach of a condition of their parole, statutory release or unescorted temporary absence. However, officers may not arrest an offender without warrant if they believe on reasonable grounds that the public interest may be satisfied without arresting the person, having regard to all the circumstances, including the need to establish the identity of the person or prevent the continuation or repetition of the breach, or if they have no reason to believe on reasonable grounds that, if they do not arrest the person, the person will fail to report to their parole supervisor.

## 2.2.6 MULTIPLE SENTENCES (OR MERGED SENTENCES) (CLAUSES 44 AND 45)

Clause 44 changes the heading “Multiple Sentences” to “Merged Sentences.” Clause 45 clarifies the rule in section 139 of the CCRA, which is that, for the purpose of the CCRA and other Acts,<sup>35</sup> an offender who is subject to two or more sentences is deemed to have one sentence, which starts on the first day of the first sentence and ends on the last day of the last sentence to be served.

## 2.2.7 ORGANIZATION OF THE PBC (CLAUSES 50 AND 51)

Clause 50 makes an amendment to allow a number of part-time members and not more than six full-time members to be appointed to the Appeal Division of the PBC. The members are designated by the Governor in Council, on the recommendation of the Minister, from among the members appointed under section 103 of the CCRA.

Clause 51 adds section 154.1 to the CCRA, stating that members of the PBC are not competent or compellable witnesses in any civil proceeding relating to any matter coming to their knowledge in the course of their functions under the CCRA or any other federal Act. The objective is to allow board members to consider and comment on the relevance and reliability of information from witnesses without being concerned that they may later have to testify in proceedings between parties.

# 3 COMMENTARY

## 3.1 GENERAL

The CCRA required a parliamentary review of its operation and provisions five years after its coming into force,<sup>36</sup> and in November 1998 the Standing Committee on Justice and Human Rights tasked a subcommittee with this review. In May 2000, the subcommittee released its report, containing 53 recommendations.<sup>37</sup> The

government responded in November that same year.<sup>38</sup> The government also conducted its own public consultation in 1998,<sup>39</sup> culminating in a separate report on possible changes.<sup>40</sup> As was mentioned previously, bills have been introduced to implement some of the recommendations in these reports, but all died on the *Order Paper*. As a result, the CCRA has been amended in only a few respects since its enactment in 1992.<sup>41</sup>

In 2007 the government also tasked a special committee with reviewing the CSC's operational priorities, strategies and business plans. This committee, the CSC Review Panel, released its report, *A Roadmap to Strengthening Public Safety*, in October 2007.

Many of the clauses in the bill aim to implement the recommendations of the CSC Review Panel (2007) that was heavily criticized by Jackson and Stewart in their 2009 document, *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*, which we discussed earlier.

### 3.2 REGARDING ACCELERATED PAROLE REVIEWS

The creation of APR in 1992, like the introduction in 1986 of a provision to allow violent offenders to be kept in custody after their statutory release date, is part of a trend in the federal corrections system, which began in the late 1970s, toward treating conditional release differently for two categories of offenders: violent offenders and others.<sup>42</sup> The objective is to release offenders who present a low risk to society as soon as possible, while delaying the release of offenders who are considered to represent a high risk. A CSC document states:

The intent of accelerated parole review is to provide for formal recognition in law that non-violent and violent offenders should not be subject to the same conditional release process.<sup>43</sup>

That document also states that “the main focus of APR was to address public safety and reintegration” by enabling the CSC and the PBC to focus their resources on dangerous offenders who presented a high risk of reoffending and recognizing that faster reintegration of low-risk offenders is likely to better meet the needs of offenders and the community. Studies have shown that “there is a tendency for lower-risk offenders to be negatively affected by the prison experience.”<sup>44</sup>

According to Jackson and Stewart, APR was also intended to solve a problem reported by a number of actors in the system: that federal offenders sentenced to short terms of imprisonment were at a disadvantage in relation to parole as compared to offenders sentenced to longer terms:

Ironically, those who are least likely to be released on parole are those who are serving short federal sentences simply because there is insufficient time to be assessed, placed in an appropriate institution and complete the required programs prior to their parole eligibility date.<sup>45</sup>

Since APR was created in 1992, however, it has been criticized on several fronts. Some people have questioned the appropriateness of selecting only offenders serving their first sentence in a penitentiary, pointing out that most offenders

sentenced for the first time to a sentence of two years or more already have a lengthy criminal record.<sup>46</sup> Others have observed that eligibility for day parole at one sixth of sentence distorts the sentence initially imposed by the court, primarily in cases involving offenders sentenced to lengthy terms, who are nonetheless released after serving only a few months in prison. In response to the publicity last fall surrounding the sentencing of certain white-collar fraudsters, all political parties agreed to examine this provision, which permits the speedy release of certain offenders.

Since the changes made to the CCRA in 1997, there have been attempts to change the APR rules. In its report tabled in the House of Commons in May 2000, the Subcommittee on the Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights made two recommendations in this regard.<sup>47</sup> Although the subcommittee considered it “important to retain accelerated parole review, so first-time federal offenders considered non-violent need not be subjected to the negative influence of some repeat offenders,” it nonetheless concluded that two amendments to APR were essential:

- that offenders incarcerated because they had committed an offence set out in Schedule II to the CCRA for which the court did not impose an additional parole eligibility period not be eligible for APR; and
- that the PBC be required to assess offenders’ cases for parole based on a general recidivism criterion, rather than on a violent recidivism criterion.

On 14 September 2009, Member of Parliament Serge Ménard introduced a bill to end APR for granting day parole.<sup>48</sup> Enactment of that bill would have meant that an offender entitled to APR could have had access to it only for full parole review, as was the case from 1992 to 1997.

Clause 30 of the bill (abolition of APR) is a response to a recommendation by the Correctional Service of Canada Review Panel, tasked by the government in April 2007 with reviewing the CSC’s activities.<sup>49</sup> In its report, the panel justified abolishing APR by citing the fact that offenders granted parole under that procedure generally had a higher recidivism rate than other offenders.

In 2007–2008, six of the 831 offenders who were granted full parole under APR had their parole revoked for committing a violent offence, as compared to six of the 527 offenders released under the regular procedure. In the same year, 72 of the 831 offenders granted parole under APR had their full parole revoked for committing a non-violent offence, as compared to 22 of the 527 offenders released under the regular procedure.<sup>50</sup>

The Correctional Service of Canada Review Panel also considered it necessary to abolish APR in order to emphasize that parole is not a right, and must be earned. It argued that offenders must demonstrate that they deserve parole by actively participating in their correctional plan.<sup>51</sup> On the other hand, there are those who fear that adopting this approach will mean that offenders sentenced to short terms of imprisonment will have to serve longer portions of their sentences in custody before being granted parole, as compared to other offenders.<sup>52</sup> It has also been argued that the abolition of APR could result in significant increases in workload and costs for the PBC, as the board will be required to hold hearings in every case.<sup>53</sup>

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## NOTES

1. [Bill C-39: An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts](#), 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, 2010. Versions of a similar bill had been introduced previously but died on the *Order Paper* – Bill C-43: An Act to Amend the Corrections and Conditional Release Act and the Criminal Code, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, 2009 (received second reading and was referred to the House of Commons Standing Committee on Public Safety and National Security on 29 October 2009 and proceeded no further); Bill C-46, An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 1<sup>st</sup> Session, 38<sup>th</sup> Parliament, 2005 (received first reading 20 April 2005 and proceeded no further); Bill C-19, An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 3<sup>rd</sup> Session, 37<sup>th</sup> Parliament, 2004 (received first reading 13 February 2004 and referred 23 February 2004 to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, which held one meeting to study the bill on 11 May 2004); and Bill C-40, An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament, 2003 (received first reading 4 June 2003 and proceeded no further).
2. The parole eligibility date must not be confused with the actual release date. The decision as to whether to grant parole (whether day parole or full parole) is made by the Parole Board of Canada. Even in cases where the offender's case is considered a few days before the parole eligibility date, a decision to release the offender does not necessarily follow.
3. Correctional Service of Canada Review Panel, [A Roadmap to Strengthening Public Safety – Report of the Correctional Service of Canada Review Panel](#), October 2007. The [executive summary of the report](#) can also be found on the Public Safety Canada website.
4. Mr. Jackson has taught and been an advocate of human rights for over 30 years. On 1 September 2009, the Office of the Correctional Investigator of Canada presented him with the Ed McIsaac Human Rights in Corrections Award in recognition of his lifelong commitment to improving the correctional system and protecting the human rights of the incarcerated.
5. Michael Jackson and Graham Stewart, [A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety](#), September 2009.
6. The *Corrections and Conditional Release Act* (S.C. 1992, c. 20), proclaimed 1 November 1992, replaced the *Penitentiary Act* and the *Parole Act*. A number of amendments have been made since its proclamation, including the addition of offences to its schedules.
7. *Corrections and Conditional Release Regulations*, SOR/92-620.
8. The PBC was created under the *Parole Act*, S.C. 1958, c. 38.
9. Only the provinces of Ontario and Quebec have their own parole boards with authority to release offenders serving sentences of less than two years' imprisonment.
10. The eligibility for various forms of conditional release is shown in Appendix A of this legislative summary.
11. There are several grounds for this type of release: medical reasons, facilitating the inmate's contact with family, the inmate's obtaining confirmation of planned employment as part of the release plan, and helping the inmate to fashion a personal development plan, to receive counselling or to have a chance to participate in community service.
12. Copies of schedules I and II of the CCRA are found in Appendix B of this legislative summary.

13. Appendix C of this legislative summary provides a detailed description of the three differences between accelerated parole review (APR) and the normal parole procedure.
14. Inmates sentenced to life imprisonment for first-degree murder are eligible for full parole after serving 25 years of their sentence, while those sentenced to life imprisonment for second-degree murder are eligible after serving 10 to 25 years of their sentence, depending on the court's decision at the time of sentencing.
15. House of Commons, Standing Committee on Public Safety and National Security, *Evidence*, 2 June 2009, 0915 [Howard Sapers, Correctional Investigator of Canada].
16. The Office of the Federal Ombudsman for Victims of Crime responded favourably to the idea of including compensation or victim restitution in the correctional plan. Steve Sullivan, Federal Ombudsman for Victims of Crime, stated before the Standing Committee on Public Safety and National Security:

That's really important, I think, because some judges look at restitution and say, "Well, this guy is going to jail. He doesn't have any money." We know that offenders make some money when they're in prison. We also know that victims actually appreciate, even if the total restitution isn't paid, that efforts are made by the offender. I think it actually has a benefit for the offender as well. It makes the crime real.

House of Commons, Standing Committee on Public Safety and National Security, *Evidence*, 20 April 2010, 1610 [Steve Sullivan, Federal Ombudsman for Victims of Crime].
17. See new clauses 15.1 and 15.2 of the bill.
18. See Office of the Federal Ombudsman for Victims of Crime, [\*Toward a Greater Respect for Victims in the Corrections and Conditional Release Act\*](#), 2010.
19. CCRA, subsection 140(1). The PBC has the discretion to hold a hearing if one is not mandatory (*ibid.*, subsection 140(2)).
20. Pursuant to s. 45 of the CCRA:

Every person commits a summary conviction offence who (a) is in possession of contraband beyond the visitor control point in a penitentiary; (b) is in possession of anything referred to in paragraph (b) or (c) of the definition "contraband" in section 2 before the visitor control point at a penitentiary; (c) delivers contraband to, or receives contraband from, an inmate; (d) without prior authorization, delivers jewellery to, or receives jewellery from, an inmate; or (e) trespasses at a penitentiary.
21. Within the meaning of section 2 of the CCRA, contraband means:

(a) an intoxicant, (b) a weapon or a component thereof, ammunition for a weapon, and anything that is designed to kill, injure or disable a person or that is altered so as to be capable of killing, injuring or disabling a person, when possessed without prior authorization, (c) an explosive or a bomb or a component thereof, (d) currency over any applicable prescribed limit, when possessed without prior authorization, and (e) any item not described in paragraphs (a) to (d) that could jeopardize the security of a penitentiary or the safety of persons, when that item is possessed without prior authorization.
22. Subsections 122(6) and 123(7) of the CCRA, to be amended by subclauses 27(2) and 28(2) of the bill.
23. Bill C-53: An Act to amend the Corrections and Conditional Release Act (accelerated parole review) and to make consequential amendments to other Acts, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, 2009.
24. A copy of Schedules I and II of the CCRA is provided in Appendix B of this document.

25. S.C. 1997, c. 17.
26. Day parole is a more limited form of parole than full parole, because unless an inmate on day parole obtains special permission from the PBC, he or she must return to a correctional institution or halfway house every night.
27. Brian A. Grant, *Accelerated Parole Review: Were the Objectives Met?* Research Branch, Correctional Service of Canada, February 1998, p. iv.
28. Ibid.
29. Public Safety Canada, *Corrections and Conditional Release Statistical Overview 2008*, December 2009, p. 29.
30. Specifically, in 1986 a provision was introduced to allow certain offenders to be kept in custody after their statutory release date, and other amendments increased the period that different categories of offenders had to serve before being eligible for parole.
31. CCRA, s. 133.
32. Criminal organization offences are those under *Criminal Code*, s. 467.11 (participation in activities of a criminal organization), s. 467.12 (commission of an offence for a criminal organization) and s. 467.13 (instructing the commission of an offence for a criminal organization).
33. CCRA, subsection 135(9.1). The automatic revocation without hearing has been ruled unconstitutional in the past (see *Illes v. Kent Institution* (2001), 160 C.C.C. (3d) 307, 2001 BCSC 1465 (B. C. Supreme Court)).
34. The referral must be within 14 days of recommitment for offenders serving less than two years, and within 30 days of recommitment for all other offenders unless the PBC establishes a shorter period (CCRA, subsection 135(3)). Subject to adjournments with the consent of the offender, the PBC must hold a hearing within 90 days of the referral, or 90 days of the offender's readmission to a correctional facility (CCRR, subsection 163(3)).
35. The *Criminal Code*, the *Prisons and Reformatories Act*, R.S.C. 1985, c. P-20, and the *International Transfer of Offenders Act*, S.C. 2004, c. 21. (The *Prisons and Reformatories Act* is federal legislation that applies to provincial prisons and institutions.)
36. CCRA, s. 233.
37. House of Commons, Subcommittee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights, [\*A Work in Progress: The Corrections and Conditional Release Act\*](#), Ottawa, May 2000.
38. Government of Canada, *Response to the Report of the Subcommittee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights: A Work in Progress: The Corrections and Conditional Release Act*, Ottawa, November 2000 (revised).
39. Solicitor General Canada, *Towards a Just, Peaceful and Safe Society: The Corrections and Conditional Release Act Five Years Later – Consultation Paper*, Ottawa, 1998.
40. Ibid.
41. For example, comprehensive sentence calculation amendments were enacted in 1995 (S.C. 1995, c. 42) and certain parole eligibility dates were amended in 1997 (S.C. 1997, c. 17). The CCRA has also been amended as a consequence of the enactment of other legislation: e.g., *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, and *Youth Criminal Justice Act*, S.C. 2002, c. 1.
42. Dominique Robert, "Transformations récentes de la législation fédérale sur la mise en liberté sous condition au Canada. Une lecture à la lumière des écrits sur la notion de risqué," *Érudite*, 2001.

43. Grant (1998), p. 3.
44. "Incarceration in Canada," National Crime Prevention Centre fact sheet, Public Safety Canada, 2000.
45. Jackson and Stewart (2009).
46. Ibid., p. 6.
47. House of Commons, Subcommittee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights (2000).
48. Bill C-434: An Act to amend the Corrections and Conditional Release Act (day parole – six months or one sixth of the sentence rule), 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, 2009.
49. Correctional Service of Canada Review Panel (2007).
50. Public Safety Canada (2009), p. 94.
51. Ibid.
52. Jackson and Stewart (2009).
53. National Parole Board, [\*Vision 2020 – Public Safety, Public Service\*](#), "Government Initiatives," February 2009.

## APPENDIX A – ELIGIBILITY FOR VARIOUS FORMS OF CONDITIONAL RELEASE<sup>a</sup>

	Unescorted temporary absence <sup>b</sup> (CCRA, s. 115; Code, s. 746.1)	Day parole (CCRA, 119; Code, s. 746.1)	Full parole (CCRA, s. 120)	Statutory release (CCRA, s. 127)
1 <sup>st</sup> degree murder	22 years	22 years	25 years (Code, s. 745) <sup>c</sup>	N/A
2 <sup>nd</sup> degree murder	7 to 22 years	7 to 22 years	10 to 25 years (Code, s. 745) <sup>c</sup>	N/A
Other life sentence	4 years	Full parole – 6 months	7 years <sup>d</sup>	N/A
Dangerous offenders	4 years <sup>e</sup>	4 years	7 years (Code, s. 61)	N/A
Sentence of 2 years or more	1/6 of sentence (max.: 3.5 years) (min.: 6 months)	Full parole – 6 months (min.: 6 months)  OR  Accelerated parole review: 1/6 of sentence (min.: 6 months) (CCRA, s. 119.1)	1/3 of sentence (max.: 7 years)	2/3 of sentence
Exceptions (e.g., illness)	(CCRA, s. 115(2))	(CCRA, s. 121)	(CCRA, s. 121)	Detention: (CCRA, s. 129 <i>et seq.</i> )
Delayed parole <sup>f</sup>			1/2 of sentence (max.: 10 years) (Code, s. 743.6)	

### NOTES

- a. In this table, CCRA means *Corrections and Conditional Release Act*, and Code means *Criminal Code*.
- b. Eligibility for work release is identical (CCRA, subsection 18(2)).
- c. Application for reduction of parole eligibility after 15 years served (Code, s. 745.6).
- d. Less time in pre-trial detention (between arrest and conviction).
- e. “Maximum security” offenders are not eligible for unescorted temporary absences (CCRA, subsection 115(3)).
- f. This procedure covers offences set out in Schedule I (offences involving violence) and Schedule II (serious drug-related offences) of the CCRA and organized crime offences (Code, s. 743.6).

## APPENDIX B – SCHEDULES I AND II TO THE CORRECTIONS AND CONDITIONAL RELEASE ACT

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### SCHEDULE I

*(Subsections 107(1), 125(1) and 126(7) and sections 129 and 130)*

1. An offence under any of the following provisions of the *Criminal Code*, that was prosecuted by way of indictment:

- (a) section 75 (piratical acts);
- (a.1) section 76 (hijacking);
- (a.2) section 77 (endangering safety of aircraft or airport);
- (a.3) section 78.1 (seizing control of ship or fixed platform);
- (a.4) paragraph 81(1)(a), (b) or (d) (use of explosives);
- (a.5) paragraph 81(2)(a) (causing injury with intent);
- (b) subsection 85(1) (using firearm in commission of offence);
- (b.1) subsection 85(2) (using imitation firearm in commission of offence);
- (c) subsection 86(1) (pointing a firearm);
- (d) section 144 (prison breach);
- (e) section 151 (sexual interference);
- (f) section 152 (invitation to sexual touching);
- (g) section 153 (sexual exploitation);
- (h) section 155 (incest);
- (i) section 159 (anal intercourse);
- (j) section 160 (bestiality, compelling, in presence of or by child);
- (k) section 170 (parent or guardian procuring sexual activity by child);
- (l) section 171 (householder permitting sexual activity by or in presence of child);
- (m) section 172 (corrupting children);
- (n) subsection 212(2) (living off the avails of prostitution by a child);
- (o) subsection 212(4) (obtaining sexual services of a child);
- (o.1) section 220 (causing death by criminal negligence);
- (o.2) section 221 (causing bodily harm by criminal negligence);
- (p) section 236 (manslaughter);
- (q) section 239 (attempt to commit murder);
- (r) section 244 (discharging firearm with intent);
- (s) section 246 (overcoming resistance to commission of offence);

- (s.1) subsections 249(3) and (4) (dangerous operation causing bodily harm and dangerous operation causing death);
- (s.2) subsections 255(2) and (3) (impaired driving causing bodily harm and impaired driving causing death);
- (s.3) section 264 (criminal harassment);
- (t) section 266 (assault);
- (u) section 267 (assault with a weapon or causing bodily harm);
- (v) section 268 (aggravated assault);
- (w) section 269 (unlawfully causing bodily harm);
- (x) section 270 (assaulting a peace officer);
- (y) section 271 (sexual assault);
- (z) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);
- (z.1) section 273 (aggravated sexual assault);
- (z.2) section 279 (kidnapping);
- (z.21) section 279.1 (hostage taking);
- (z.3) section 344 (robbery);
- (z.31) subsection 430(2) (mischief that causes actual danger to life);
- (z.32) section 431 (attack on premises, residence or transport of internationally protected person);
- (z.33) section 431.1 (attack on premises, accommodation or transport of United Nations or associated personnel);
- (z.34) subsection 431.2(2) (explosive or other lethal device);
- (z.4) section 433 (arson – disregard for human life);
- (z.5) section 434.1 (arson – own property);
- (z.6) section 436 (arson by negligence); and
- (z.7) paragraph 465(1)(a) (conspiracy to commit murder).

2. An offence under any of the following provisions of the *Criminal Code*, as they read immediately before July 1, 1990, that was prosecuted by way of indictment:

- (a) section 433 (arson);
- (b) section 434 (setting fire to other substance); and
- (c) section 436 (setting fire by negligence).

3. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983, that was prosecuted by way of indictment:

- (a) section 144 (rape);
- (b) section 145 (attempt to commit rape);
- (c) section 149 (indecent assault on female);

- (d) section 156 (indecent assault on male);
- (e) section 245 (common assault); and
- (f) section 246 (assault with intent).

4. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 1, 1988, that was prosecuted by way of indictment:

- (a) section 146 (sexual intercourse with a female under 14);
- (b) section 151 (seduction of a female between 16 and 18);
- (c) section 153 (sexual intercourse with step-daughter);
- (d) section 155 (buggery or bestiality);
- (e) section 157 (gross indecency);
- (f) section 166 (parent or guardian procuring defilement); and
- (g) section 167 (householder permitting defilement).

5. The offence of breaking and entering a place and committing an indictable offence therein, as provided for by paragraph 348(1)(b) of the *Criminal Code*, where the indictable offence is an offence set out in sections 1 to 4 of this Schedule and its commission

- (a) is specified in the warrant of committal;
- (b) is specified in the Summons, Information or Indictment on which the conviction has been registered;
- (c) is found in the reasons for judgment of the trial judge; or
- (d) is found in a statement of facts admitted into evidence pursuant to section 655 of the *Criminal Code*.

6. An offence under any of the following provisions of the *Crimes Against Humanity and War Crimes Act*:

- (a) section 4 (genocide, etc., committed in Canada);
- (b) section 5 (breach of responsibility committed in Canada by military commanders or other superiors);
- (c) section 6 (genocide, etc., committed outside Canada); and
- (d) section 7 (breach of responsibility committed outside Canada by military commanders or other superiors).

SCHEDULE II

(Subsections 107(1) and 125(1) and sections 129, 130 and 132)

1. An offence under any of the following provisions of the *Narcotic Control Act*, as it read immediately before the day on which section 64 of the *Controlled Drugs and Substances Act* came into force, that was prosecuted by way of indictment:

- (a) section 4 (trafficking);
- (b) section 5 (importing and exporting);
- (c) section 6 (cultivation);
- (d) section 19.1 (possession of property obtained by certain offences); and
- (e) section 19.2 (laundering proceeds of certain offences).

2. An offence under any of the following provisions of the *Food and Drugs Act*, as it read immediately before the day on which section 64 of the *Controlled Drugs and Substances Act* came into force, that was prosecuted by way of indictment:

- (a) section 39 (trafficking in controlled drugs);
- (b) section 44.2 (possession of property obtained by trafficking in controlled drugs);
- (c) section 44.3 (laundering proceeds of trafficking in controlled drugs);
- (d) section 48 (trafficking in restricted drugs);
- (e) section 50.2 (possession of property obtained by trafficking in restricted drugs); and
- (f) section 50.3 (laundering proceeds of trafficking in restricted drugs).

3. An offence under any of the following provisions of the *Controlled Drugs and Substances Act* that was prosecuted by way of indictment:

- (a) section 5 (trafficking);
- (b) section 6 (importing and exporting);
- (c) section 7 (production).
- (d) and (e) [Repealed, 2001, c. 32, s. 57]

4. The offence of conspiring, as provided by paragraph 465(1)(c) of the *Criminal Code*, to commit any of the offences referred to in items 1 to 3 of this schedule.

## APPENDIX C – DETAILED DESCRIPTION OF THE THREE DIFFERENCES BETWEEN ACCELERATED PAROLE REVIEW (APR) AND THE NORMAL PAROLE PROCEDURE

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Accelerated Parole Review (APR) has three features that distinguish it from the normal parole procedure that may lead to day parole or full parole.

### REFERRAL OF CASES

The cases of offenders entitled to APR are automatically referred to the Parole Board of Canada (PBC) (also known as the National Parole Board) for review regarding parole and the PBC makes its decision without holding a hearing.

Unlike the offenders not entitled to APR, offenders who are entitled to APR are not required to apply to the PBC for day parole. The *Corrections and Conditional Release Act* (CCRA) requires the Correctional Service of Canada to refer the cases of offenders entitled to APR to the PBC before their day parole eligibility date so they may be released under supervision in the community as soon as possible.

Although offenders who are not entitled to APR may also be granted day parole, the PBC reviews only the cases of offenders who have informed the PBC that they wish to be granted day parole, generally six months before their full parole eligibility date. Some offenders do not request that review, and prefer to wait until the PBC considers their case for full parole (in the case of full parole, the PBC must review all cases of eligible offenders, unless an offender informs the board in writing that he or she does not wish to be granted full parole).

The PBC is also not required to hold a parole hearing to assess whether offenders entitled to APR may be granted day parole and full parole.<sup>1</sup> However, applications for parole by other offenders must be reviewed at a hearing at which they must, for example, persuade the PBC that they are ready to live in society as law-abiding citizens and that they will comply with the conditions imposed on them for release.

### REOFFENDING CRITERION

The reoffending criterion used by the PBC for granting or refusing parole is less stringent in the case of offenders entitled to APR.

Unlike the usual procedure, the PBC must grant parole (whether day parole or full parole) to an offender who is entitled to APR unless it determines that the offender is likely to commit an offence *involving violence* before the expiration of the sentence. For all other offenders, the PBC instead uses a general reoffending criterion to grant or refuse release. In those cases, the PBC will grant parole only if it considers that the offender does not present an unacceptable risk of committing an offence before the legal expiration of the sentence, *whether or not the offence is violent*. The criterion used is therefore more stringent for offenders who are not entitled to APR.<sup>2</sup>

## ELIGIBILITY PERIOD

APR also differs from the usual procedure because of the shorter period to be served by the offender before eligibility for day parole. While offenders who are not entitled to APR are generally eligible for day parole six months before their full parole eligibility date (that is, at one third of the sentence, or a maximum of seven years), offenders who are entitled to APR are eligible for day parole after serving one sixth of the sentence. In both cases, however, the CCRA provides for a minimum of six months' imprisonment before eligibility for day parole, since the longer of the times referred to is used.

This means that an offender who is sentenced to imprisonment for two to three years who does not meet the APR criteria may also be granted day parole after serving only six months of the sentence. An example is the case of an offender sentenced to serve 30 months in penitentiary for whom the court did not impose a period of ineligibility for parole.<sup>3</sup> As noted earlier, what distinguishes the treatment of the two groups of offenders in that case is the more stringent criterion in relation to reoffending that the PBC must apply in the case of offenders who are not entitled to APR.

Application of the one-sixth-of-sentence rule has a greater impact on offenders who are sentenced to imprisonment for longer terms. For example, an offender sentenced to imprisonment for nine years who is entitled to APR could be granted day parole after serving a year and a half of the sentence, while an offender given the same sentence who does not meet the APR criteria could be granted day parole only after serving two and a half years of the sentence.

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## NOTES

1. When parole is not ordered after a case is reviewed, the case is considered at a hearing with the PBC. If an offender is refused release at the end of the hearing, the offender is still entitled to a reconsideration of the case, under the usual procedure set out in the CCRA (s. 126).
2. From 1992 to 1996, 82% of offenders eligible for APR were released on their full parole eligibility date (one third of sentence). This means that the PBC refused to release 18% of offenders to whom the APR procedure applied. Brian A. Grant, *Accelerated Parole Review: Were the Objectives Met?* Research Branch, Correctional Service of Canada, February 1998.
3. Subsection 119(1) of the CCRA.