National Parole Board | Commission nationale des libérations conditionnelles

NPB POLICY MANUAL

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Note: *The most up-to-date version of this manual* ***resides on the network.*** *Individuals who choose to work with a paper copy of the manual should verify that the printed version is consistent with the electronic version on the network.*

Canada

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1. Introduction

1.1 - Mission

Mission Statement of the National Parole Board

The National Parole Board, as part of the criminal justice system, makes independent, quality conditional release and pardon decisions and clemency recommendations. The Board contributes to the protection of society by facilitating, as appropriate, the timely integration of offenders as law-abiding citizens.

Core value 1

We contribute to the attainment of a just,
peaceful and safe society.

Core value 2

We respect the inherent potential and dignity of all individuals and
the equal rights of all members of society.

Core value 3

We believe that the contribution of qualified and motivated individuals is
essential to promoting the achievement of the Parole Board's Mission.

Core value 4

We are committed to openness, integrity and accountability
in the execution of our mandate.

1.2 - Conditional release decision making

Purpose

The purpose of these policies is to guide Board members in making pre-release conditional release decisions which may result in the release of an offender to the community. These policies are consistent with and supportive of the *Corrections and Conditional Release Act* which requires that the Executive Committee adopt policies for decision-making in all cases coming before the National Parole Board for review and that Board members exercise their functions in accordance with these policies (para.151(2)(*a*) and ss.105(5). The principles governing pre-release decision-making are stated to introduce the risk assessment process which examines identified risk factors presented by the offender whose potential for release is being assessed and the specifics of different types of pre-release decisions which follow.

Introduction

The Corrections and Conditional Release Act states that

> *the purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens. (S.100)*

This is the primary mandate of the National Parole Board and the following group of policies will address risk assessment based on the following three principles:

- Protection of society is the fundamental consideration in any conditional release decision.
- Supervised release increases the likelihood of successful reintegration and contributes to the long-term protection of society.
- Restrictions on the freedom of the offender in the community must be limited to those necessary and reasonable to protect society and to facilitate reintegration.

Reasonable and responsible decision-making about the risk that an offender may present to re-offend requires comprehensive and reliable information. To determine the level of risk to society should an offender be released, the Act requires the Board to consider

> *all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender. (para. 101(b))*

The NPB and CSC strive to ensure that this and other relevant information is available to allow Board members to assess the risk and the potential of an offender to reintegrate as a law-abiding citizen. This will include information about the nature of the offence, the criminal history of the offender, and other factors such as a history of violence or anti-social behaviour and attitudes.

The Board examines the key factors which likely contributed to the criminal behaviour and assesses whether those behavioural factors with potential for change have been addressed by the offender through individual initiative and participation in institutional programs, and if the offender has benefited sufficiently to consider any risk on conditional release to be acceptable and manageable through participation in the release plans.

The National Parole Board recognizes that victims and other individuals can provide relevant information which can assist the Board in its assessment of the risk an offender may present to society if released. Such information may relate to the nature and circumstances of the offence, previous anti-social or deviant attitudes or behaviours, release plans, or any conditions of release. It may also help the Board in assessing the offender's attitudes to others and to the impact of the offence.

During its decision-making, the Board will consider any relevant representations from members of aboriginal communities (for example, native elders) and from ethnocultural minority groups and will assess the extent to which such communities or groups may be involved in the offender's release plan and their influence on the risk of reoffending, the reintegration potential of the offender, and the management of risk on release.

Except for persons sentenced to life imprisonment or serving indeterminate sentences, offenders will ultimately return to the community. With that in mind, the Board will make every effort to assist the reintegration of offenders conditionally released to the community by fully assessing release plans and, when necessary, imposing additional conditions of release to assist in managing risk, particularly during the critical initial period of release.

2. General

2.1 - Risk assessment for pre-release decisions Decision-making criteria and process

Authority

Corrections and Conditional Release Act, S.102

Purpose

To describe the risk assessment criteria and process for pre-release decisions.

Introduction

The primary mandate of the Board is decision-making with respect to the timing and conditions of the conditional release of offenders which will contribute to the protection of the public by facilitating their reintegration into the community as law-abiding citizens. In deciding on any conditional release which would place an offender in the community and able to interact with members of the public, the Board shall thoroughly assess the risk posed by the offender. Consequently, the case of an offender applying to the Board for unescorted temporary absence is subject to the same risk assessment process as that of an offender applying for day parole, or being considered for full parole. Consideration will also be given to how a release fits into and furthers the long-term correctional plan of the offender.

Following this risk assessment, Board members may grant conditional release if, in their opinion, the offender will not reoffend, the risk is not undue, and the release will facilitate the offender's re-integration. The determination of risk is based on two primary considerations. The first is an assessment as to whether the offender is likely to reoffend[1]. The second is a determination that the risk to the public is not undue taking into consideration the nature and seriousness of the offence that could be anticipated should the offender recidivate. If there is to be a grant of any form of conditional release, the decision must impose the least restrictions on the release which are consistent with protection of society and the eligibility for release of the offender.

Board members will commence their risk assessment in each case based on the information on the offender's file. To grant release the information provided must be sufficient to allow the Board members to make a reasonable assessment of the risk presented by the offender.

The Board will begin its review by considering two aspects of the information available about the offender. These are:

- A. Information about the offender's criminal history risk factors and assessment of identified needs areas at time of incarceration; and

1 Except for accelerated parole review cases where the only criteria is that Board must be satisfied that there are no reasonable grounds to believe that the offender, if released, is likely to commit an offence involving violence before the end of the sentence.

- B. Information about the behaviour of the offender during incarceration or on conditional release in the community which is indicative of a modification of the risk the offender may present to the community.

This assessment provides the framework for further examination of the case which may or may not be made by way of a hearing. During this examination the Board will consider the identified factors with respect to risk reduction and available risk management interventions in the community should a release be granted.

Information standards

The quality of information on an offender's file is critical to the determination of the case. When reviewing the file, the Board may come to believe a reasonable assessment of the risk presented by the offender is not possible because potentially significant information, which should be available, has not been provided. For example:

- specific information which could have impact on the decision is identified as needed;
- the information provided lacks the analysis needed to assess positive change in the offender and/or is overly reliant on offender self-report; or
- the release plan does not include information which appears to be essential, such as confirmation of accommodation, or the community assessment is inadequate.

In such a case, the Board will:

- ask the CSC or other correctional authorities to obtain the information, if possible, before any required hearing, or before their decision is rendered; or
- postpone the hearing/review, if it may be done without the possibility of loss of jurisdiction; or
- adjourn the review if the information will be available within two months; or
- deny the release and inform the correctional authority and the offender the case will be reviewed after the needed information is received.

The Board recognizes that in some cases certain information will not be available, and decisions will have to be made on the basis of the historical information correctional authorities have been able to gather using their best efforts, and their assessments of the offender while under sentence.

Review process

A. ASSESSMENT OF RISK FACTORS AND NEEDS AREAS AT TIME OF INCARCERATION

Board members, in studying the offender's file to identify the individual risk factors and needs areas at the time of incarceration, shall review and analyze:

- the nature of the current offence(s) and any precipitating factors, as identified in police reports, pre-sentence reports, etc.;

- the offender's criminal and social history, including marital and family relationships, especially any evidence of violent behaviour;
- additional information from correctional authorities, such as:
- the role of alcohol and/or drugs in the offender's criminal behaviour;
- identification of the offender as a member or associate of a criminal gang or of organized crime by the Correctional Service of Canada, as specified in Commissioner's Directive #576;
- information about anti-social behaviour, attitudes and associates;
- attitude of indifference to the criminal behaviour and its impact on the victim(s);
- previous breaches of supervision conditions and performance on any earlier conditional releases, including those under a previous sentence, especially any record of being at large without authorization or escape attempts;
- any indication of violence or abuse of family members, and/or people in relationships of intimacy, dependency or trust with the offender, or who may be otherwise vulnerable;
- issues surrounding other relationships as they relate to the risk of reoffending;
- issues surrounding employment;
- information relating to the performance and behaviour of the offender while under any prior
the offender's criminal and social history, including marital and family relationships, especially any

- victim information such as Victims Impact Statements given to Crown Attorneys, police reports about the nature of the offence, or information provided directly to the Board or correctional authorities by victims or their families;

- information from provincial authorities about previous criminal behaviour and incarcerations, including young offender information and any available information about criminal activity which led to admission to the mental health system;

- information about performance in school, and from community contacts and family members about anti-social behaviour, attitudes, values and associates;

- psychological and/or psychiatric assessments. The requirements for such professional assessments are detailed in the policy on psychological and psychiatric assessments (2.3); and

- ratings on the SIR scale (general statistical information about the risk of reoffending for a group of similar offenders) or other predictive risk assessment tools.

B. ASSESSMENT OF OFFENDER'S INSTITUTIONAL BEHAVIOUR AND BENEFIT OF INTERVENTIONS WHICH MAY HAVE REDUCED THE RISK POSED BY THE OFFENDER

After identifying the major case specific factors, the Board members shall consider any evidence of change in the offender, in particular efforts targeted at mitigating the risk factors, and other information from correctional authorities and others which pertain to risk, including:

- the offender's progress in the correctional plan and with addressing identified needs and risk factors;

- evidence of benefit and positive change in attitude and behaviour as a result of incarceration and/or participation in programs and/or other interventions which have had beneficial impact on risk factors attested to by institutional and case management staff and other persons dealing with the offender. Programs and interventions include, but are not limited to, programs such as substance abuse programs, anger management, cognitive skills, educational upgrading, native spirituality, elder counseling, or other programming or interventions appropriate to the individual's needs. In some cases, particularly those assessed as low risk, incarceration itself may be considered to be an intervention resulting in positive change in the offender's attitude and behaviour;

- professional reports of assessed degree of benefit and commitment with respect to participation in psychological and/or psychiatric treatment programs which address identified risk factors and needs, including those relating to anti-social attitudes and behaviours, and other personality factors such as level of development, emotional and intellectual maturity, impassivity, self-regulation and problem-solving skills. If a qualified person has identified a disorder that likely contributed to the offence, the offender must have benefited from programs undertaken during incarceration;

- institutional behaviour, in particular any violent incidents, including information concerning the offender's continued involvement in criminal activities including trafficking in, using, or importing drugs. Evidence of enduring changes in behaviour or attitudes which may indicate reduction or increase in the risk posed by the offender; and

- participation in activities organized by gang members or associates, and/or association with individuals identified as members of organized crime groups or criminal gangs; and

- information from the offender which indicates commitment to, and evidence of, change; degree of insight into criminal behaviour and factors in the offence and the gravity of the offence; acceptance of responsibility; and understanding of crime cycle indicators and relapse prevention and risk management skills.

A decision not to grant or authorize a release may be made on the basis of an assessment that the risk that would be presented by the offender being in the community is not acceptable.

C. ASSESSMENT OF RELEASE PLAN AND CONCLUDING RISK EVALUATION

When Board members believe there has been sufficient reduction of risk possibly to justify a grant of some type of conditional release they will continue the review and consider:

- the type of release the offender has applied/is eligible for, with particular attention to the long-term plan for the offender and whether the purpose of the potential release will contribute to the plan;

- the release plan and whether it addresses the identified needs and risk factors of the offender; all details of any plan should be confirmed including, if applicable, bed space or place of residence, program or treatment availability, leave privileges on day parole, employment or training arrangements, etc. Programming or other interventions may be initiated or continued in the community to address needs and risk factors. For some offenders no special interventions will be required in addition to the control and support offered by supervision in the community;

- stressors/factors in the release environment which may increase the risk of reoffending and the offender's needs in relation to these factors, and whether any reoffence should one occur is likely to be violent or non-violent;

- the community assessment: Protection of society is the paramount consideration in the decision on any case. Therefore, taking into consideration the type of release and the characteristics of the community to which the release will be made, the release plan must be thorough. Community input shall be obtained from the police, and when appropriate, not only from the family or sponsors of an offender but, where relevant, from victims who have expressed concern and may be impacted including victims intimately associated with the offender, aboriginal Elders or tribal councils, leaders of ethnic communities which may provide support for or be negatively impacted by the offender, and other appropriate sources;

- the management strategy for the offender while under supervision;

- when the offender has been involved with criminal activities as a member or associate of an organized crime group or criminal gang, the release plan and Board decision shall try to ensure that placement in a residential facility does not assist such associations;

- the least restrictive release type and conditions of release available to the offender compatible with the previously identified risk factors and the protection of society;

- requests from victims for release conditions considered necessary for their protection, for example, a no contact condition; and

- for offenders who are foreign nationals, up-to-date information on their status.

Following review of the relevant information in A, B and C above, the Board members will make their decision. If they conclude that the risk presented by the offender is not undue they may grant the appropriate release. To assist the management of the offender in the community and to reduce any risk of reoffending, the Board shall take into consideration the standard conditions of release and whether the imposition of additional conditions may be necessary.

This risk assessment process is required for all pre-release decisions, whether they are an initial decision, or an expansion or continuation of a release program. Board members are not bound by a previous decision but must take into account the behaviour and achievements of the offender on any previously granted release, any alterations of risk and the primary criterion of protection of the public on every decision.

Following the review, Board members will usually make their decision although occasionally the hearing may be adjourned and the decision delayed. If the review is by way of a hearing, the offender is informed of the decision of the Board members. The written decision is provided to the offender as soon as possible.

Decision sheet

The decision sheet is the official record of the Board's decision and the reasons for the decision.

In the event of a split decision, the views of the diverging Board member must be documented as part of the reasons.

REASONS FOR DECISION

Board members must summarize, in language that is clear, concise and understandable, their overall assessment and evaluation of the risk presented by the offender. This will help to ensure that anyone reading the reasons for the decision will have a full understanding of the rationale for the release or non release of the offender.

The above must occur even for decisions where an existing program is being continued unchanged for a short period.

The summary must include

- an analytical statement of the major case specific factors, as viewed by the Board members, including the needs or other areas requiring intervention;
- the extent to which the specific risk factors and areas identified as requiring intervention have been addressed by the offender, and whether there has been benefit to, or evidence of change in the offender which could reduce risk to the community;
- if the Board members believe there has been sufficient reduction of risk to justify a release, an analysis and evaluation of the community risk management strategies to be employed during the supervision period;

  and

- a concluding assessment of the risk presented by the offender.

The reasons for the decision should not make reference to personal information about a third party.

Cross reference

CSC Case Management Manual (phase 4)

Implementation date

January 2, 1997

2.2 - Hallmarks of quality decision making

Purpose

To identify the hallmarks of a quality decision to help the Board in rendering quality decisions.

Introduction

The National Parole Board, as a partner in the criminal justice system, is committed to the timely reintegration of offenders into the community, while ensuring that its paramount consideration is to protect society through risk assessment. The Board accomplishes this through its decision making policies to ensure consistent quality risk assessments.

The Board maintains a registry of its decisions, which is accessible to those who show, in writing, an interest in the case. The Board has a responsibility to promote consistency of process that reflects a concrete analysis and assessment of the case has been undertaken, consistent with the ideas of openness, accountability and professionalism.

Hallmarks

A decision that:

1. reflects the Board's commitment to the protection of the public, consistent with the principle of the least restrictive determination;

2. reflects a full and impartial consideration of the case was undertaken, consistent with the duty to act fairly;

3. reflects a sensitivity to the social and cultural differences of the individual offender;

4. is based on comprehensive and reliable information, while respecting applicable legislation and the Board's decision making policies;

5. is clear, concise and expressed in understandable language; and

6. is documented in a way that:

    - briefly summarizes the Board members' analysis and assessment of relevant information, in particular, known risk indicators identified in the information received from the police, courts (crown and judge), correctional services, victims and the offender;

    - reflects an analysis and assessment of risk factors and needs areas, at the time of incarceration, while stressing the most serious offences and any substantive factors contributing to the offence pattern;

    - reflects an analysis and assessment of the offender's institutional behaviour and the sustained benefits of the intervention(s) which may have reduced the risk to reoffend; and

    - reflects an analysis and assessment of the release plans, if provided, and community management strategies to be employed during supervision periods to address the offender's needs, and to manage the risk.

2.3 - Psychological and Psychiatric Assessments

Purpose

Professional assessments by psychologists and psychiatrists can provide critical information about the mental status of an offender, and about behavioural characteristics and other risk factors which can assist the members of the National Parole Board in making conditional release decisions. Consideration of such assessments is one element of the comprehensive analysis Board members must perform in reviewing a case and making a decision about the offender's risk factors and reintegration potential. This policy will establish the type of assessments required by the Board.

Psychologists provide a range of services including assessment, therapeutic intervention, crisis intervention and program development, delivery and evaluation. The primary role of psychiatrists is diagnosis of mental illness and the treatment of the acutely and sub-acutely mental ill.

Psychological Assessments

Psychological assessments may be completed for an offender at several points of the sentence. The need for a psychological assessment will be determined by behavioural characteristics of offenders, their criminal history, and features of the offence.

A. INTAKE PSYCHOLOGICAL ASSESSMENTS

As of 1995, intake psychological assessments are required by the Correctional Service of Canada at intake screening, to identify criminogenic factors and develop a correctional treatment plan, for offenders meeting any of the following criteria:

i. Situational adjustment problem - severe anxiety; withdrawn; panic; vulnerable and inadequate.

ii. Mental health - Axis 1 diagnosis2; prior psychiatric admission; current psychotropic medication.

iii. Suicide - prior attempts; current ideation; current plan.

iv. Self-mutilation - history of self-injury; current threats.

v. Persistent violence - history of three or more convictions for a Schedule I offence.

2 Axis 1 (Multiaxial system DSM III): Disorders usually first evident in infancy, childhood and adolescence. Includes such disorders as mental retardation, attention deficits and eating disorders (e.g. anorexia nervosa); organic mental disorders; substance-use disorders (e.g. alcohol, cocaine); schizophrenic disorders; paranoid disorders; affective disorders; anxiety disorders, somatoform disorders (e.g. hypochondriasis); dissociative disorders (e.g. multiple personalities). Source: T.Leis, T.Nicholalchuk and R.Menzies, "The Mentally Disordered Offender: Risk Assessment, Management, and Treatment".

vi. Gratuitous violence - excessive violence beyond that which is "required" to meet an end; or evidence of sadistic behaviour, torture.

vii. Sex offender - any history of convictions for sexually related offenses.

viii. High need offender - severe substance abuse; organicity; offenders with mental disability, social incompetence. Any combination of needs or a singe severe need (including difficulties relating to employment, marital/family, associates, substance abuse, community functioning, personal/emotional and attitudes).

Offenders sentenced before 1995 were not subject to these criteria and may or may not have received a psychological assessment addressing such problems during their incarceration before referral, if required, for a pre-release assessment.

B. PRE-RELEASE PSYCHOLOGICAL ASSESSMENTS

Requirements

Psychological assessments will not normally be required for:

- provincial offenders; or
- offenders eligible for accelerated parole review.

Mandatory referral criteria all other offenders

- persistent violence;
- gratuitous violence;
- referrals for detention;
- conditional release reviews for offenders with indeterminate or life sentences;

- high risk sex offenders - those with two or more sexually related convictions; untreated or drop out; deviant arousal from phallometry (paraphilia); use of a weapon.

Discretionary referral criteria

Referrals will be initiated only when existing treatment summaries are not sufficient to assess progress in relation to the offender's correctional plan and/or community management strategies in the following cases:

- mental disorder;
- suicide risk (including institutional history of self-injury);
- high need (as above).

Currency of psychological assessments

A pre-release psychological assessment will be considered to be current for a period of two years.

Post treatment/program assessments

If there has been program participation, a further assessment will be required to address the influence of the program on the offender and the extent of change, if any, in the risk posed by the offender. This may be a post-treatment report completed by a psychologist, case management officer or program officer, if the issues of extent of change and risk are specifically addressed. Normally, following completion of intensive or intermediate treatment delivered or recommended by a psychologist, the Board will require a post-treatment assessment completed by a psychologist or certified treatment professional.

If, after two years the offender has not participated in any such programming, subsequent assessments may be updates of the initial pre-release assessment.

A more recent assessment will be required if the institutional behaviour of the offender has resulted in charges related to violent behaviour.

Psychiatric assessments

At least one psychiatric assessment is required for any offender with a life or indeterminate sentence. This may be a thorough assessment completed for the courts. Since psychiatric assessments address mental illness or disorder and mental capacity, such assessments will provide information to CSC on intervention strategies which are needed by the offender. Reports are required on the results of any psychiatric treatment interventions with respect to any impact on the risk presented by the offender.

A new psychiatric assessment is required for offenders with a life minimum or indeterminate sentence when they first apply for any type of conditional release other than a medical or compassionate escorted temporary absence. In the case of an offender assessed as mentally disordered and requiring treatment, this pre-release psychiatric assessment will be considered current until the offender participates in the recommended treatment. Another psychiatric assessment is not required for offenders who do not meet these criteria.

A psychiatric assessment will be obtained for any offender when recommended by a psychologist.

When a mental health condition which requires medication or professional intervention to reduce the risk posed by the offender has been identified, and the offender is non-compliant, a further report will not be required.

The Board shall be informed when an offender is taking medication which modifies behaviour. Information about the effect of the medication, the attitude of the offender to continuing use of the medication, and possible changes in the risk posed should the offender stop using the medication is required to assist in risk assessment.

Exceptions

In exceptional cases, the Board may ask for a new psychological or psychiatric assessment for a particular offender if they believe it is required. This situation could arise if there are conflicting assessments on the offender's file, or when specific information on the file leads the Board members to believe such an assessment is needed for decision-making purposes. Board members will give written reasons for making the request to identify the cause of their concern.

In rare instances, Board members may ask the Correctional Service of Canada to obtain a report from an independent external professional. Board members will give written reasons whenever outside professional reports are requested.

Effective date

April 1, 1995

2.4 - Eligibilities

Life sentence - minimum (murder, 1st or 2nd degree, on or after July 26, 1976)

RELEASE TYPE	ELIGIBILITY
Full parole	1st degree - 25 years.***** 2nd degree - 10 to 25 years, as determined by the judge.***** Judicial review possible after 15 years.
Day parole	3 years before PED.
UTA	3 years before PED.
ETA	any time, at the discretion of CSC and subject to approval/recommendation of the Board (see TA policy). ETA's for medical reasons or in order to attend judicial proceedings or a coroner's inquest are exempt from NPB approval/recommendation requirement.
Statutory release	not applicable.

***** Eligibility is calculated to include time spent in custody following arrest

Life sentence - minimum (murder or death commuted January 1, 1974 to July 26,1976)

RELEASE TYPE	ELIGIBILITY
Full parole	10 to 20 years ***** Judicial review possible after 15 years.
Day parole	3 years before PED.
UTA	3 years before PED.
ETA	any time, at the discretion of CSC and subject to the Board's recommendation in certain circumstances (see TA policy). ETA's for medical reasons or in order to attend judicial proceedings or a coroner's inquest are exempt from recommendation requirement.
Statutory release	not applicable.

***** Eligibility is calculated to include time spent in custody following arrest

Life sentence - minimum (death not commuted by July 26,1976, becomes sentence for 1st degree murder)

RELEASE TYPE	ELIGIBILITY
Full parole	25 years.***** Judicial review possible after 15 years.
Day parole	3 years before PED.
UTA	3 years before PED.
ETA	any time, at the discretion of CSC and subject to the Board's recommendation in certain circumstances (see TA policy). ETA's for medical reasons or in order to attend judicial proceedings or a coroner's inquest are exempt from recommendation requirement.
Statutory release	not applicable.

***** Eligibility is calculated to include time spent in custody following arrest

**Life sentence - minimum (*Young Offenders (under 18)*
murder 1st and 2nd degree, sentenced on or after May 15, 1992)**

RELEASE TYPE	ELIGIBILITY
Full parole	5 to 10 years, as determined by judge. *****
Day parole	4/5th of PED.
UTA	4/5th of PED.
ETA	any time, at the discretion of CSC and subject to approval/recommendation of the Board (see TA policy). ETA's for medical reasons or in order to attend judicial proceedings or a coroner's inquest are exempt from NPB approval/recommendation requirement.
Statutory release	not applicable.

***** Eligibility is calculated to include time spent in custody following arrest

Life sentence - maximum

RELEASE TYPE	ELIGIBILITY
Full parole	7 years, or 10 years if Judicial determination pursuant to section 743.6 of the CC.*
Day parole	6 months before PED.
UTA	3 years before PED.
ETA	any time, at the discretion of CSC and subject to the Board's recommendation in certain circumstances (see TA policy). ETA's for medical reasons or in order to attend judicial proceedings or a coroner's inquest are exempt from recommendation requirement.
Statutory release	not applicable.

* Eligibility is calculated to include time spent in custody following arrest

Indeterminate sentence

RELEASE TYPE	ELIGIBILITY
Full parole	3 years for offenders sentenced prior to August 1, 1997. * 7 years for offenders sentenced on or after August 1, 1997. *
Day parole	3 years for offenders sentenced prior to August 1, 1997. * 3 years before PED for offenders sentenced on or after August 1, 1997. *
UTA	3 years for offenders sentenced prior to August 1, 1997. * 3 years before PED for offenders sentenced on or after August 1, 1997. *
ETA	any time, at the discretion of CSC and subject to the Board's recommendation in certain circumstances (see TA policy). ETA's for medical reasons or in order to attend judicial proceedings or a coroner's inquest are exempt from recommendation requirement.
Statutory release	not applicable.

* (from the day the offender was taken into custody)

Other sentence - two years or more

RELEASE TYPE	ELIGIBILITY
Full parole (regular sentence)	the lesser of 1/3 of the sentence or seven (7) years: ss.120(1)
Full parole (Judge's determ.)	the lesser of 1/2 of the sentence and ten years: s. 743.6 of CC.
Full parole (combined sentence)	refer to sections 120.1, 120.2, and 120.3 of the CCRA
Day parole non-APR	the greater of six months before PED or 6 months of sentence: para.119(1)(c)
Day parole APR	the longer of six months served or 1/6th of the sentence: section 119.1
UTA	the greater of 1/2 the PED, or (6) months: para.115(1)(c) ***** a UTA for medical purposes to administer emergency medical treatment may be authorized at any time to an offender whose life or health is in danger: ss.115(2) ***** ***** offenders classified as **maximum** security are not eligible for unescorted temporary absence: ss.115(3)
ETA	any time, at the discretion of CSC.
Statutory release	2/3 of the sentence, plus, for an offender serving a sentence at the time the *Corrections and Conditional Release Act* was proclaimed, the number of days of remission the offender may have lost or failed to earn, and was not re-credited.

(for exceptions see s. 120, 120.1, 120.2, 120.3 and 121 of the *CCRA*)

Other sentence - less than two years

RELEASE TYPE	ELIGIBILITY
Full parole	1/3 of the sentence: ss.120(1)
Day parole	1/2 of PED: para.119(1)(d)
UTA	Provincial jurisdiction
ETA	Provincial jurisdiction
Statutory release	not applicable

(for exceptions see s. 120, 120.1, 120.2, 120.3 and 121 of the *CCRA*)

3. Temporary absence

3.1 - Unescorted temporary absence

Legislative references

Corrections and Conditional Release Act, sections 107(1)(e), and 115 to 118, and Regulations, sections 147, 148, 155, 156, 161(2), 162, and 164

Decision-making criteria and factors

When reviewing a request for temporary absence, the Board will conduct the risk assessment review and analysis of all relevant case specific factors described in the policy on Risk assessment for pre-release decisions (2.1).

PERSONAL DEVELOPMENT FOR REHABILITATIVE PURPOSES

An unescorted temporary absence for purposes of a specific personal development program authorized for periods of up to 60 consecutive days (ss. 116(6)), may consist of a program which includes one or more outings per week and a specific number of hours per outing. These may include, but are not limited to, activities involving attendance/participation in

- a substance abuse treatment program;
- alcoholics anonymous meetings;
- a sex offender treatment program;
- general or specialized education programs;
- technical training programs; or
- family violence counselling sessions.

The program must be renewed by way of a review for each additional period of 60 days. In doing this review, Board members should consider the progress made by the offender over the previous 60-day period and whether the offender will present an undue risk to society during the absence.

When reviewing programs such as this for offenders passed day parole eligibility, Board members may consider the benefits of granting a limited day parole that could serve the same purpose as the UTA.

ASSESSMENT PURPOSES

When the Board is considering a request for an unescorted temporary absence for assessment reasons, consideration of the purpose of the assessment absence is needed.

- Absence for a relatively brief, specific purpose, such as for acceptance at a half-way house, may be considered for administrative purposes.

- Absence for investigating or participating in activities such as therapy, alcoholics anonymous groups or other support groups which provide positive and continuing support and influence of a rehabilitative nature for the offender may be considered as personal development for rehabilitative purposes.

GROUP ACTIVITIES

For group activities, the Board will review and assess the case of each offender.

SUPERVISION

When the Board authorizes an unescorted temporary absence, it is authorized with the understanding that the Correctional Service of Canada will ensure sufficient contact between the offender and the parole supervisor so that any increase in the level of risk to the community will be monitored effectively.

Further conditional releases

The fact that a temporary absence has been authorized carries no commitment that additional absences will be authorized or that day parole or full parole will be granted.

Period in custody between UTAs

A minimum period of 24 hours in custody is required between all types of unescorted temporary absence except when the subsequent unescorted temporary absence is required for medical or compassionate reasons.

Delegation of UTA authority to Institutional Heads

The Board confers on all institutional heads the power to authorize the unescorted temporary absence for **medical** reasons, for all offenders serving

- a life sentence imposed as a minimum punishment or commuted from a sentence of death,
- a sentence for an indeterminate period, or
- a sentence for an offence set out in Schedule I or II.

The Board confers on all institutional heads the power to authorize the unescorted absence for

- all offenders serving a sentence for an offence on Schedule II, and
- offenders serving a sentence for an offence on Schedule I, **except** where the offence
  a) resulted in the death or serious harm to the victim, or
  b) is a sexual offence involving a child.

Cross reference

Policy on Risk assessment for pre-release decisions: Decision-making criteria and process (2.1)

Implementation date

January 24, 1996

3.2 - Escorted temporary absence - Offenders serving life or indeterminate sentences

Legislative references

Corrections and Conditional Release Act, section 17, the *Criminal Code*, section 746.1, and CCRA Regulations, sections 147 and 155.

National Parole Board interventions

The Correctional Service of Canada has the legislative authority, pursuant to section 17 of the Act, to authorize escorted temporary absences (ETA) for offenders serving a life or indeterminate sentence. The authorization may be subject to the Board's approval or recommendation as described below.

Approval

Section 746.1 of the *Criminal Code* stipulates that, except with the **approval** of the NPB, no absence with escort (other than for medical reasons or to attend judicial proceedings or a coroner's inquest) may be authorized for an offender sentenced to life **minimum**, where the offender has more than 3 years to serve before PED.

Recommendation

CSC policy requires the warden to consult with the NPB as to the appropriateness of any escorted temporary absence (except for medical or compassionate reasons or to attend judicial proceedings or a coroner's inquest) prior to granting an ETA to offenders serving:

- life as a **maximum**;
- life as a **minimum**, where the offender is within 3 years of PED;
- an indeterminate period; and

in the case of all:

- first applications for escorted temporary absences; and
- first applications, and any subsequent applications following any of the occurrences listed below:

  a) an unfavourable report is received following any temporary absence;

  b) a conditional release has been revoked, canceled, or terminated due to the offender's behaviour;

  c) the Board has denied an unescorted temporary absence, a day parole or a full parole; or

d) the offender has been assigned a higher security classification.

While the Warden is required to consult with NPB in these cases, the Warden has the final authority to grant the ETA.

Decision-making criteria

An escorted temporary absence may be approved or recommended by Board members when they believe that the criteria set out in Subsection 17(1) are met. As well, Board members should apply the risk assessment criteria for pre-release decisions described in 2.1 of this manual.

Group activities

For group activities, the Board will review and assess the case of each offender.

Escorts

Board members must be aware of the nature of the escort before approving or recommending an escorted temporary absence.

Cross reference

Policy on Risk assessment for pre-release decisions: Decision-making criteria and process (2.1)

Implementation date

January 24, 1996

4. Parole

4.1 - Day parole

Legislative references

Corrections and Conditional Release Act, ss.102, 119(1), s. 122, and Regulations section 157

Preamble

Applications for day parole will be reviewed in accordance with the policy on Risk assessment for pre-release decisions, (2.1).

A day parole program may consist of a number of stages, each with a specific purpose. CSC may implement each phase upon successful completion of the preceding phase, unless the Board members at the time of the initial decision specify the requirement for a progress report from CSC for each phase and Board approval before the implementation of the next phase. In the decision, the Board shall be specific in recording how each stage is to be implemented. Any changes to the original day parole plan must be referred to the Board for approval before implementation.

Although performance on day parole is a factor to consider in a full parole review, successful completion of a day parole carries no commitment that full parole will be granted.

DURATION OF DAY PAROLE

Day parole may be granted for a period not exceeding six months and may be continued for additional periods but each period may not exceed six months. (ss.122(5)) The Board must conduct an assessment of risk before each extension of the day parole. If the offender has reached full parole eligibility, the Board must determine whether the purpose of the day parole has been achieved and the offender would be more appropriately released on full parole, or whether the offender would benefit from an additional period of day parole to further prepare for full parole.

If a day parole plan is continued for an additional period, the total duration should not normally exceed one year, except for lifers. The additional day parole will be processed as a grant of a new day parole, although the same release conditions may be carried over.

DAY PAROLE ELIGIBILITY MORE THAN ONE YEAR BEFORE PAROLE ELIGIBILITY DATE

Experience and recidivism studies have demonstrated that prolonged periods of day parole are not usually of benefit to the offender. In considering day parole for offenders where the eligibility date is more than one year before full parole, or for long-term offenders, Board members shall take into consideration the effects of long-term incarceration and the benefits of well-structured release planning.

In some cases, a release plan proposing an extended period on day parole may be presented which provides for sufficient structure and control through participation in a comprehensive day parole program. Such a release plan may be offered in a community residential facility specializing in programs for long-term offenders.

If Board members decide during the risk assessment process that the day parole release plan being considered does not provide enough structure to manage the risk in conjunction with the above consideration, the Board members may consider alternate release plans presented by the Correctional Service which may include:

- a series of UTA's and/or extended UTA's;
- short periods of release on day parole requiring the offender to return to an institution each night; and
- full release on day parole requiring the offender to return to a community-based residential facility each night.

Day parole for foreign nationals

Offenders who are subject to a detention order under section 105 of the *Immigration Act,* issued on or after July 10, 1995, will not be reviewed by the Board for day parole because under section 105 of that Act those offenders can no longer be released on day parole.

FACTORS TO BE CONSIDERED

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Immigration Act

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Conditions of release

The conditions the Board imposes on an offender on day parole are automatically carried over when the Board decides to continue a day parole unless the Board amends the conditions in continuing the day parole.

Additional conditions imposed on an offender on day parole are, however, not automatically carried over to full parole or statutory release. The Board will indicate in its decision whether some or all of the additional conditions on day parole are to be carried over to full parole or statutory release.

Leave privileges

Unless otherwise specified by the Board, in writing, the MAXIMUM leave privileges for an offender on day parole will be in accordance with Policy 7.2 - Residency and day parole leave privileges in this manual.

EXPANDED PERIODS OF LEAVE

Before full parole eligibility, the Board may reduce the nightly reporting requirement so the offender is not required to report for extended periods in exceptional circumstances, when all other options have been considered and judged inappropriate, and only in order to meet the particular needs of the case. The Board may consider expanded leave to be responsive to the needs of female, aboriginal, ethnic minority or special needs offenders.

The Board has greater flexibility after full parole eligibility date. Board members must consider whether day parole represents the least restrictive option to protect society.

DOCUMENTING LEAVE AND EXPANDED LEAVE

If leave privileges or expanded periods of leave are authorized, the specific parameters of the leave being authorized and reasons shall be recorded as part of the decision.

EMERGENCY MEDICAL AND COMPASSIONATE LEAVE

Unless otherwise specified by Board members in the decision, the community correctional centre director or the responsible district director may authorize leave of up to a maximum of fifteen days per occurrence for emergency medical reasons, or up to a maximum of three days per occurrence for compassionate reasons such as death in the family or visits to the family where a serious illness occurs.

Such leave is to be dealt with via the day parole route rather than an unescorted temporary absence. In such cases, the National Parole Board must be informed within five working days whenever such leave is authorized.

MODIFICATIONS TO AUTHORIZED LEAVE

If the Board has authorized leave privileges, CSC must submit requests for modifications to the Board for approval if the modifications represent increased community access. The director of the CCC, the director of the CRF, or the district director may modify the leave privileges to reduce an offender's access to the

community in accordance with the day parole plan and the offender's general progress.

DAY PAROLE TO A PRIVATE HOME

A private home may be designated by CSC as a community-based residential facility. The National Parole Board may grant a day parole to a private residence before PED only if the residence has been designated as a community-based residential facility.

The Board may consider day parole to a private home when an offender requires a period of transition from the institution, CCC, or CRF into the community; the offender needs continued support; and the demand for residential facilities is not high enough to ensure the provision of direct services by the private or public sector (e.g., geriatric, services for female offenders).

Cross reference

Policies on Risk assessment for pre-release decisions: Decision-making criteria and process (2.1), Hearings, Reviews, and Release conditions, and the Guidelines for leave privileges and Standards on Private Home Placement for Released Offenders

Implementation date

January 24, 1996

4.2 - Full Parole

Legislative references

Corrections and Conditional Release Act, sections 102, 120 (eligibilities), 121 (parole by exception),122-124 (reviews), 128 (effects), 133 (conditions of release)

Criteria for release on full parole

Offenders being considered for release on full parole will be assessed using the Risk assessment for pre-release decisions: Decision-making criteria and process policy (2.1).

When considering release on full parole, Board members must be conscious of the need for the offender to have demonstrated change in behaviour and attitudes, and of the need to assess carefully cases where information has accumulated over lengthy or numerous periods of incarceration, recognizing the potential for information to be overlooked or misinterpreted in these circumstances.

Offenders, particularly those who have been convicted of a violent offence, who have

- been incarcerated for a significant period of time;
- served more than two distinct penitentiary terms;
- repeated or multiple convictions and charges; and/or
- repeatedly failed on conditional release

shall not normally be granted full parole without previous successful experience on unescorted temporary absences and/or day parole which has provided a period of gradual and slowly expanded releases to allow the offender to begin to demonstrate a capacity to reintegrate into society as a law abiding citizen.

Parole by exception

An offender must submit a formal application for parole by exception unless:

- the offender is mentally or physically incapable of applying;
- release is being proposed without the offender's consent (such as for extradition); or
- where urgent circumstances require flexibility.

Board members must first decide whether one of the criteria in section 121 is met; if not, review in advance of eligibility date will be denied and the process discontinued.

If a criterion for parole by exception is met, the Board will then consider whether to grant either day or full parole, in accordance with the provisions of the Act and the Board's decision policies. The Board should consider whether the offender has reached eligibility for an alternative release program, which may be used instead of parole by exception.

Any re-applications received will not be submitted to the Board unless significant new information which affects the offender's eligibility for parole by exception is identified.

Cross-reference

Policies on Risk assessment for pre-release decisions: Decision-making criteria and process, Release conditions, Parole for deportation, extradition or voluntary departure, and Post-release interventions.

Implementation date

January 24, 1996

4.3 - Accelerated review

Legislative references

Corrections and Conditional Release Act, sections 125-126 and Regulations, section 159.

Proper referral

Before scheduling an offender for review under the accelerated review provisions of the Act, the Board must ensure that the referral by the Service was made in accordance with section 125 of the Act. If the criteria in section 125 are not met, the case will be reviewed under the parole criteria in section 102.

Decision-making criteria and process

Accelerated review for full parole requires two distinct evaluations against different criteria:

1. Assessment of whether the Board is satisfied that no reasonable grounds exist to believe that the offender, if released, is likely to commit an offence involving violence before the offender's sentence expires (ss.126(2)); and

2. If release on full parole is directed, assessment of the need for the Board to impose additional conditions of release which address the risk of reoffending non-violently.

FACTORS FOR ASSESSING THE RISK OF REOFFENDING WITH VIOLENCE

The Board will form its opinion about the likelihood of violent reoffending based on all reasonably available and relevant information provided by the Correctional Service of Canada, the offender, and others, such as victims or family members. The Board will consider, but is not limited to, the following factors:

- the offender's potential for violent behaviour as established on the basis of

  (i) previous violent behaviour as documented in the offence history, provincial and young offender records, police reports of the circumstances surrounding the offence(s);

  (ii) he seriousness of previous offenses;

  (iii) reliable information that the offender has difficulty controlling anger or impulsive behaviour, to the point that it might lead to the commission of an offence involving violence. This information may be obtained from community assessments which have examined a full range of variables including the offender's family and marital history, evidence of substance abuse, social history, medical and psychiatric history, employment history and institutional performance;

  (iv) evidence of threats of violence;

  (v) use of weapons during the commission of an offence; and

(vi) attitude of indifference to the criminal behaviour and its impact on the victim(s);

- when an offender has been identified as a member or associate of an organized crime group or a criminal gang the above factors, the circumstances surrounding the offence, and previous charges and convictions will be assessed in the context of these relationships. [Criteria for identification are set out in Commissioner's Directive #576]

- stressors/factors in the release environment which may be predictive of violent behaviour and the offender's needs in relation to these factors;

- information relating to the performance and behaviour of the offender while under sentence;

- psychological or psychiatric evidence that a mental illness or disorder of the offender has the potential to lead the offender to commit, prior to the expiration of the sentence, an offence involving violence; and

- information about any attempts by the offender to reduce/mitigate the possibility of future violent behaviour and evidence that the offender recognizes the problem and is participating or intends to participate in treatment or interventions such as anger management programs.

ASSESSING THE RISK OF NON-VIOLENT REOFFENDING AND THE IMPOSITION OF RELEASE CONDITIONS

When release on full parole is directed, the Board shall assess the risk of reoffending non-violently and consider imposing conditions necessary to address this risk. This assessment will use the risk assessment criteria outlined in the NPB pre-release decision policies (2.1).

A condition to reside in a community-based residential facility may be imposed but only when the offender represents a high risk of non-violent reoffending and this condition has been determined to be the least restrictive measure to manage the risk adequately and to facilitate reintegration. This determination will be based on information from correctional staff that, in view of an assessment of the offender's needs, accommodation is identified as a need area and a residency condition is considered to be a requirement to address the need.

In some cases Board members may have particular concerns that an offender eligible for release under the accelerated parole provisions may not co-operate with the proposed conditions of release. These concerns will be documented by the Board in the reasons for the decision to alert CSC to the Board's opinion about the potential risk of non-compliance or reoffending posed by the offender.

Accelerated review hearing

When parole is not directed at the initial in-office review the case will be scheduled for a hearing. The hearing is conducted by two Board members who will consider:

- the documentation and evidence that was considered at the initial in-office review;
- the reasons provided by the previous Board member for the refusal to direct that the offender be released on full parole;
- any new information submitted to the Board subsequent to the in-office review; and

- representations from the offender regarding the factors which led to the refusal to direct release at the in-office review.

Cross reference

Policies on Release conditions; Risk assessment for pre-release decisions (2.1)

Effective date

September 11, 1996

4.4 - Deportation/Extradition/Voluntary departure

Reference

Corrections and Conditional Release Act, sections 102, 121-123 and 133.

Purpose

To guide the Board in reviewing cases involving **deportation**, **voluntary departure** or **extradition**.

General

When reviewing cases for **deportation**, **extradition**, and **voluntary departure** Board members must take into consideration the criteria of undue risk to society (not only Canadian society) and the facilitating of the offender's reintegration into the community. They must also consider the benefits of community supervision in the achievement of these criteria.

When the risk is assessed as undue, it is noted that there are other ways for an offender to effect a removal to another country. One such method is for the offender to request a transfer to that country under the *Transfer of Offenders Act,* in the event there is an agreement with that country.

Deportation

The up-to-date immigration status of the offender must be determined before granting parole to an offender who is subject to or may be subject to **deportation**. Information will include, but is not limited to:

- permanent resident or visitor status of the offender;
- whether Immigration has issued or intends to issue a detaining order under section 105 of the *Immigration Act*;
- the status of the most recent immigration inquiry, hearing, direction, immigration detention order or appeal of an order;
- in the case of day parole, whether the offender has appealed to Federal Court and the status of the appeal;
- the effectiveness of any removal order in place;
- if there is an effective removal order, the status of the travel documentation;
- the result of any request for refugee status;
- whether immigration officials have given permission for the offender to work or attend school; and
- whether the offender has requested a transfer under the *Transfer of Offenders Act.*

If an offender's immigration status (including the status of an appeal of an immigration decision) has not been finalized, Board members will take into consideration in their assessment of risk, the risk of the offender violating the conditions of release by absconding from the area in order to avoid deportation.

Extradition

When reviewing a request for full parole from an offender who is subject to a surrender order under subsection 25(1) of the *Extradition Act*, Board members should be aware that, pursuant to subsection 25(4) of that Act, a procedure exists, other than full parole, that may be exercised by the Minister of Justice to allow for the immediate surrender of the offender to the foreign state.

Voluntary departure

When reviewing requests for voluntary departure from an offender serving a long-term sentence, Board members must exercise the utmost caution and be aware that authorizing the voluntary departure of the offender to another country effectively nullifies the balance of the offender's sentence as long as the offender resides outside of Canada.

Before authorizing voluntary departure for an offender on parole or statutory release, Board members must be satisfied that the country of destination is willing to accept the offender. Confirmation of acceptance should be in the form of an original, official document.

As well, Board members must consider that it is preferable that some form of supervision or monitoring of the offender take place in the destination country. Board members should therefore be advised of the efforts taken to arrange for this. If supervision or monitoring is available, written confirmation of how it will be undertaken must be provided to the Board. The supervision or monitoring could be in the form of contact with local police in the destination where the offender plans to reside.

Offender consent to parole

Consent of the offender is not required for the Board to grant full parole to an offender who is subject to **deportation** or **extradition**.

Effective date of parole

When granting a full parole to an offender who is subject to **deportation** or **extradition**, Board members will, as part of the decision, specify that the parole does not become effective until the offender can be released into the care and control of the appropriate government agencies involved in carrying out the removal order or the extradition.

Release conditions

The Board should impose, as part of any decision which results in the **deportation**, **voluntary departure** or **extradition** of an offender, a condition requiring that the offender must inform the Board and the Correctional Service of Canada in advance if the offender plans to return to Canada before the expiration of the sentence.

Cross reference

CSC Case Management Bulletin, Issue 28 - *Foreign National Offenders*

Section 25 of the *Extradition Act*

Subsection 50(2) of the *Immigration Act*

The *Transfer of Offenders Act* and the Schedule to it.

Effective date

97/01/02

5. Statutory Release

5 - Statutory Release

Legislative references

The *Corrections and Conditional Release Act*, sections 127, 128, 131(3), 133 and CCRA Regulations 161, and 162.

Additional conditions with respect to statutory release

The National Parole Board may impose any condition in addition to the conditions prescribed in the Regulations on the statutory release of an offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender. (Ss.133.(3))

Imposing a residency condition on statutory release

The authority to impose a residency condition on offenders who have reached their statutory release date is intended to enhance the control and management of risk of certain offenders where the Board is satisfied that, in the absence of such a condition, the offender will present an undue risk to society by committing an offence listed in Schedule I before sentence expiry.

Imposing a residency condition on statutory release is regarded as an exceptional provision that will only be used by the Board when a period of controlled re-entry into the community is deemed by the Board to be essential to support the offender and protect the public. The condition may also be imposed during the statutory release period if the behaviour of the offender while on statutory release leads to a determination that without this condition the offender presents an undue risk to commit a Schedule I offence before the expiration of the sentence.

REFERRAL

This condition will normally be imposed following referral from the Correctional Service of Canada. In an exceptional case, the Board may consider imposition without a CSC referral. In this circumstance, CSC will be asked to identify an appropriate facility and to provide comments on the proposed use of this condition. Should space in an appropriate facility not be available when this condition has been imposed, the offender would be released at statutory release date.

BOARD REVIEW

A hearing is not necessarily required to impose this additional condition. When deciding whether to impose or remove a residency condition, the Board will take into consideration any representations made by or on behalf of the offender.

FACTORS FOR ASSESSING THE RISK OF COMMITTING A VIOLENT OFFENCE

To determine whether an offender represents an undue risk of committing an offence on Schedule I, the Board will consider all relevant information, including the following:

- the offender's potential for violent behaviour as established on the basis of

  (i) previous violent behaviour as documented in the offence history, provincial and young offender records, police reports of the circumstances surrounding the offence(s);

(ii) the seriousness of previous offenses;

(iii) reliable information that the offender has difficulty controlling anger or impulsive behaviour, to the point that it might lead to the commission of an offence involving violence. This information may be obtained from community assessments which have examined a full range of variables including the offender's family and marital history, social history, medical and psychiatric history such as evidence of substance abuse, employment history and institutional performance including any special incidents;

(iv) evidence of threats of violence;

(v) use of weapons during the commission of an offence; and

(vi) attitude of indifference to the criminal behaviour and its impact on the victim(s);

- stressors/factors in the release environment which may be predictive of violent behaviour and the offender's needs in relation to these factors;

- psychiatric or psychological evidence that a mental illness or disorder of the offender has the potential to lead the offender to commit, prior to the expiration of the sentence, an offence involving violence; and

- information about any attempts by the offender to reduce/mitigate the possibility of future violent behaviour and evidence that the offender recognizes the problem and is participating or intends to participate in treatment or interventions such as participation in anger management programs.

DECISION TO IMPOSE A RESIDENCY CONDITION

After determining that an offender represents an undue risk to commit an offence on Schedule I, the Board, in deciding whether to impose a residency condition will take into consideration any factor that is relevant, including:

- an assessment from correctional staff that the offender is considered as a high/risk- high/need or high/risk-medium/need offender;
- accommodation is identified as a need area and a residency condition is viewed by correctional staff as a requirement to address the need;
- documentation indicating that the offender would likely benefit from a period of additional control as is provided by a residential facility;
- the availability of bed-space in a suitable residential facility is confirmed.

RESIDENCY IN PSYCHIATRIC FACILITIES

Residency in a psychiatric facility will normally be used only when treatment is required at the facility and should be part of a multi-phase plan leading to residency in a community-based residential facility or regular statutory release.

Since residency in a psychiatric facility may offer limited access to the community Board members will document, in the decision, their rationale for placing the offender in such a facility. Limited access to the

community is appropriate in order to enable the offender to participate in and benefit from treatment programs that will further reduce and facilitate the management of risk in the community.

DURATION OF A CONDITION TO RESIDE

Unless Board members specify the period for which the condition is valid, it remains in force until warrant expiry or until removed by the Board. The CSC may submit a recommendation for removal or variance based on the level of risk and needs of the offender. Board members must assess whether the purpose of the residential condition has been achieved. This condition should only be in effect as long as necessary for the protection of the public.

LEAVE PRIVILEGES

Leave privileges should normally be in accordance with the Board's policy on residency and day parole leave privileges. Board members should only further limit access to the community by exception and the rationale is to be stated in the reasons for the decision.

EXPANDED PERIODS OF LEAVE

The Board may reduce the nightly reporting requirement so the offender is not required to report for extended periods in exceptional circumstances when all other options have been considered and judged inappropriate and only in order to meet the particular needs of the case. The Board may consider expanded leave in order to respond to the needs of female, aboriginal, ethnic minority or special needs offenders.

DOCUMENTING LEAVE AND EXPANDED LEAVE

If leave privileges or expanded periods of leave are authorized, the specific parameters of the leave being authorized and reasons shall be recorded as part of the decision.

EMERGENCY MEDICAL AND COMPASSIONATE LEAVE

Unless otherwise specified by Board members in the decision, leave of up to a maximum of fifteen days per occurrence for emergency medical reasons, or up to a maximum of three days per occurrence for compassionate reasons such as death in the family or visits to the family where a serious illness occurs, is authorized by the Board for implementation by the facility director in conjunction with the responsible district director.

PRIVATE HOME

A private home may be designated by CSC as a community based residential facility. The Board may impose a residency condition to a private home only if it has been so designated.

The Board may consider residence in a private home when an offender requires a period of transition from the institution, CCC, or CRF into the community; the offender needs continued support; and the demand for residential facilities is not high enough to ensure the provision of direct services by the private or public sector (e.g., geriatric cases, small or remote communities, services for female offenders).

RESIDENTIAL CONDITIONS FOLLOWING A PERIOD OF DETENTION OR A DETENTION REFERRAL

Please see Detention policy, Chapter 6.

Cross Reference

Policies on Release Conditions, Conditional Release Decision-making, Detention, Residency and day parole leave privileges, and Post-release Interventions.

Implementation Date

January 24, 1996

6. Detention

6 - Detention

Legislative References

Corrections and Conditional Release Act, Sections 129-132*,* Schedules I and II, Regulations 160

Referrals

PROPER REFERRAL

Prior to scheduling an offender for a detention review, the Board must determine that the referral by the Correctional Service of Canada or by a provincial or territorial correctional agency was made in accordance with section 129 of the Act, i.e.

- the referring agency is of the opinion that the criteria for referral are met, and
- their conclusion is reasonable.

Cases referred by the Service and the Commissioner of Corrections are both valid referrals if properly referred. The computation for scheduling the review is calculated from the date of the first referral. A case is considered to have been referred on the day it is forwarded from the referring agent.

WITHDRAWAL OF REFERRAL

A case referred to the Board may not be withdrawn unless new information indicates that the referral criteria at the time the case was referred were not met, or the statutory release date has changed.

A request to the Board to withdraw a referral will be accepted only if the request is made, in writing, by the person(s) who made the referral or by a person designated by the Commissioner, and is accompanied by a report which outlines the reasons for the withdrawal.

Hearings

INTERIM HEARING

In certain cases referred by the Commissioner to the Chairperson of the Board it is not possible to hold a detention hearing before the offender's statutory release date. The Board must then hold an interim hearing to determine whether sufficient information exists to hold a detention hearing and to ensure the Board does not lose jurisdiction of the case. The purpose must be explained to the offender.

On completion of the interim hearing, a detention hearing may be held immediately if the Board is satisfied that all relevant information is available on which to make a decision, the information has been shared with offender, all other procedural safeguards are met, and the offender agrees to proceed. Detention hearings not held immediately following the interim hearing must be held as soon as is practicable but not later than four weeks after the case was referred to the Board, unless the hearing is postponed at the request of the offender.

DETENTION HEARING

The detention hearing is distinct from the interim hearing, therefore the members who sat on the interim hearing need not sit on the detention hearing, although they may do so.

PROCEDURAL SAFEGUARDS

Prior to commencement of the hearing procedural safeguards will be confirmed and offenders will be informed of the purpose of the hearing, the criteria to be examined and the possible decisions that can be made.

POSTPONEMENTS

The Board will postpone the detention hearing at the offender's request if a procedural safeguard can not be met. A new hearing will be scheduled to take place within two months. However, if the offender's statutory release date is within one month of an interim hearing, the Board shall deny the postponement in order to avoid losing jurisdiction and order detention pending a new hearing.

If information considered essential to the case is not available to the Board at the time of the hearing, the Board may postpone the review in order to obtain the information. However, the review must be completed within the time frames established in the *Regulations*, unless the offender agrees to a longer postponement. If the lack of this information results in a detention decision, a review of the decision will be undertaken when the information becomes available.

Factors to be considered

In determining the likelihood of an offender committing an offence causing the death of or serious harm (severe physical injury or severe psychological damage) to another person; a sexual offence involving a child; or a serious drug offence, the Board must take into consideration any factor that is relevant, including the factors outlined in section 132 of the Act.

Evidence of recurring sexual victimization involving children under eighteen as demonstrated by the offender's criminal history, in psychological reports or from information obtained from victims, will be considered as reliable information about the offender's sexual preferences for the purposes of paragraph 132(1.1)(*b*) of the Act.

DETERMINING SERIOUS HARM

When determining whether an offender caused serious harm to a person, Board members will consider the following:

- An offence which results in physical or psychological disability, incapacitation, disfigurement, or serious reduction in quality of life, where the result is permanent or long-term in nature, should, unless exceptional circumstances exist, be regarded as having satisfied the "serious harm" criterion.
- It is not necessary that an offence have a permanent or long-term effect on the victim in order to satisfy the "serious harm" criterion. For example, if a victim is severely beaten, but recovers completely from the beating, it is still possible for that offence to be considered to have caused "serious harm".
- When the Act requires that an "opinion" be formed as to whether the offence caused serious harm, the Board member's are required to exercise judgment about the severity of the harm caused. It is the Board member's judgment which is required; although the member may draw on assessments made

by others such as psychologists, the member must not substitute the other's judgment for the member's.

- It is essential to bear in mind that in cases where there is no evidence of physical harm, it is still necessary to form an opinion as to whether severe psychological damage was caused. It is recognized that in many cases it will be difficult to get concrete information as to the psychological impact of the crime on the victim.
- If necessary, in order to form an opinion as to whether or not severe psychological damage was caused, Board members may draw on expert opinion; this can be achieved through consultations or discussions with a psychologist or psychiatrist, or through reference to the available literature. (N.B. For guidelines on assessment of the psychological damage aspect of serious harm, see Appendix I.)

Additionally, the following factors must be considered in formulating an opinion as to whether serious harm was caused. It is not necessary for an offence to involve each of these elements in order to meet the criterion; rather, all the dimensions must be weighted and an assessment made whether, taken together, all the elements of the offence lead to an opinion that serious harm was caused:

- the extent of injury to the victim, as assessed or indicated by medical care sought or required;
- the nature of the offence and the circumstances surrounding it, and in particular whether it involved brutality, excessive force, viciousness, or deviant sexual behaviour;
- the use of a weapon to harm or threaten the victim;
- whether or not the victim was subject to prolonged or repeated abuse or terror;
- any particular vulnerability of the victim, such as being very young, aged, infirm, helpless, or handicapped.

Decision options

Taking into account the factors above and any other relevant factors, Board members will make one of the following determinations:

1. DETENTION

Board members will order the detention of an offender where they are satisfied:

(a) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule I, that the offender is likely to commit
   - an offence causing the death of or serious harm (severe physical injury or severe psychological damage) to another person, or
   - a sexual offence involving a child before the expiration of the sentence;

(b) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule II, that the offender is likely, if released, to commit a serious drug offence before the expiration of the sentence; or

(c) in the case of an offender whose case was referred to the Chairperson by the Commissioner, that the offender is likely, if released, to commit

- an offence causing the death of or serious harm (severe physical injury or severe psychological damage) to another person;
- a sexual offence involving a child; or
- a serious drug offence

before the expiration of the sentence.

2. STATUTORY RELEASE

If the Board members determine that the offender does not meet the criteria for detention, the offender will be released on statutory release, with or without additional conditions as deemed necessary and appropriate to facilitate re-integration and to assist in the management of the offender.

3. ONE-CHANCE STATUTORY RELEASE

If the Board members determine that the offender does not meet the criteria for detention, but are satisfied that the offender was serving a sentence for a Schedule I offence which caused death or serious harm or was a sexual offence involving a child; or was serving a sentence for a Schedule II offence; the Board members will decide whether to impose a one-chance provision on the offender's statutory release pursuant to ss. 130(4) of the Act.

When determining whether to order one-chance statutory release, Board members will take into consideration any factor that is relevant, including:

- evidence of a history of repeated failure on conditional release;
- evidence of repeated convictions for similar offences;
- the offender's progress in treatment programs;
- the extent to which the offender's release plan minimizes the risk of future violence, sexual offences against children or risk of a future serious drug offence.

Reviews of detention orders

The Board may review a detention order at any time and must review an order within one year after the order was made and thereafter within one year after the date of each preceding review, pursuant to ss.131 of the Act. The Board may order detention with an understanding that there will be a further review upon successful or near completion of the treatment program. At the review the Board must determine whether there is sufficient new information concerning the risk presented by the offender to justify modifying the order or making a new order. The behaviour of the offender must have improved sufficiently to satisfy the Board members that the offender no longer meets the detention criterion.

Residency condition following a period of detention

To decide whether to impose a residency condition for an offender who will be released following a period of detention, the Board will take into consideration any factor that is relevant, including:

- the offender is identified as requiring a gradual reintegration into the community following the period of detention;
- information from correctional staff that accommodation is identified as a need area and a residency condition is viewed as a requirement to address the need;

- the condition is reasonable and necessary for the protection of society and to facilitate the offender's successful reintegration into the community; and
- bed space in a suitable residential facility is confirmed.

COMMUNITY ACCESS

Initially, offenders will be required to return to the residential facility nightly, unless otherwise authorized by the Board, in writing. As part of this decision, Board members will state explicitly the expectations that are included in the condition, including any limits or changes to access to the community.

APPROPRIATENESS OF TREATMENT CENTRES AND INSTITUTIONS AS RESIDENTIAL FACILITIES

For purposes of orders made under subpara. 131(3)(a)(ii) certain penitentiaries are designated by the Commissioner as community-based residential facilities. They should normally be used in a multi-phase plan which views detention as the first phase potentially leading to residency at a future date.

Psychiatric facilities and penitentiaries may offer very limited access to the community. If access to the community would be less in such institutions than if the inmate were in another type of community-based residential facility, a rationale for placing the offender there must be provided in the submission to the National Parole Board. For example, limited access to the community is appropriate in order to enable the offender to participate in and benefit from treatment programs that will further reduce and facilitate the management of risk in the community.

COMPLIANCE WITH RULES AND REGULATIONS

When a statutory release residency case is assigned to a psychiatric facility or penitentiary, an additional condition to respect the rules and regulations of that facility must be imposed. Statutory release residency cases are not inmates and cannot be charged with institutional offences while housed within a Correctional Service of Canada institution.

Reviews of residency orders

The Board may review a residency order at any time and must review such an order within one year and thereafter within one year after the date of each preceding review.

Review following an additional sentence

When the Board conducts a review pursuant to ss.130(3.2) of the Act to determine whether the current detention order should be amended to keep it in force until the new warrant expiry date, a full review of the case is not required given that the detention order is still in effect and a full review of the detention order will occur within one year of the previous detention decision or annual review decision.

Board members will address the information related to the additional sentence in deciding whether to amend the order.

Cross references

Policies on Hearings and Reviews

Implementation date

January 24, 1996

Appendix I - Guidelines for the assessment of the psychological damage aspect of serious harm

These guidelines are based on research evidence examining the psychological effects of crime on victims and clinical diagnostic criteria. They are intended to assist CSC staff and NPB members in recognizing the psychological aspects of serious harm.

While these sources of information are relevant to the assessment of serious harm, they must not be used as a substitute for individual judgments. Board member's are required to exercise their own judgment and form their own opinion about whether an offence caused serious harm to the victim.

The *Corrections and Conditional Release Act* defines "serious harm" as "severe physical injury or severe psychological damage". The *Act* also requires that an opinion be formed about whether certain offences caused "serious harm" to the victim.

In consideration of the practical limitations involved in assessing the often "unseen" nature of severe psychological damage, the guidelines set out a series of steps, relevant to the level of information available on an offender's file, to assist CSC staff and Board members in formulating an opinion of serious harm.

CLINICAL DEFINITION OF SERIOUS HARM

In assessing the psychological impact of an offence, mental health professionals generally consider whether victims have symptoms of a serious psychological disorder after the criminal offence.

Psychological disorders are based on impairments in psychological functioning as indicated by:

- the victims' subjective distress and self-reported symptoms; and
- the victims' inability to maintain a valued role in society, e.g., problems with work, school (if a child), family, and friends.

The overall level of psychological impairment is based on weighing the subjective and societal perspectives. In general, serious problems in one area are sufficient to indicate a serious mental disorder. The most common, serious psychological disorder to result from criminal victimization is Post Traumatic Stress Disorder (PTSD).

DIAGNOSTIC CRITERIA FOR PTSD

- reliving of event (intrusive memories, dreams, feeling like event is recurring)
- feeling numb; persistent avoidance of possible reminders of event; loss of interest in the future
- increased physiological arousal (sleep problems, cannot concentrate, startles easily)
- duration of the disturbance of at least one month

The difference between "mild" to "moderate" symptoms and "severe" symptoms is a matter of degree. One way of determining whether a psychological symptom is severe or not is to consider whether a person with that symptom would definitely be in need of treatment. As a reference point, the following symptoms are considered **severe** versus **moderate** by most mental health clinicians and researchers.

DISTINCTIONS BETWEEN SEVERE AND MODERATE PSYCHOLOGICAL SYMPTOMS

Severe	Moderate
- has suicidal ideation	- has depressed mood
- unable to keep a job	- has conflicts with co-workers
- unable to leave home	- avoids some places usually considered safe (e.g. shopping malls)
- has no friends	- has few friends
- frequently shoplifts	- steals from others within the household
- neglects family	- provides inconsistent parenting
- has delusions (believes things that could not be true)	- is overly suspicious
- has frequent panic attacks	- has occasional panic attacks
- refuses to go to school (child)	- occasionally truant
- has persistent insomnia	- has some nightmares
- compulsively drinks	
- addicted to drugs	

Other serious psychological disorders that can result from criminal victimization include depression, conduct disorder (in children), various anxiety disorders, and the exacerbation of pre-existing psychological or psychiatric problems. A frequent symptom in children of sexual victimization is inappropriate sexual behaviour.

DOCUMENTARY SOURCES FOR ASSESSING SEVERE PSYCHOLOGICAL DAMAGE

Severe psychological damage can be inferred from various sources. One strong source of evidence would be the assessment from a duly qualified mental health professional documenting that such harm had occurred. Since such assessments are rarely, if ever, available, another direct source would be victim impact statements. If these statements do not exist or provide unclear or insufficient information, severe psychological damage may in some cases be inferred from offence and victim characteristics as described in such documents as police reports and court documents outlining the facts of the offence.

STEPS TO ASSESS SEVERE PSYCHOLOGICAL DAMAGE

The following steps can also be taken to assess severe psychological damage and may be particularly useful where psychological assessments for victims are not available:

- Examine **victim impact statements**. For impact statements **taken immediately after the crime**, look for high levels of subjective distress and the victims' fear of death during the incident. Strong fears

reported immediately following the incident are an indication that the victim may have suffered severe psychological damage.

- For **victim impact statements taken several months after the event**, look for any serious symptoms, including symptoms of PTSD, sustained subjective distress, and impairment in social and occupational functioning. These are signs that the victim may have suffered severe psychological damage.
- In addition to victim impact statements, consideration should be given to offence and victim characteristics.

The following lists identify offence and victim characteristics identified in the mental health literature as being commonly associated with psychological disorders resulting from sexual and non-sexual victimization. The presence of each of these characteristics increases the probability that a victim of a criminal offence suffered severe psychological damage. It should be noted that the research literature indicates that sexual offences are more likely to cause severe psychological damage than non-sexual offences.

FACTORS ASSOCIATED WITH SEVERE PSYCHOLOGICAL DAMAGE

Offence characteristics

- sexual offence
- if a sexual offence, penetration was involved
- brutality (e.g., serious physical injury, torture)
- victim held captive
- repeated offences against victim
- long duration

Victim characteristics

- prior mental health or adjustment problems
- prior criminal victimization
- female
- 50 years old or older

Other factors

- prior positive relationship or relationship of trust with offender (e.g., parent abuses child, assault by marriage partner)
- no social support for victim provided (e.g., family disbelieves child sexual abuse victim, victim isolated from friends, family, services)

ASSESSING WHETHER THE VICTIM SUFFERED SEVERE PSYCHOLOGICAL DAMAGE BASED ON OFFENCE AND VICTIM CHARACTERISTICS

The foregoing are guidelines only. Victims may be seriously harmed although few (or none) of the factors are present. As well, victims may not be seriously harmed even though many of the factors are present. **The severity and duration of the factors need to be considered in making judgments about the impact of the crime.** To assist in making this judgment, the following table presents various combinations of cases that have been identified in the research literature as being associated with severe psychological damage. The cases are presented in descending order of their likelihood of being associated with severe psychological damage (i.e., the ones at the top of the table are representative of cases most often associated with the incidence of severe psychological damage and the ones at the bottom depict cases that are unlikely to be associated with severe psychological damage).

LIKELIHOOD OF CASES BEING ASSOCIATED WITH SEVERE PSYCHOLOGICAL DAMAGE

Most likely

- child victim, sexual intercourse with parental figure.
- adult female victim, forced sexual intercourse with significant physical injury.
- adult victim, hostage for 10 hours, physical injury, plausible death treats.
- child victim, sexual offence without penetration by parental figure or person in position of trust, duration greater than 12 months.

Not as likely

- child victim, sexual offence without penetration by parental figure or person in position of trust, duration of 6 months or less.
- adult female victim, sexual assault without penetration by male known to victim, threats of injury, single incident.
- adult female victim, physical assaults by intimate male, greater than 12 months duration.
- child victim, sexual assault by stranger, no overt force, 3 months duration.
- adult female victim, prior mental health problems, armed robbery.

Less likely

- child victim, single incident of sexual assault by stranger, no overt force, low degree of sexual contact.
- adult female victim, single incident of physical assault (bruising) by male acquaintance.
- adult female victim, sexual assault (touching over clothes) by male in position of authority (landlord, boss), no overt force, duration of 3 months.
- elderly woman living alone, arson in apartment building, not direct target.

Least Likely

- exhibitionism, obscene telephone calls (adult or child victims).
- property offence, family household, no special vulnerabilities.
- adult male victim, assault by male acquaintance.

7. Release Conditions

7.1 - Release conditions

Legislative reference

Corrections and Conditional Release Act, sections 133 and 134, and Regulations, section 161.

Purpose

This policy provides guidance to Board members on imposing and altering release conditions.

Special conditions

A special condition should be imposed only when the condition is considered appropriate for risk management and only when the condition is reasonable and necessary to prevent the offender from returning to criminal activity.

Board members must be satisfied that without the assistance and control afforded by compliance with the special condition, the offender presents an undue risk to reoffend. There must be a clear link between the condition and the probability of reoffending if the condition is violated.

A special condition must relate directly to a need identified in the decision documentation, or to behaviour that the Board members consider inappropriate or unacceptable. The condition must be one which can be complied with, and which can be monitored and enforced by the parole supervisor.

Board members must be cognizant of and sensitive to the needs and circumstances of aboriginal and female offenders and offenders from other cultures when contemplating imposing conditions for these offenders.

Conditions must be stated clearly and explicitly using wording that specifies the intent of the Board members so that there can be no misinterpretation or misunderstanding. Wording such as "at the discretion of the parole supervisor" is inappropriate as it delegates to the parole supervisor the authority to impose the condition.

Altering special conditions

The Board should alter special conditions when a change in the level of risk renders the condition no longer reasonable and necessary for the protection of society or facilitating the offender’s reintegration into society.

In its review of a case, Board members will consider any relevant factor, including:

- the offender's progress while on release;
- the degree of stability in the offender's release plan or current situation;
- the presence of stresses which might affect future behaviour; and
- evidence that the offender has addressed the major factors for which the condition has been imposed.

The offender has the right to make representations to the Board whenever the conditions are varied or added by the Board. A report will be requested to obtain the views of the parole supervisor before reviewing any request by the offender to amend the conditions of release.

Violation of a special condition

Violation of a special condition is considered to be indicative of the risk becoming unacceptable and should result in immediate intervention by the supervising authority.

The Board must be informed of the circumstances of the violation of a special condition and of the action taken, within 3 working days.

Altering conditions prescribed by the regulations

Although the Board may **vary the application** of how any condition prescribed by the regulations applies to an offender, under no circumstances will the Board **relieve an offender from compliance with** any of the following conditions:

- obey the law and keep the peace;
- report to the parole supervisor as instructed by the parole supervisor; and
- immediately report to the parole supervisor any change in the address of residence.

The Board expects the parole supervisor to maintain sufficient contact with the offender so that an increase in the level of risk to the community may be monitored effectively.

Decision documentation

The reasons for imposing or altering special conditions, or altering or varying the application of conditions prescribed by the regulations must be clearly stated on the decision sheet. The reasons must outline what the Board expects of the offender.

The written reasons for imposing a special condition must reflect the rationale for imposing the condition and why it is considered essential for the management of risk.

Cross Reference

5.0 Statutory release “Imposing a residency condition on statutory release”, 7.2 - Residency and day parole leave privileges and 8.1 Post release interventions.

Implementation Date

1998-07-07

7.2 - Residency and day parole leave privileges

The Board is responsible for establishing the parameter of leave privileges to be associated with an approved day parole, or parole or statutory release that is subject to a residency condition. It entrusts to those who are responsible for the day-to-day supervision and care of these offenders, the manner in which the leave privileges will be implemented.

Normally, the **maximum** leave privileges that will be authorized by the Board are as outlined below. Board members will specify in their decision any case specific leave privileges other than these.

The institutional head, the director of the residential facility or the CSC District Director, as the case may be and in conjunction with the parole supervisor, will determine how and when the Board authorized leave privileges are to be implemented. The determination will take into consideration the offender's progress in achieving the objectives of the release in relation to the correctional plan. Additional leave privileges may not be granted unless approved in writing by the Board.

Weekday

Setting of time limits for return to a residence on a weekday is subject to the discretion of the superintendent of the community correctional centre (CCC), the director of the community residential facility (CRF), or the responsible CSC District Director.

Weekend

(for offenders who work on weekends, "weekend" in this context means a 48 hour time period)

CSC institutions

The District Director, Parole, in consultation with the institutional head, may implement the leave privileges within the context of the release plan approved by the Board and in relation to the general progress of the offender. As a maximum, one weekend may be granted each month; however, the first cannot be implemented until at least thirty days after the implementation of the release.

CCCs and institutions under provincial or territorial jurisdiction

The superintendent, the District Director or responsible person in CSC Parole may implement the weekend leave privileges in accordance with the release plan approved by the Board and in relation to the offender's progress. Seventy-two hour weekend passes (Friday to Monday) may be granted within the following limits:

- one weekend during the first month in residence
- two weekends per month during the second month in residence
- three weekends per month during the third month in residence
- four weekends per month during the fourth and subsequent months in residence.

Holiday weekends may extend from the Friday to the following Tuesday with a total leave of up to ninety-six hours.

Community residential facilities

Leave privileges may be granted in accordance with the basic rules and regulations of the community residential facility, unless the Board members have indicated specifically what those leave privileges are to be as part of the release plan. The supervising parole officer or indirect supervisor of CSC, Parole must be informed of what the leave privileges are for each particular resident at the community residential facility.

Private homes

In the case of conditional release to a private home, the same or similar conditions are to be applied as for a placement in a community residential facility including curfew requirement and weekly contacts by the supervisor at the private home unless otherwise directed by the Board.

Leave for special celebrations

(Christmas, New Year's, spiritual or other cultural celebrations)

If the Board members have already granted weekend leave privileges, leave for special celebrations cannot be granted in addition to the weekends already approved for those months. The leave for the special celebration will replace the regular weekend leave privileges. In addition, the offender may be allowed the time necessary to travel to and from the community facility for such special occasions by the Correctional Service.

Cross-References

Policies on Day parole, Full parole, Statutory release and Detention

Effective date

January 24, 1996

8. Post release interventions

8.1 - Post release interventions

Legislative reference

Corrections and Conditional Release Act, subsection 124(3), sections 135-138 and section 163 of the Regulations.

Purpose

This policy provides guidance to Board members for the review of offenders released on day parole, full parole or statutory release.

INTRODUCTION

The risk presented by an offender in the community, is the fundamental consideration in any conditional release decision. Proper supervision of offenders in the community increases public safety and aids in the successful reintegration of the offender.

The Board expects the supervision of offenders in the community to be undertaken in accordance with the policies, directives and guidelines of the National Parole Board and the Correctional Service of Canada, and in accordance with the C.S.C. “Standards for Conditional Release Supervision”.

Any behaviour or circumstance that suggests an increase in the level of risk, or that the risk has become unacceptable, should result in immediate intervention by the supervising authority.

The Board must be informed of the circumstances of the increase in risk and of the action taken, within 3 working days.

Assessment of risk factors during the period of supervision

In assessing whether risk has changed since release, Board members will review and analyze:

- the reasons for the decision that led to the current release program;
- the offender's progress in the correctional plan while in the community and in addressing identified needs and risk factors;
- the offender’s behaviour since release including the number and nature of previous suspensions;
- a comparison of the behaviour with previous pattern of criminal behaviour;
- any professional opinions and/or information from others regarding behaviour on current release;
- the circumstances surrounding the breach of any release condition and measures taken or proposed as a result of the breach;
- the release plan and community risk management strategies for continuing the release.
- the overall assessment of risk by the case management officer; and
- recommendations regarding the conditions, if any, under which the offender could remain in the community on parole or statutory release.

Remedial action

REPRIMAND

A reprimand will serve as an official warning to the offender that a continuation of the behaviour may lead to a revocation.

The Board will issue a reprimand, in writing:

- if the offender's behaviour although serious does not place society at undue risk, but raises concerns about a potential increase in the level of risk the offender may pose to the community; or
- to caution the offender that the behaviour is inappropriate and to reiterate the consequences of continuing such behaviour.

DELAY THE EFFECT OF CANCELLATION

A delay of the effect of the cancellation represents a restrictive option. It should be used only in those circumstances where there has been a previous suspension for violation of conditions and where the violation of conditions is serious enough to warrant sanction or intervention, but not serious enough to warrant a revocation of the release.

A delay of the effect of cancellation will be based on but not limited to:

- investigating or finalizing a release plan that would assist the parole supervisor in managing the risk upon re-release or facilitate the offender's reintegration;
- completion of an institutional program before re-release;
- the need to accommodate a delay in acceptance to a program or facility; and
- a disciplinary measure in view of repeated violations of conditions.

In the referral to the Board, CSC will document the offender's status and previous history of suspensions so that the Board has sufficient information to make a decision on a delay of cancellation.

Decision sheet

The decision sheet is the official record of the Board's decision and reasons for the decision.

In case of a split decision, the views of each Board member must be documented as part of the written reasons.

REASONS FOR DECISION

Board members must summarize, in language that is clear, concise and understandable, their overall assessment and evaluation of the risk presented by the offender. This will help to ensure that anyone reading the reasons for the decision will have a full understanding of the rational for the decision to continue the release, or to terminate or revoke it.

The summary must include:

- an analytical statement of the major risk factors, as viewed by the Board members, including the needs or other areas requiring intervention;
- an analysis and evaluation of the offender's plans and of the community risk management strategies to be employed during any remaining period of supervision; and
- a concluding assessment of the risk presented by the offender.

The reasons should not refer to personal information about a third party.

If a reprimand is issued or the effect of cancellation is delayed, it must be documented on the decision sheet.

Cross reference

7.1 Release conditions
C.S.C. Case Management Manual - Community supervision

Implementation date

1998-07-07

8.2 - Recredit of remission

Legislative reference

Sections 6.(4.1) and 6.(9) of the *Prisons and Reformatories Act*

Purpose

To outline the requirements on the recredit of remission, forfeited as a result of a revocation of parole, for offenders under the jurisdiction of the National Parole Board.

Policies

The Board will review a case for recredit of remission upon application by or on behalf of an offender requesting the recredit of remission forfeited as a result of revocation of parole.

Where an offender forfeits remission due to the revocation of release, only in exceptional circumstances will the Board recredit remission.

Where the Board is of the opinion that exceptional circumstances exist to justify the recredit of remission, those circumstances and the reasons to justify the decision, and the exact recredit (# of days) are to be documented clearly by the Board on the decision sheet.

Implementation date

January 24, 1996

8.3 – Offenders with a Long-term Supervision Order

Legislative reference

Criminal Code sections 753.(5)(*a*), 753.1, 753.2, 753.3, 753.4 and 760; *Corrections and Conditional Release Act*, sections 99.1, 134.1, 134.2, 135.1.

Purpose

To establish policies governing the responsibilities of the National Parole Board with respect to offenders designated by the courts as long-term offenders during the long-term supervision part of their sentence.

Release Conditions and Information Sharing with the Offender

Special conditions imposed on parole or statutory release do not automatically carry over to long-term supervision. If required, they must be imposed specifically for the long-term supervision.

If any special conditions are recommended by the Correctional Service the offender shall be informed that he or she may submit written opinion to the Board about the proposed conditions within 15 days after sharing.

If special conditions are imposed, the Board decision will normally be given no later than one month before the long-term supervision period commences, and as soon as possible after the period allowed the offender for response has elapsed. This timeframe will allow the offender the opportunity to respond to any special conditions, other than those recommended by the Correctional Service of Canada, which the National Parole Board may decide to impose, and for the Board to consider any such response.

The NPB policy on Release Conditions (7.1) applies. However, because the offender is no longer under warrant, any special condition that restricts the offender to a particular place or area must be justified, and why alternative measures will not suffice must be fully documented. For example, access to specific programs is required, or the location is necessary for the offender to receive adequate supervision. Exceptional care must be taken in writing and imposing special conditions on these offenders to ensure they are clear, reasonable and enforceable, and specific to those characteristics and behaviours of the offender which could lead to substantial risk to the community [*Criminal Code* ss.753.1(2)].

Condition to reside in a community-based residential facility

Long-term supervision orders are based on the perception that these offenders can be managed in the community. Therefore, it should only be in exceptional circumstances that a condition to reside in a community-based residential facility (CBRF) is imposed. It may be necessary in exceptional cases to provide a brief period of controlled re-entry into the community, for example if the offender has been detained. In addition, if the behaviour of the offender during the period of long-term supervision leads to a determination that without this condition the offender presents a substantial risk to the community, a condition to reside in a CBRF may be imposed. A Community Correctional Centre may only be used for

these offenders when it is located in the community. The offender must be allowed regular access to the community.

Review in 90 days: If a condition to reside in a CBRF is imposed it will be limited to a maximum of 90 days. CSC and NPB must both have reviewed the case by the end of ninety days to determine if the condition is still essential to manage risk and a decision must be taken to remove or continue the residency condition. The parole supervisor should submit a report to the Board with respect to the continuing need for this condition within 60 days of its imposition.

If the Board has reason to review the case six months or less before the long-term supervision comes into effect, and the necessary reports for long-term supervision have been submitted to the Board, special conditions in place on parole or statutory release may be continued to the LTSO period if their continuation is explicitly stated on the Board's decision.

Suspension of long-term supervision

When CSC refers the case to the Board, the Board shall review the case as soon as possible, and within thirty days. This timeframe will help to ensure enough time within the ninety-day period for the provincial/territorial Attorney General to determine whether to lay charges of breach of condition when recommended by the Board.

NPB Post-suspension decision options *(CCRA ss.135.1(5)-(8))*

If the Board orders a cancellation not to take effect until the expiration of a specified period to allow the offender to participate in a program, a special condition shall be imposed which specifies the program that is to be followed, and the anticipated date of completion.

Criteria for recommending laying a charge of breach of condition

Recommending that an information be laid could initiate a court process that could result in the offender receiving a sentence of up to ten years. The assumption of the court, in designating these cases as long-term offenders, was that there was a reasonable possibility of eventual control of their risk in the community. For the Attorney General to proceed, the following will be required:

- The behaviour of the offender must have demonstrated that he or she may present a substantial risk to the community because of failure to comply with one or more conditions;
- There is clear, convincing evidence that a breach of conditions has occurred;
- The condition must have been reasonable, related to behaviour leading to substantial risk, and enforceable;
- It must be clear that the offender understood the full implications of the condition, and will not be able to argue 'reasonable excuse' for not complying successfully;
- In cases where suspensions have been cancelled by CSC and/or NPB, the deterioration of the offender must have been well documented. All alternative interventions that have been attempted by CSC and NPB must be fully documented and why the decision has now been reached that no appropriate program of supervision can be established must be explained. The reasons why the final remedy of recommending a charge be laid is now being used, following the present breach, must be clear.

  National Parole Board decision documentation in these cases must be able to withstand the scrutiny it would receive in court if the breach of condition charge is laid.

New charges: New charges laid against the offender do not necessarily provide grounds for suspension, or for recommending to the Attorney General that a charge be laid against the offender. The charges must be of a type that makes it appear that the offender may pose a substantial risk to the community.

Hearings

A post-suspension hearing is required.

A hearing is not required to impose any special condition, or to review an application to relieve, remove or vary any conditions of the long-term supervision. The Board will take into consideration any representations made by or on behalf of the offender.

Quorum

Two Board members shall vote on all decisions relating to long-term offenders.

Records Management

The front of the hard copy file will be prominently labelled Long-term Supervision Ordered. The file will be sent to archives when the period of long-term supervision is completed. Hearing tapes should be clearly labelled LTSO to avoid inadvertent destruction after warrant expiry of the custodial sentence.

The usual time periods for destruction of files or hearing tapes apply following expiration of the long-term supervision order.

Cross references

*Corrections and Conditional Release Act***,** sections 100, 101, 109 to 111, and 140 to 145 and related NPB policies apply, as appropriate. This includes National Parole Board policies 7.1 – Release Conditions, 10.2 – Disclosure to victims, and 11.2 – Registry of decisions.

Implementation date

April 8, 1999

9. Hearings and Reviews

9.1 - Reviews

Legislative reference

Subsections 123(5) and 138(5) of the Act

Purpose

The purpose of this policy is to provide guidance on when to conduct a review for parole earlier than the time required by legislation, following a denial or revocation of release of the offender.

Policy

The Board is not required by law to conduct a further review for parole within two years following a denial of parole or within one year following revocation of a release.

Notwithstanding the above, the Board will conduct an earlier review for parole, when information and a recommendation are received from correctional authorities indicating that the offender, if released, will not present an undue risk to reoffend.

The documentation from correctional authorities must address any issues or concerns expressed in the reasons for the previous Board decision to deny or revoke release.

Reviews earlier than required by legislation should take place in any appropriate case and particularly in the case of offenders serving relatively short sentences where waiting two years would not serve the interests of public safety.

Cross references

Policies on hearings; unescorted temporary absence; accelerated parole review; day parole; detention; adjournments; and guidelines on the use of waivers, postponements and withdrawals, and sharing of information.

Effective date

April 8, 1999

9.2 - Hearings

Legislative reference

Section 140 of the *Corrections and Conditional Release Act*.

General

The exercising of a decision making power, especially one that affects an individual's rights (i.e. liberty), must respect the duty to act fairly in the rendering of decisions. As decision-makers, Board members must abide by this duty. One of the components of this duty is the right to be heard. In some cases, as stated in legislation, this right encompasses the right to a hearing.

Hearings provide a forum for Board members to review information with the offender and other participants, and affords the offender and the offender's assistant the opportunity to make in-person representations to the Board. Hearings also permit members to clarify with the offender and case management staff any area of concern.

Hearings before the Board are administrative processes in nature and no formal rules of evidence are required to be followed. Board members are responsible for the conduct and the integrity of the hearing and for the professional management of the decision-making process.

Hearing - discretionary

If not required by law, the Board may still choose to conduct a review by way of a hearing, if the Regional Vice-Chairperson or the Regional Director believe that it is desirable to do so based on an assessment of any relevant factor, including

- the decision may result in the first release of the offender, or the first release of the offender following a revocation of day parole, full parole or statutory release;
- the criminal history of the offender, including a history of violence;
- previous history of breaches of release conditions or failures on conditional release;
- the extent and purpose of the proposed release plan;
- the date of the previous review; or
- decision comments from any previous review or the current review.

Procedural safeguards

Prior to the commencement of a hearing, the Board will verify that all procedural safeguards have been respected. If a procedural safeguard has not been met, the offender may be unable to present the case properly. In cases such as this, when legislative time frames permit and the delay will not result in a loss of jurisdiction by the Board, the offender may choose whether to go on with the hearing or reschedule it at a later date.

Confidential information

Information relevant and essential to decision-making must be shared with the offender. When information is withheld from the offender, pursuant to subsection 141(4) of the Act, the offender must be informed that confidential information has been considered in making the decision (refer to the policy on Disclosure of information).

If confidential information becomes available to the Board during the hearing, the information will be received in the absence of the offender or other persons present, and will be recorded on a separate tape.

After the Board members receive the confidential information, they will decide whether it is relevant and if the information or a “gist” thereof can be shared with the offender, given the requirements of subsection 141(4) of the Act.

New information on criminal activity

The Board recognizes that an offender may reveal information during a hearing about criminal activity not previously divulged or currently before the courts. Offenders will be made aware that such information could be used in other proceedings.

Who attends the hearing

(see also, policy on Observers at hearings)

In addition to those persons who would normally be in attendance at a hearing, Board members may require the presence of other NPB and CSC staff to provide information and support services.

Persons interested in the hearing process in general and not with the case of a particular offender may be given permission by the Board to be in attendance at a hearing, unless the Board concludes that any of the possible situations described in subsection 140(4) the *Act* is likely to exist. The persons may include members and staff of the Board, staff of CSC, representatives from provincial or territorial correctional systems in relation to their professional activities, and individuals who wish to obtain a better understanding of the conditional release process. All persons will be required to respect the confidentiality of the proceedings and the privacy interests of the offender.

Cross references

Corrections and Conditional Release Act, section 141 (disclosure of information); subsection 143(1), (records of proceedings); *Corrections and Conditional Release Regulations,* sections 147-154 (quorum); and 164 (review by way of hearing): policies on observers at hearings, assistants, records, interpreters, decision registry, adjournments, waivers, postponements, and disclosure of information; and Board members Code of Conduct.

Effective date

January 24, 1996

9.2.1 - Elder Assisted Hearings

Legislative references

Corrections and Conditional Release Act, section 140 and subsection 151(3).

Purpose

The purpose of Elder assisted hearings is to create an environment which facilitates a culturally sensitive hearing process for aboriginal offenders (Indian, Inuit and Métis) being reviewed by the National Parole Board. Offenders other than those officially identified as aboriginal may choose to have an Elder assisted hearing.

The role of the Elder is to provide Board members with information about aboriginal cultures, experiences and traditions, and, when possible, the specific cultures and traditions of the aboriginal population to which the offender belongs, or may return. The Elder also often offers wisdom and guidance to the offender. The National Parole Board arranges for the presence of the Elder who will provide this service and participate in the hearing process.

Characteristics of an Elder assisted hearing

Physical and social barriers between the participants will be minimized thus facilitating the exchange of information. Participants include the Board members, the Elder, and the hearing assistant; CSC staff; the offender and the assistant; an institutional Elder or one who has been visiting and conducting ceremonies, when appropriate; and other approved participants. The format may vary according to regional practices.

The Elder provided by the Board may be briefed by the Board members about the offenders appearing for review. A briefing shall be based on information which has been shared with the offender by case management staff.

Prior to or at the beginning of each hearing the hearing assistant will briefly explain the Elder's role and the way the hearing will proceed.

All participants may provide input into the case.

The Board members shall adhere to the established criteria for decision-making. When discussing the information relevant to risk assessment, a strong focus of the hearing will be on the offender's progress towards healing; program participation, including participation in aboriginal ceremonies incorporating the teachings, and the benefits derived from participation; extent of success addressing the risk factors which led to offending; and the potential for successful reintegration into the community.

Role of the Elder

Before a day, or session, of Elder assisted hearings begins, the Elder may choose to perform a ceremony in the hearing room and pray with the NPB Board members and staff. In addition, the Elder may choose to say a prayer at the beginning of each hearing when the participants and any observers are present.

The Elder is an active participant in the hearing and may ask about the offender's understanding of aboriginal traditions and spirituality, progress towards healing and rehabilitation, and readiness of the community to receive the offender if return to the community is part of the release plan. The Elder may speak with the offender in an aboriginal language to gain a better understanding of the offender, and to assist the Board members with gaining further information helpful to achieving a quality decision. A summary of such an exchange will be given by the Elder to the Board members and other participants, including the offender, before the decision is made.

The Elder is an advisor to the Board members during the deliberation stage of the hearing and may provide insights and comments with respect to cultural and spiritual concerns.

Conduct of the Hearing

OPENING PRAYER

The Elder may choose to say a prayer at the beginning of the hearing. Prior to the hearing, the offender will have been offered the opportunity to participate in this prayer, and choose whether to be present.

MANAGEMENT OF THE HEARING

The Board members, aided by the hearing assistant, are responsible for the management of the hearing, and maintaining the atmosphere of respect and trust.

DELIBERATIONS

Board members may deliberate privately with the Elder present. Alternatively, they may choose to confer following the conclusion of the interview, without anyone having to withdraw, and then give their decision.

Prior to or after the deliberations, the Elder may speak and give advice to the offender.

ASSISTANTS

At the discretion of the Board the offender may be allowed more than one person to provide assistance and to support to him or her during the hearing. In determining who may participate in the hearing, the Board will take into consideration aboriginal cultural values and supports which may influence the offender's

rehabilitation and reintegration, such as the importance of the offender's family, the community, and its leaders and Elders.

To allow for necessary security clearances, consideration, and approval, application to have additional assistants should be made to the Board as early as possible before the hearing.

INSTITUTIONAL OR OTHER ELDERS

An offender may ask to have another Elder participate in the hearing. This Elder may be working in the institution or be from the community. These Elders may participate in the hearing but are viewed as assistants for the offender and do not participate in deliberations.

OBSERVERS

Observers at Elder assisted hearings, as at other hearings, do not participate in the hearing.

Procedural safeguards

Before the hearing, on tape, the hearing assistant will explain to the offender the role of the Elder and, when the Elder chooses to say a prayer before the hearing begins, will also ask if he or she would like to be present for the prayer.

The verification of procedural safeguards will be recorded on the hearing tape. If the verification is not done in the presence of the Board members, they will be informed of the verification at the beginning of the hearing.

An additional procedural safeguard shall be added: "The offender agreed to an Elder assisted hearing". A form signed by the offender indicating this agreement must be on file.

Applications and Priorities for Elder assisted hearings

APPLICATIONS / ASSIGNMENTS OF OFFENDERS FOR ELDER ASSISTED HEARINGS

It should not be assumed that an offender does or does not want an Elder assisted hearing. Any region offering Elder assisted hearings will establish procedures, in consultation with CSC, for the earliest possible identification of offenders who want this form of hearing. When Elder assisted hearings are scheduled without a specific application, offenders must be informed in advance of the hearing date and given an opportunity to request assignment to a different panel.

PRIORITIES

While not required by law, the Board may conduct Elder assisted hearings when circumstances permit. For example, there must be a sufficient number of aboriginal offenders in a region to establish a reasonably predictable schedule of such hearings, Elders must have been identified who are willing to provide the required level of service to the Board, necessary training must have taken place, etc.

The timing or scheduling of compulsory reviews may make it impossible to provide an Elder assisted hearing, or the availability of the Elder may cause Elder assisted hearings to be held at a time other than a usual hearing day in a facility. The following priorities will be applied in determining who will be allowed an Elder assisted hearing when all requests cannot be fulfilled:

First: aboriginal offenders who are participating in native spirituality programs;

Second: non-aboriginal offenders participating in native spirituality programs;

Third: aboriginal offenders not participating in native spirituality programs.

Cross references

Corrections and Conditional Release Act, section 141 (disclosure of information); subsection 143(1) (records of proceedings); *Corrections and Conditional Release Regulations,* sections 147-154 (quorum); and 164 (review by way of hearing); the National Parole Board Corporate Policy on Aboriginal Offenders; and policies on hearings**,** observers at hearings, assistants, records, interpreters, decision registry, adjournments, waivers, postponements, and disclosure of information; and the Board members Code of Conduct.

Effective date

February 1998

9.3 - Observers at hearings

Legislative reference

Corrections and Conditional Release Act, subsections 140(4)-(6).

Purpose

The National Parole Board permits observers to attend specific hearings to increase the openness of its decision-making, the accountability of the Board, and to contribute to the public's understanding of the decision-making process.

Definition

Observers are persons authorized by the Board to attend an offender's hearing to only observe the proceedings.

General

Normally observers will be permitted to be present during the entirety of the hearing; although, only the Board members are present at the time of deliberation.

The authority to permit observers should be interpreted liberally since Board members will have the authority not only to admit observers to the hearing but also may require individuals to leave the hearing at any time that the members consider it necessary in accordance with s.s. 140(5) of the Act.

Normally, persons of a young age will not be allowed to attend as observers. This is due to the nature of the subject matter commonly discussed at hearings. Exceptions will be considered on a case by case basis.

Authorization to attend a hearing

Authorization to attend a hearing is specific to that hearing, and any subsequent request to attend a hearing must receive Board approval.

Conditions governing observers

Persons who wish to attend a hearing must submit a written request to the Board for observer status. They must also agree to comply with all conditions established at the time of the hearing by the Board members. The request must be made sufficiently far in advance to ensure that the Board can make an informed decision regarding authorization.

MEDIA REQUESTS FOR ATTENDANCE AT HEARINGS

For media observers who have a valid security clearance - applications will be required 2 days in advance of the hearing date; for those who do not have a valid security clearance, applications will be required 15 days in advance of the hearing date.

The members may, at times, request that an observer(s) leave the hearing room for a portion of, or the hearing in its entirety for a reason indicated in paras. 140.(4) (a) to (d) of the Act.

Provision of an explanation

A person who has been denied permission to attend as an observer will be given an explanation.

A denial of authorization to attend a hearing is not appealable.

Notification to the offender

Offenders will be notified of any person who has applied to observe at their hearing. The offender will be informed in the letter of notification that the observer will be permitted to attend the hearing unless the Board is advised of, and is satisfied that, any of the criteria in paras. 140.(4)(a)-(d) of the Act are met.

Cross reference

9.2 Hearings

Effective date

September 11, 1996

9.4 - Assistants at hearings

Legislative Reference

Corrections and Conditional Release Act, subsections 140(7) and (8), and paragraphs 140(4)(a) to (d).

Purpose

To inform and guide the Board regarding assistants for offenders at National Parole Board hearings.

Role of the Assistant

The role of the assistant before the Board is to support and advise the offender, and in that capacity includes addressing the Board members. The role does not extend to the role of counsel as found in the court process.

Arrangements and expenses

The offender is responsible for making the necessary arrangements for the assistant to attend the hearing. Neither the National Parole Board nor the Correctional Service of Canada bear any responsibility for those arrangements nor for any costs incurred by the offender or the assistant.

Number of assistants allowed

Should an offender request the presence of more than one person for assistance at the hearing, the Board members will require that one individual be designated as the assistant who will advise the offender and address the Board.

The Board may find it necessary to limit the number of such persons attending the hearing to ensure that an efficient and effective hearing takes place. Any such limitation will be established after considering the circumstances of the hearing room and the other persons who are required to be at the hearing or who have been granted permission to attend the hearing.

Assistant not available

If the assistant is unable to attend the hearing, the offender will be consulted to determine whether or not the hearing should proceed. If the offender elects to postpone the hearing, up to a 3 month delay may ensue before it is possible to reschedule it.

The members maintain the discretion to decide whether to postpone and reschedule the hearing or to proceed with the hearing. The members must indicate in the written decision, the reasons for proceeding with the hearing.

Cross reference

Policies on hearings, observers at hearings, interpreters, waivers and postponements.

Effective date

September 11, 1996

9.5 - Interpreters

Legislative Reference

Corrections and Conditional Release Act, subsection 140(9)

Purpose

The use of interpreters supports the Board's commitment to ensuring that the offender is aware of, and understands all relevant information provided to the Board for the hearing and also understands the proceedings of the hearing.

Arrangements and expenses

The Correctional Service of Canada is responsible for ensuring that the offender is aware of the right to have an interpreter. CSC makes the necessary arrangements and pays all expenses for interpreter services.

Impartiality of the Interpreter

Wherever possible, the interpreter should be certified. Spouses and other family members or friends of the offender should not normally be used as interpreters except where no other interpreter is available. Institutional personnel such as chaplains or native counsellors may be used as interpreters if the offender makes such a request and the Board agrees.

Interpreter not available

The Board will consult with the offender if an interpreter is not available and determine if the fairness of the hearing would be compromised by proceeding in the absence of an interpreter. If the offender does not agree to a postponement, the Board will proceed with the review. However, if, in the view of the Board a hearing cannot effectively be held, the Board should either postpone or deny release and set a new review date when an interpreter will be available.

Recording of the Decision

A key role of the interpreter at the hearing is to ensure that the Board's decision and any release conditions are articulated clearly and fully explained to the offender. The written reasons for the decision will be provided in the official language used during the hearing. The interpreter may be asked to record, in the language understood by the offender, the decision, reasons for the decision, and the conditions of release. This will enable the offender to review them subsequent to the hearing. The interpreter's recording will be annexed to the decision sheet.

Cross reference

Disclosure of information: Guide for staff

Implementation date

9.6 - Adjournments

Legislative Reference

Corrections and Conditional Release Act, subsections 122(3); 123(4); and 135(5). Corrections and Conditional Release Regulations, 156(5), 157(4), 158(4), and 163(1).

Purpose

To provide guidance to Board members and staff on the use of adjournments of reviews.

Definition

An adjournment of a review is a temporary suspension of that review.

Day parole, full parole and UTA reviews

a) ADDITIONAL INFORMATION

If the Board adjourns a review to obtain further information, the same Board members will continue the review following receipt of the information. In circumstances where it is not possible to use the same members, a new review will be necessary.

b) FURTHER TIME

If the Board adjourns a day or full parole review to allow more time to render a decision, the same Board members who conducted the review will render the decision.

c) COMPLETING THE REVIEW

The Board may render a decision without resuming the hearing;

- when no new information is received - for example, the adjournment is only for the purpose of rendering the decision; or
- when new information is received between the adjournment and the rendering of the decision, if
    - the decision results in the release of the offender, or
    - in the case of a denial, the offender has had the opportunity to address the elements of the new information.

Detention review

The Board may adjourn a detention review at the request of the offender, but the review must resume as soon as possible. The offender must be made aware that no release will occur prior to the Board making a final decision.

When the review resumes, the same Board members will continue the review at the point of adjournment. In circumstances where it is not possible to use the same members, a new review will be necessary.

Post-suspension review

If, at the request of the offender, the Board adjourns a post-suspension review, the review must resume as soon as possible.

When the review resumes, the same Board members will continue the review at the point of adjournment. In circumstances where it is not possible to use the same members, a new review will be necessary.

Cross reference

Corrections and Conditional Release Act, subsection 143(3); National Parole Board policy on detention, waivers, and postponements.

Effective date

September 9, 1996

9.7 - Waiver of review or hearing

Legislative reference

Corrections and Conditional Release Act, ss. 123(2) and 140(1).

Purpose

To provide guidance to Board members and staff on the use and acceptance of a waiver, i.e. a declaration, in writing, by an offender advising the Board that the offender does not want a hearing or review.

General

The Board considers, whenever possible, day and full parole release during the same review. It is important, therefore, that CSC case managers ensure that offenders are made aware of and understand the purpose of their right to a review or hearing, and the consequences of waiving that right.

Waivers will not be accepted from offenders who have been certified or declared legally unable to manage for themselves. Guardians appointed by the courts to exercise the rights for such offenders, may submit a waiver on their behalf.

In order that an offender who wishes to waive a hearing or review be duly informed concerning the consequences of waiving, CSC case managers will make every reasonable effort to ensure that the waiver is submitted using a standard waiver form. This form is valid only if signed by the offender.

A waiver applies only to the specific hearing or reviews waived, and is valid until the next review date required by legislation (two years) or policy 9.1 Reviews. An offender who waives the hearing, but not the review, shall be advised that written representations may be forwarded to the Board within 15 days of the waiver. The Board will not complete the review until after 15 days from the date of the waiver of the hearing.

If an offender revokes a waiver, it is only valid if the Board receives the written notice of revocation of the waiver prior to the date of review. In such instances the Board will conduct the review as soon as practical following the receipt of all documentation required to review the case.

Refusal to sign standard waiver form

If an offender wants to waive a review or hearing but refuses to sign a standard waiver form, CSC case managers will document that fact on the form and indicate whether they believe the offender understood the consequences of submitting the waiver. On the basis of this information, the Board will decide whether to accept the waiver.

Refusal to attend a hearing

If an offender does not attend a hearing, but refuses to sign a waiver, the Board will complete the review without a hearing if the Board believes that every attempt was made to obtain a waiver. In these circumstances, Board members should be presented with documentation supporting, or indicate on the decision sheet, the fact that the offender is aware of the consequences of not attending the panel.

Cross reference

Policy on adjournments, postponements and reviews.

Effective date

September 11, 1996

9.8 - Postponement of review

Legislative reference

Corrections and Conditional Release Act, s.s.141(3). Regulations s.s. 157(3) & 158(3).

Purpose

To provide guidance to Board members and staff on postponements, i.e. a delay of a hearing or review, usually at the request of the offender, anytime before it begins.

General

When a hearing or review is postponed, it should commence as soon as it is practicable thereafter, but normally not longer than three months from the month of postponement.

An offender may request a postponement for reasons that may include but are not limited to:

- a procedural safeguard cannot be met before the date of the review; or
- the offender wishes to complete an assessment, treatment or training program before the review.
- the offender's assistant is unable to be present at the hearing;

If a postponement will result in a legislative or regulatory timeframe not being met, the offender must be informed of this fact and be asked to indicate, in writing, the request for postponement and awareness of the missed timeframe.

Last minute postponements

If an offender requests a postponement for a valid reason, as outlined above, but the Board has reasonable grounds to believe that the offender is using the reason in order to frustrate or control the system (ex. to avoid having a hearing in the presence of an observer), the Board may proceed with the review despite the request for postponement, in order to avoid abuse of the postponement process. Normally this measure would be taken only following several previous postponements by the offender.

Board members must document, on the decision sheet, the reasons for refusing a request for postponement.

Cross reference

Policy on adjournments and waivers.

Effective date

September 11, 1996

10. Disclosure of Information

10.1 - Disclosure to Offender

Legislative reference

Corrections and Conditional Release Act (s.141).

Purpose

To provide guidance to Board members and staff on the disclosure of information to offenders for decision-making.

The disclosing of relevant information is a key component of the principles of fundamental justice. Disclosure must be undertaken in a manner which allows the offender to properly prepare for the review by the Board.

Disclosure to offenders

All relevant information considered by the Board for decision-making must be provided to the offender, in writing and in the official language requested, at least fifteen days (not including the day the information is shared or the day of the review by the Board) before the day set for the review of the case, in accordance with the requirements of subsection 141(1) of the Act.

As well, relevant information received within fifteen days of a review must be provided to the offender, in writing, as soon as possible thereafter.

Exception

Where there are reasonable grounds to believe that any information should not be disclosed on the grounds of public interest, or that its disclosure would jeopardize the safety of any person, the security of a correctional institution, or the conduct of any lawful investigation, as much information as is **strictly necessary in order to protect the interest identified** may be withheld. The withholding of relevant information should **occur rarely**.

The grounds for withholding the information must be documented on the Board's decision sheet.

The grounds for determining that the information should be withheld must be convincing and supported with facts relative to the public interest said to be protected by the non-disclosure. There must be a direct and observable link between the content of that information and the protection of the public interest served by the non-disclosure.

In the **rare circumstance** that one of the grounds for withholding relevant information is met, the offender will be provided as much information as possible but without divulging the confidential aspect of the information. There must be sufficient detail to allow the offender to know the substance of the information adverse to the offender's cause, and allow the offender a fair opportunity to respond to the allegation(s) contained in the document.

Process for sharing

The C.S.C. has agreed to carry out the "sharing" of the relevant information with the offender. This includes the preparing of a summary of the information to be shared with the offender if one of the grounds for

withholding information is met.

The Board is responsible for confirming that all relevant information considered by the Board for decision-making has been shared with the offender. The Board, therefore, must be satisfied that any summary of confidential information provided to the offender complies with s.s. 141(4) of the Act. For this reason, a copy of the summary and of the confidential documentation itself are required by the Board.

PHOTOGRAPHS AND VIDEOS

If relevant information considered by the Board is in the form of a photograph or video, the offender will be permitted access to view the photograph or video within the usual timeframes for the disclosing of information, and until the hearing takes place.

The photograph, video or copy thereof, shall not be given to the offender or placed in the offender's possession.

Information to Assistants

If an assistant requests a copy of the information that has already been shared with the offender for decision-making purposes, the assistant must obtain that information from the offender.

Cross reference

Information sharing - guide for staff

Effective date

April 2, 1997

10.2 - Disclosure to victims

Legislative references

Corrections and Conditional Release Act, Subsections 99(1), and 142(1-5).

Preamble

The *Corrections and Conditional Release Act* allows victims to receive certain information about the offender who harmed them which will enable them to follow the offender through the correctional system and to know about National Parole Board decisions relating to that offender.

The Act specifies the extent of such information, and subsections 99(1) and 142(3) define the persons who may be accepted as victims to whom information may be released. Individuals must meet both criteria in subsection 142(3) to receive information about the offender not otherwise available to the public.

Entitlement to information

Victims are entitled to basic information about an offender, including eligibility and review dates for unescorted temporary absences and parole. More information may be released to victims under criteria set out in paragraph 142(1)(*b*). Initial requests from victims or their agents should be in writing to the Board.

Agent

An agent is an individual who is authorized, in writing, to act for the victim. The Board must be satisfied that the victim has given the person the authority to act. A written request sent by a victim service agency based in the criminal justice system (e.g., court or police based) or from court officials does not require the victim's signature.

Boards of Investigation

Victims of incidents which result in a Board of Investigation in which the National Parole Board is a participant will be considered for recognition under the criteria in Subsection 142(3) of the CCRA. This will give them the same entitlements to information about the offender who harmed them as victims of previous events. When their identity is established in reports relating to the incident, no further verification is needed.

In addition, they should be provided with NPB publications about the investigation process. If they choose, information about the stage of the investigation in terms of when the report may be completed and available may be provided through the Regional Director in consultation with the Manager, Case Audits and Investigation.

Authority for disclosure

The Act authorizes the Chairperson to decide whether additional specified information may be released (ss 142(1)(*b*)), and whether an individual meets the criteria of subsection 142(3). The Chairperson, as provided in subsection 142(5), has extended authority for making these decisions to Regional Vice-Chairpersons,

Regional Directors, Regional Managers Conditional Release, Regional Managers Community Relations and Training, and designated Community Liaison/Information Officers.

Information which may be disclosed

The *Corrections and Conditional Release Act* specifies the type of information that the Board may give to victims. Information to which victims are entitled, on request, is detailed in paragraph 142(1)(*a*).

In addition, the Act (142(1)(*b*

- all information to others, including the general public and media representatives.

People other than victims asking for information about an offender should be told they may make a written request for access to the decision registry.

Cross-References

Corrections and Conditional Release Act section 144, subsections 2(1), 26(1-4) and 140(4-6), National Parole Board policies on Observers at hearings and the Registry of decisions.

Effective date

September 11, 1996

10.3 - Information from victims

Legislative references

Corrections and Conditional Release Act, sections 2, 23(1)(*e*), 25(1), 99(1), 101(b), 125(*3*), 132 and 142(3).

Preamble

The National Parole Board welcomes information about offenders from victims and from other people who have relevant knowledge which, in addition to information received from other components of the criminal justice system, may assist the Board in the review of an offender's case.

Information sharing requirements

The Board cannot assure confidentiality for persons who supply information or for the information provided. Victims and others shall be advised that any information to be considered in the review of a case, or a summary of the information, including that provided by the victim, must be shared with the offender. However, current addresses and any name changes are not shared with the offender. Information will not be used by the Board if it is not shared with the offender except where the Board is authorized to withhold information by subsection 141(4) of the Act.

Use of information from victims

The use of this information is governed by the principles stated in the *Corrections and Conditional Release Act*, including that the protection of society is paramount and the requirement to consider all information that is relevant to the case, including information obtained from victims (section 101).

Relevant information from victims and others can help the Board assess:

- the nature and extent of harm suffered by the victim;
- the risk of re-offending the offender may pose if released;
- the offender's potential to commit a violent crime, particularly in cases qualifying for accelerated review, for example by providing evidence about threatening or previous violent behaviour;

- the offender's understanding of the impact of the offence;
- conditions necessary to manage the risk which might be presented by the offender; and
- the offender's release plans. Possible repercussions must be carefully assessed if the victim is a family member, or was closely associated with the offender. If the offender intends to return to an integrated, small, or isolated community, Board members must weigh the support and control available to assist reintegration. The views of the victim are of assistance if release would place the offender near the victim.

Giving information to the Board or other correctional authorities

Information from victims and others will be accepted by appropriate staff of the National Parole Board, the Correctional Service of Canada or other criminal justice authorities as part of the case preparation process. The information will be included in the offender's file and will be considered by the Board members who review the case as required in subsection 101(*b*) of the *Corrections and Conditional Release Act*.

Occasionally, a situation may arise where a Board member personally receives information on a case directly from a victim, a victim's agent or other person. The member shall ensure that such information is documented in the offender's file. The Board member will not review the case of the offender affected by such information at the review subsequent to receiving such information.

Cross-References

Section 142 of the *Corrections and Conditional Release Act* and the National Parole Board policies on providing Information to victims, Observers at hearings; and the Decision registry.

Effective date

September 11, 1996

11. Records of Reviews and Decisions

11.1 - Records of proceedings

Legislative references

Corrections and Conditional Release Act, section 143; subsection 144(1); and *Regulations*, section 166.

Records of decisions and hearing proceedings

RECORDS OF DECISIONS

The Board's decision and the reasons for the decision constitute the record of proceedings for the purposes of subsection 143(1) of the *Corrections and Conditional Release Act*.

VOICE RECORDINGS OF HEARINGS

Additionally, the Board will make a voice recording of all hearings to provide an account of what occurred at each hearing and to permit review to ensure that procedural requirements which protect the rights of the offender were met. This practice enhances the accountability of the decision-making processes of the Board and assists review by the Appeal Division.

If technical difficulties make a voice recording impossible, Board members will ensure that:

- For hearings related to the detention provisions of the Act, a detailed written record is made as the hearing proceeds; or
- In all other cases, a written summary of the proceedings is made.

These written records must include:

- the names of all persons participating in the hearing and their role;
- confirmation that information has been shared with the offender and that all other procedural safeguards were met;
- any new information which may arise during the hearing; and
- whether an observer attended the hearing.

RETENTION OF HEARING TAPES

Privacy legislation requires the retention of all hearing tapes for two years after their last administrative use. In addition, the Board will retain voice recordings

- until there is a further hearing, if one has not been held within two years; and
- until warrant expiry date when the hearing resulted in the release of the offender; and
- until two years after warrant expiry date when considered necessary by the Regional Director or Regional Manager in cases where an investigation has been ordered, it is reasonable to believe that there may be a further interest in the recording, or it may assist administrative functions of the Board.

OFFENDER'S ACCESS TO VOICE RECORDED PROCEEDINGS

The National Parole Board owns the master recording: however, privacy legislation states that an individual has the right to access personal information held by a government institution. Therefore, upon written request, the Board will supply the offender, without charge, one copy of the voice recording with any

11.2 - Registry of decisions

Authority

Corrections and Conditional Release Act, section 144;
Corrections and Conditional Release Regulations, section 167.

Purpose

The registry of National Parole Board decisions and the reasons for those decisions promotes openness of decision-making and accountability of the Board. It contributes to public understanding of conditional release.

The registry allows individuals who demonstrate an interest in a specific case to access Board decisions relating to that offender. In addition, after personal identifiers are removed from the decision documents, researchers may have access to groups of decisions.

Policy

CONTENT OF THE DECISION REGISTRY

The National Parole Board registry of decisions contains:

- Board decisions, and reasons for the decisions, relating to an offender's conditional release, recommitment, or detention made after the proclamation of the *Corrections and Conditional Release Act*. The record of the decision, including the reasons, is that which is provided to the offender, in the official language of Canada requested by the offender, as required in paragraph 143(2)(b) of the *Corrections and Conditional Release Act*; and
- the decisions and reasons of the Appeal Division of the Board.

Temporary absence decisions made by the Correctional Service of Canada and administrative determinations made by the National Parole Board are not recorded in the decision registry.

The National Parole Board policy on interpreters at hearings allows, but does not require, the interpreter to provide a written summary of the decision and reasons for reference by the offender and case management staff. These summaries are not part of the decision registry. However, in accordance with the principle of openness, if an interpreter provided such a summary, and an individual who speaks the same language and not one of the official languages requests decision information the Board will, if possible, release the information provided by the interpreter.

SPECIFIC CASE ACCESS TO THE DECISION REGISTRY

Subsection 144(2) allows access to the contents of the registry relating to a specific case to a person who demonstrates an interest in that case and who applies, in writing, to the Board. Exceptions are made for information which could reasonably be expected

- to jeopardize the safety of any person;
- to reveal a source of information obtained in confidence; or
- if released publicly, to adversely affect the reintegration of the offender into society.

Access to case specific decisions, including decisions from a previous sentence, is allowed only when the offender is under sentence or is subject to a long-term supervision order.

ACCESS TO PERSONS WHO DEMONSTRATE AN INTEREST IN A CASE

- Individual interest will be demonstrated by a request, in writing, for access to the contents of the registry relating to a specific offender. The request must describe the nature of that interest (for example, a member of the offender's family; a community volunteer; offender's assistant; the victim; investigating police officer; media representative; etc.).

- Unless the entire hearing took place in the presence of an observer, each decision will be assessed as to whether it contains information exempted by ss.144(2). In all other instances, any such information will be obscured if the contents are released, except for information disclosed during a part of a hearing at which an observer was present. (ss.144(4)).

- If the individual requesting access to the registry is a victim, disclosure of information will be in accordance with section 142 of the Act which may allow the release of information otherwise restricted by subsection 144(2).
- Should an individual or representative of an organization request case specific information about three or more distinct cases, the National Parole Board reserves the right to make a determination that such interest constitutes research, and the request may be subject to the Regulations governing research applications.

ACCESS FOR RESEARCH PURPOSES

Any person may have access for research purposes to the contents of the registry, subject to any conditions prescribed by section 167 of the Regulations. Research access will exclude the name of any person, including the offender, information that could be used to identify any person or information which could jeopardize any person's safety if disclosed.

Applications for research access are expected to come from various sources, including:

- members of the criminal justice system;
- media representatives;
- academics and students; and
- members of interest groups.

Cross reference

National Parole Board policy on *interpreters at hearings*;
Access to Information Act and *Privacy Act*.

Implementation date

November 1, 1992

12. Appeals

12 - Appeals

Legislative reference

Corrections and Conditional Release Act: s.s. 110, 143(2), 146 & 147; Regulations: 166(2)(b) & 168.

Purpose

To inform and guide the Board with regard to the jurisdiction and authority, role and functions of the Appeal Division**.**

Principles

The Appeal Division contributes to the quality of the decision-making process, and to the openness, professionalism and accountability of conditional release decisions.

The role of the Appeal Division is to ensure that the law and the Board policies are respected, and that the rules of fundamental justice are adhered to and that the Board's decisions are based upon relevant and reliable information.

The Appeal Division reviews the decision-making process to confirm that it was fair and that the procedural safeguards were respected.

The Appeal Division has jurisdiction to reassess the issue of risk to reoffend and to substitute its discretion for that of the original decision makers, but only where it finds that the decision was unfounded and unsupported by the information available at the time the decision was made.

Appealable Decisions

An offender or the offender's representative may appeal a decision of the Board that is a denial of conditional release for the offender.

An offender who is serving a life "minimum" sentence or the offender's representative may appeal a decision of the Board to not approve an escorted temporary absence.

An offender or the offender's representative may appeal a decision of the Board

- requiring that the offender reside in a community-based residential facility as a condition of parole pursuant to subsection 133(4) of the Act, or
- requiring that the offender reside in a community-based residential facility or in a psychiatric facility as a condition of statutory release pursuant to subsection 133(4.1) of the Act.

The Vice-Chairperson of the Appeal Division may allow the appeal of an offender or the offender's representative to be heard respecting the grant of a conditional release that is more restrictive than the release requested by the offender.

Grounds for appeal

The written notice of appeal, filed by the offender, or a person acting on behalf of the offender, shall state the ground(s) for appeal, as itemized in s. 147(1) (C.C.R.A.), that the offender is alleging, together with all

Applications will be reviewed in the order in which they have been received by the Appeal Division. However, cases will be reviewed on a priority basis if the application for appeal is received within three months of the statutory release date, or the offender appeals a detention order, a decision to not direct parole following an accelerated parole review, or any other case deemed by the Vice-Chairperson of the Appeal Division to be an exception.

Conduct of appeals

The review by the Appeal Division shall be conducted by way of a file review and may include, where available, a review of the voice recording of the hearing.

The Appeal Division is not restricted to a consideration of the ground(s) raised in the written notice of appeal, but will consider also, whether there has been an error or breach in the law, Board policy or in the common law duty to act fairly which has resulted in prejudice or unfairness to the offender.

Notification of decision to release

Where the Appeal Division exercises its discretion to grant release directly, the Division shall ensure that all persons who are entitled to know of the release of the offender have been notified.

Implementation of decisions rendered by the Appeal division

In order to ensure fairness of process, where the Appeal Division has ordered a new review/hearing, the office of the Chairperson will be advised of cases where the ordered review/hearing has not occurred within two months of the decision to order a new review/hearing.

Where, through the appeal process, a practice is identified which raises a concern with respect to the review of cases within a region, the Vice-Chairperson of the Appeal Division will, in writing, advise the Regional Vice-Chairperson of the practice and the concern. The Regional Vice-Chairperson will respond, in writing outlining what action, if any, will be taken regarding the practice.

Communication of decisions

The Appeal Division shall ensure that copies of its decisions are circulated to the Vice-Chairperson of the region.

Effective date

February 11, 1997

13. Miscellaneous

13.1 - Communicable diseases/Aids

Authority

Corrections and Conditional Release Act and Regulations

Purpose

To provide guidance to Board Members in making conditional release decisions in cases where an offender has tested positive to the HIV virus, and therefore may or may not have developed Acquired Immunodeficiency Syndrome (AIDS).

Policy

The basic element of the policy is that risk assessment is focused on the previous behaviour or documented expressions of intent by the offender, and not on HIV status alone. HIV status will be a factor for consideration in decision making only when parole by exception for humanitarian reasons is proposed.

- HIV status in and of itself is not a factor in risk assessment or decision making. In its risk assessment and decision making, NPB will not require information on whether or not an inmate tests HIV antibody positive.
- The Board is committed to giving full consideration to applications for release, including parole by exception, where necessary in order to ensure medical treatment or palliative care not otherwise available within the institution. The Board is sensitive to humanitarian considerations with respect to all terminally ill offenders. Consideration for release must always take place within the context of the risk to society.
- The Board will consider in its risk assessment evidence of behaviour or expressed intent which demonstrates wanton disregard for public safety and which may cause loss of life or serious harm, such as through HIV transmission, and may use such evidence in reaching its decision.
- The Board is committed to ensuring that training and education in the understanding of the medical and social dimensions of HIV infection is available to Board members and staff.

Cross reference

Parole by exception

Implementation date

May 1, 1991

13.2 - Prohibition from driving

Authority

Corrections and Conditional Release Act, section 109

Purpose

This policy is intended to guide the Board's reviews of applications for the cancellation or modification of prohibitions imposed under section 259, *Criminal Code of Canada.*

Background

The authority vested in the Board by section 109 is similar to the clemency powers exercised by the Governor in Council in that it is a broad discretionary power that permits remedies that directly interfere with an order of a criminal court. It is not an integral part of the correctional process, as is the case with conditional release.

Policy

The National Parole Board may approve the cancellation or modification of a prohibition order made pursuant to section 259 of the Criminal Code where:

- There is evidence of undue hardship, including economic, mental, or physical suffering or privation, that is substantial and out of proportion to the nature of the offence for which the prohibition was ordered.
- Other remedies to the identified hardship do not exist, are not lawfully available in the individual case, or recourse to them would result in greater hardship.
- There is evidence that altering or removing the prohibition order would not constitute an undue risk to the community.

Applications

Applications for the cancellation or modification of a driving prohibition order will be directed to National Parole Board, Clemency and Pardons Division, which will be responsible for investigations including contact with the appropriate provincial licensing authority.

Voting

Two members will vote on each case. Should the members reviewing an application determine that an interview should be conducted prior to a decision being rendered, that interview should be conducted in accordance with the Board's Interview Guidelines for Clemency and Pardons.

Cross Reference

Criminal Code of Canada, subsection 259(1)

Interview Guidelines for Clemency and Pardons.

Effective Date

July 1, 1993.

14. Clemency and Pardons

14.1 - Clemency and Pardons

Purpose

The purpose of this policy is to guide Board members in making decisions whether to grant or revoke pardons.

Background

The *Criminal Records Act* (CRA) authorizes the National Parole Board to exercise its discretion to grant or refuse to grant pardons for convictions for offences prosecuted by indictment under federal acts and regulations and to revoke pardons in certain circumstances. It also requires the Board to issue pardons, through a non-discretionary process, for offences punishable on summary convictions for eligible applicants.

A pardon, whether granted or issued, is evidence that the conviction should no longer reflect negatively on a person's character. To that end, the Act also specifies that information about pardoned offences should not be sought in the employment applications of organizations under federal jurisdiction and restricts access to records under federal jurisdiction and removes any disqualifications that would result from a conviction.

Legislative authority

GRANTING AND ISSUING PARDONS

Subsection 4.1(1) of the CRA gives the Board the authority to make a discretionary decision to grant pardons for offences prosecuted by indictment if it is satisfied the applicant is of good conduct and is conviction-free for five years.

Subsection 4.1(2) of the CRA requires that the Board issue pardons for offences punishable on summary convictions following a conviction-free period of three years.

REVOKING PARDONS

Section 7 of the CRA gives the Board the authority to revoke a pardon that has been granted or issued, if the person who was granted or issued the pardon is subsequently convicted of an offence punishable on summary conviction, because of evidence that the person knowingly made a false or deceptive statement or concealed material information relating to the application. Section 7.2 of the CRA provides for automatic revocation of a pardon for a new conviction under an act or regulation of Parliament for an offence prosecuted by indictment.

DISCHARGES

The CRA provides for removal of discharges from the automated criminal conviction records retrieval system (CPIC). This occurs after one year for absolute discharges and three years for conditional discharges. It also prohibits the disclosure of the fact of the discharge by federal agencies and departments unless the Solicitor General authorizes the disclosure.

Policy

GOOD CONDUCT

The responsibility rests the applicant to provide the National Parole Board with all the information which is required for it to confirm the eligibility under the *Criminal Records Act,* and to proceed with the review into the merits of the application.

For the purpose of the *Criminal Records Act*, good conduct is defined as a conviction-free period, with no suspicion or allegation of criminal behaviour.

The Board will grant a pardon in respect of indictable offences where no negative information has been received from law enforcement agencies about suspected or alleged criminal behaviour on the part of the applicant since the last conviction /sentence.

Where the Board has received information from law enforcement agencies about suspected or alleged criminal behaviour on the part of the applicant since the last conviction /sentence, it will assess the information and determine whether the pardon should be granted or denied.

The Clemency and Pardons Division will issue a pardon in respect of summary convictions where the conviction-free period criterion has been met.

INFORMATION TO BE PROVIDED BY THE APPLICANT:

The applicant will provide the Board with the following documents:

In all cases :

- application form duly completed;
- FPS sheet confirmed by fingerprints;
- certificate of good conduct issued by local police force (current address);
- fee for service.

Where applicable :

- military conduct sheet to confirm eligibility;
- court documents or police history sheet for offences not listed on FPS;
- court document to confirm eligibility when last entry/entries on FPS indicate(s) sentence was completed less that 5 years prior to application;
- proof of payment of fine;
- proof of payment of restitution.

INQUIRIES TO BE CONDUCTED BY THE BOARD:

Applications for offences listed on the Annex where sentence expired less than 10 years prior to application:

In all cases:

- A CPIC check;
- A PIRS check;
- verification with Immigration Canada if applicant not a Canadian citizen;

- verifications with local RCMP detachments, provincial or municipal police forces.

Applications for all other offences:
In all cases:
- A CPIC check;
- A PIRS check.

Where applicable:
- verification with Immigration Canada if applicant not a Canadian citizen;
- verifications with local RCMP detachments, provincial or municipal police forces where CPIC or PIRS check so suggests e.g. where information is received as to allegations of criminal activity or disregard for public security or law.

REVOCATION

The Board will revoke a pardon on the ground that the individual to whom the pardon was granted or issued is no longer of good conduct if it is satisfied, based on clear and reliable information, that the individual, since the pardon was granted or issued, has been found guilty of an indictable offence or an offence punishable on summary conviction, or has been convicted of an offence punishable on summary conviction.

The Board will revoke a pardon where it is satisfied that the available evidence establishes that the individual to whom the pardon was granted or issued had made false or deceptive statements about, or concealed, material information relating to the granting or the issuance of the pardon.

VOTING REQUIREMENTS

All decisions will be made by one Board member. The Board member who proposes to either refuse to grant a pardon or to revoke a pardon will set out in writing the reasons for the proposal.

REVIEWS WHERE THERE MAY BE REPRESENTATIONS BY APPLICANTS

If the Board proposes either to refuse to grant a pardon or to revoke a pardon:

- the applicant will be informed in writing of the proposal and the grounds for it;
- the applicant will be informed that the Board, in reviewing the application, will consider any written or oral representations made by or on behalf of the applicant; the Board will not proceed with the review of the application for at least 45 days following the notification, unless representations are received at an earlier date;
- representations in persons will be heard by one Board member in the national office or in one of the Board's regional offices, or by way of a conference call.
- upon completion of the review, the member will render a decision to grant, to refuse to grant, to revoke or to take no action to revoke the pardon.

NO APPEALS

The decisions of the Board under the *Criminal Records Act* are final. No new application will be considered until one year has elapsed since the last decision.

PARDONS UNDER THE CRIMINAL RECORDS ACT - ANNEX

Offences under any of the following provisions of the *Criminal Code* that was prosecuted by indictment:

section 151 -	sexual interference
section 152 -	invitation to sexual touching
section 153 -	sexual exploitation
section 155 -	incest
section 159 -	anal intercourse
section 160 -	bestiality, compelling, in the presence of a child
section 170 -	parent or guardian procuring sexual activity by child
section 171 -	householder permitting sexual activity by or in presence of a child
section 172 -	corrupting children
section 212(2)-	living off the avails of prostitution by a child
section 212(4)-	obtaining sexual services of a child
section 220 -	causing death by criminal negligence
section 236 -	manslaughter
section 239 -	attempt to commit murder
section 244 -	causing bodily harm with intent
section 249(3)-	dangerous operation causing bodily harm
section 249(4)-	dangerous operation causing death
section 255(2)-	impaired driving causing bodily harm
section 255(3)-	impaired driving causing death
section 264 -	criminal harassment
section 267 -	assault with a weapon or causing bodily harm
section 268 -	aggravated assault
section 271 -	sexual assault
section 272 -	sexual assault with a weapon, threats to a third party or causing bodily harm
section 274 -	aggravated sexual assault
section 279 -	kidnapping
section 433 -	arson - disregard for human life
section 465(1)(a) -	conspiracy to commit murder

An offence under any of the following provisions of the *Criminal Code* as they read immediately before January 4, 1983 that was prosecuted by way of indictment:

section 144 -	rape
section 145 -	attempt to commit rape
section 149 -	indecent assault on a female
section 156 -	indecent assault on a male

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:

section 146 -	sexual intercourse with a female under 14
section 153 -	sexual intercourse with step-daughter
section 155 -	buggery or bestiality
section 157 -	gross indecency

An offence under any of the following provisions of the *Narcotic Control Act* that was prosecuted by way of indictment:

section 4 -	trafficking
section 5 -	importing and exporting

An offence under any of the following provisions of the *Food and Drugs Act* that was prosecuted by way of indictment:

section 39 -	trafficking in a controlled drug
section 48 -	trafficking in a restricted drug

14.2 - Royal Prerogative of Mercy

Legislative reference

Section 110 of the *Corrections and Conditional Release Act*, the *Letters Patent*, and sections 748, 748.1 and 749 of the *Criminal Code*.

Background

The Royal Prerogative of Mercy originates in the ancient power vested in the British monarch who had the absolute right to exercise mercy on any subject. In Canada, similar powers of executive clemency have been given to the Governor General who, as the Queen's representative, may exercise the Royal Prerogative of Mercy. It is largely an unfettered discretionary power to apply exceptional remedies, under exceptional circumstances, to deserving cases.

purpose

The present document constitutes the Minister's guidelines to the National Parole Board. to assess the merits of clemency applications, and to determine whether to recommend to the Solicitor General that an act of clemency be granted.

Authority and power

GOVERNOR GENERAL OF CANADA - *LETTERS PATENT*

The power to exercise the Royal Prerogative of Mercy for federal offenses is vested in the Governor General of Canada by virtue of the Letters Patent, constituting that office. In practice, the Governor General will grant an act of clemency only after receiving the advice of the Solicitor General of Canada, or that of at least one other minister.

The Governor General may grant two types of pardons, free pardons and conditional pardons, and may also grant respites from the execution of a sentence. In addition, sentences, as well as fines, penalties or forfeitures "due and payable to the Queen in right of Canada", may be remitted by the Governor General.

GOVERNOR IN COUNCIL - *CRIMINAL CODE*

Sections 748 and 748.1 of the *Criminal Code* authorize the Governor in Council to grant free or conditional pardons, and to order the remission of pecuniary penalties, fines and forfeitures imposed under an act of Parliament. The exercise of these powers is considered by the Federal Cabinet on the advice of the Solicitor General of Canada, or that of at least one other minister.

In practice, requests for executive clemency are processed under the Letters Patent constituting the Office of the Governor General of Canada only when it is not legally possible to proceed under the *Criminal Code*. Therefore, with the exception of respites, relief from prohibitions and remissions of sentence, all positive recommendations are forwarded to the Federal Cabinet for a decision under the provisions of the *Criminal Code*, rather than to the Governor General of Canada.

Principles guiding the exercise of clemency

The Royal Prerogative of Mercy is exercised according to general principles which are meant to provide for a fair and equitable process, while ensuring that it is granted only in very exceptional and truly deserving cases.

In reviewing clemency applications, conducting investigations and making recommendations, the National Parole Board shall be guided by the following principles:

1. THERE MUST BE EVIDENCE OF SUBSTANTIAL INJUSTICE OR UNDUE HARDSHIP.

Neither the Governor General nor the Governor in Council intervene on technical grounds. Therefore, in order for executive clemency to be invoked on the basis of an injustice, there must be clear evidence of a substantial injustice.

Similarly, undue hardship, which includes suffering of a mental, physical and/or financial nature, must be out of proportion to the nature and the seriousness of the offense and the resulting consequences, and must be more severe than for other individuals in similar situations.

In general terms, the notions of injustice and hardship imply that the suffering which is being experienced could not be foreseen at the time the sentence was imposed. In addition, there must be clear evidence that the injustice and/or the hardship exceed the normal consequences of a conviction and sentence.

2. THE EXERCISE OF THE ROYAL PREROGATIVE OF MERCY IS CONCERNED SOLELY WITH THE APPLICANT.

Each application will be examined on its own merits, taking into consideration the circumstances of the individual applicant. Consideration will not be given to the hardship of anyone else who may be affected by the applicant's situation, nor will it be considered posthumously.

3. THE EXERCISE OF THE ROYAL PREROGATIVE OF MERCY IS NOT INTENDED TO CIRCUMVENT OTHER EXISTING LEGISLATION.

In order for the Royal Prerogative of Mercy to be invoked, the applicant must have exhausted all other avenues available under the Criminal Code, or other pertinent legislation.

In addition, an act of executive clemency will not be considered where the difficulties experienced by an individual applicant result from the normal consequences of the application of the law.

Furthermore, the Royal Prerogative of Mercy will not be considered as a mechanism to review the merits of existing legislation, or those of the justice system in general.

4. THE INDEPENDENCE OF THE JUDICIARY SHALL BE RESPECTED.

The exercise of the Royal Prerogative of Mercy will not interfere with a court's decision when to do so would result in the mere substitution of the discretion of the Governor General, or the Governor in Council, for that of the courts. There must exist clear and strong evidence of an error in law, of excessive hardship and/or inequity, beyond that which could have been foreseen at the time of the conviction and sentencing.

5. THE ROYAL PREROGATIVE OF MERCY SHOULD BE APPLIED IN EXCEPTIONAL CIRCUMSTANCES ONLY.

The Royal Prerogative of Mercy is intended only for rare cases in which consideration of justice, humanity and compassion override the normal administration of justice. It should be applied only where there exist no other remedies, where remedies are not lawfully available in a particular case, or where recourse to them would result in greater hardship.

6. THE EXERCISE OF THE ROYAL PREROGATIVE OF MERCY, BY ITS VERY NATURE, SHOULD NOT RESULT IN AN INCREASED PENALTY.

When considering the merits of an individual case, the decision should not, in any way, increase the penalty for the applicant.

Specific remedies and criteria

In addition to the general principles which guide the National Parole Board in assessing the merits of clemency applications, each form of relief is assessed against some specific criteria:

1. FREE PARDON

- *definition*

A free pardon is a formal recognition that a person was erroneously convicted of an offense. Any consequence resulting from the conviction, such as fines, prohibitions or forfeitures, will be canceled upon the grant of a free pardon. In addition, any record of the conviction will be erased from the police and court records, and from any other official data banks.

- *criteria*

The sole criterion upon which an application for a free pardon may be entertained is that of the innocence of the convicted person.

In order for a free pardon to be considered, the applicant must have exhausted all appeal mechanisms available under the *Criminal Code*, or other pertinent legislation. In addition, the applicant must provide new evidence, which was not available to the courts at the time the conviction was registered, or at the time the appeal was processed, to clearly establish innocence.

- *authority*

Governor in Council and Governor General

2. CONDITIONAL PARDON - PRIOR TO ELIGIBILITY UNDER THE CORRECTIONS AND CONDITIONAL RELEASE ACT (CCRA)

- *definition*

A conditional pardon - prior to eligibility under the *CCRA* is the release of an inmate from incarceration into the community, under supervision and subject to conditions, until the expiration of the sentence imposed by the court.

- *criteria*

Inherent to any sentence of incarceration is the notion of hardship which is meant to act as a punishment for the convicted offender, and as a deterrent for potential offenders. The limitations to one's freedom and to one's rights to participate fully as a member of the community, the distance and often the isolation from

one's family and friends, are the direct consequences of a sentence of imprisonment and of the crime which resulted in the imposition of such a penalty.

CSC is responsible for the care and custody of inmates as stipulated in section 5(a) of the *CCRA* and that responsibility includes caring for the medical problems of all offenders, irrespective of their seriousness. Whereas illness or deteriorating health may cause hardship, it does not, in itself, constitute a sufficient reason to grant a conditional pardon in advance of eligibility for conditional release under the *CCRA*. For this exceptional measure to be invoked, serious medical problems would be considered as one of many factors.

In order for a conditional pardon to be granted prior to eligibility under the *CCRA*, the inmate must be ineligible for any other form of release under the *CCRA*, and the release should not, in any manner, put the community at risk of the offender's re-offending. In addition, there must exist substantial evidence of excessive inequity, substantial injustice or undue hardship which would be out of proportion to the nature and seriousness of the offense and the resulting consequences, and more severe than for other individuals in similar situations.

- *authority*

Governor in Council and Governor General

3. CONDITIONAL PARDON - IN ADVANCE OF ELIGIBILITY UNDER THE CRIMINAL RECORDS ACT (CRA)

- *definition*

A conditional pardon in advance of eligibility under the *CRA* has the same meaning and effect as a pardon granted under the provisions of the *CRA*.

- *criteria*

Possessing a criminal record is the normal consequence of having been found guilty or convicted of a crime. A criminal record may limit access to careers, to employment, to travel and, in itself, may result in a certain amount of hardship.

In order for a conditional pardon to be granted in advance of the eligibility under the *CRA*, the applicant must be currently ineligible for a pardon under the *CRA.* In addition, such a pardon may be considered only when there is evidence of good conduct, within the meaning of the *CRA*, and consistent with the policies of the National Parole Board in these matters. Finally, there must be substantial evidence of undue hardship, out of proportion to the nature of the offense and more severe than for other individuals in similar situations.

- *authority*

Governor in Council and Governor General

4. REMISSION OF SENTENCE

- *definition*

A remission of sentence amounts to the erasing of all, or part of, a sentence imposed by the court.

- *criteria*

Consistent with the principle that the independence of the judiciary must be respected, a remission of sentence may be considered only where there exists evidence of: an error in law; a substantial inequity, such as a change in legislation which had unintended and unanticipated consequences for a person convicted and sentenced; or undue hardship which would be out of proportion to the nature and seriousness of the offense and more severe than for other individuals in similar situations.

- *authority*

Governor General

5. REMISSION OF FINE, FORFEITURE, ESTREATED BAILS AND PECUNIARY PENALTIES

- *definition*

A remission of a fine, a forfeiture, an estreated bail or a pecuniary penalty amounts to the erasing of all, or part of, the penalty imposed by the court.

- *criteria*

In order for such penalties to be remitted, there must exist substantial evidence of undue hardship, due to circumstances or factors unknown to the court that imposed the sanction, or which occurred subsequent to the imposition of the sanction by the court. In addition, consideration will be given to whether the grant of a remission would result in hardship to another person.

- *authority*

Governor in Council and Governor General

6. RESPITE

- *definition*

Respite is the interruption of the execution of a sentence.

- *criteria*

In order for a respite in the execution of the sentence to be considered, there must be substantial evidence that failure to grant such an act of clemency would result in undue hardship, or create an inequity. In addition, the granting of a respite should not place the community at risk of the offender's re-offending.

- *authority*

Governor General

7. RELIEF FROM PROHIBITIONS

- *definition*

A relief from a prohibition is the removal or the alteration of a prohibition, imposed by the court as a result of a conviction.

- *criteria*

A prohibition may be removed or altered where there is substantial evidence that the prohibition is causing undue hardship to the applicant and that altering or removing the prohibition would not place that community at risk of the offender's re-offending.

- *authority*

Governor General

- *note*

Pursuant to section 109 of the *CCRA*, the National Parole Board may, under some circumstances, cancel or vary a portion of a driving prohibition order made under section 259(1) or (2) of the *Criminal Code*. Consistent with the principle that the Royal Prerogative of Mercy is not intended to circumvent any other existing legislation, such a recourse may only be invoked for driving prohibitions where the applicant is otherwise ineligible under the provisions of the *CCRA*.

Cancellation of a remedy

All remedies described above are subject to cancellation if the application was granted on the basis of information which is subsequently found to have been fraudulent.

All remedies, with the exception of free pardons, may be canceled if any condition under which they are granted is subsequently breached.

14.3 - Interview Guidelines for Clemency and Pardons

Authority

Criminal Records Act (CRA)
Sections 109 & 110, Corrections and Conditional Release Act (CCRA)

Purpose

To provide guidance to Board members conducting interviews: for pardons under the CRA; in relation to an application for the exercise of the royal prerogative of mercy; or in relation to an application to cancel or vary the unexpired portion of an order of prohibition from driving.

Background

Under the provisions of the CRA, when the Board proposes either to refuse to grant or to revoke a pardon based on an assessment of good conduct, the applicant affected may make written or oral representations to the Board before a final decision is made. Oral representations are made in a personal interview with two Board members. As well, the Board may conduct personal interviews in relation to applications for the exercise of the royal prerogative of mercy and for applications to cancel or vary the unexpired portion of an order of prohibition from driving.

Guidelines for interviews

- the Board respects the duty to act fairly in all its decision making and responds appropriately to the particular needs and special circumstances of each application.

- interviews permit applicants to respond to the information that the Board has or will be considering and allows opportunity to bring forward additional information, or to clarify specific issues.

- interviews will be conducted at the request of the applicant if the Board
  - proposes to refuse to grant a pardon or to revoke a pardon;
  - proposes to make a negative recommendation to the Minister with regard to an application under the royal prerogative of mercy; or
  - proposes not to cancel or vary an order of prohibition from driving.

- interviews may be attended by any persons acceptable to both the members and the applicant.

- the Board members will normally begin the interview by briefly clarifying the purpose of the interview and will provide the applicant the opportunity for presentation of new information, clarification of information the Board had relied upon, or general representation.

- the applicant should be given every reasonable opportunity to seek advice from an assistant and the assistant will have an opportunity to speak directly to the Board members before the interview is concluded.

- the interview will be conducted in the official language chosen by the applicant.

- the Board will normally advise the applicant of its decision and reasons at the interview and will provide a written decision and reasons within a reasonable period following the interview.

- if necessary, the Board members may conclude the interview and make a decision at a later date.

Cross reference

Pardon Decision Policies

Ministers Directive on the Royal Prerogative of Mercy, signed March 17, 1993.

Annex A - Amendments to NPB Policy Manual

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2.3 - Psychological and Psychiatric Assessments

The meaning of "persistent violence" under the heading PSYCHOLOGICAL ASSESSMENTS is amended to read – a history of three or more convictions for a Schedule I offence.

2.4 - Eligibilities

Eligibility tables are amended to reflect the changes to the *Corrections and Conditional Release Act* made pursuant to Bill C-55.

3.1 - Unescorted temporary absence

An amendment was made under the heading PERSONAL DEVELOPMENT FOR REHABILITATIVE PURPOSES to reflect that 60-day UTA programs must be renewed by way of a review for each additional period of 60 days.

3.2 - Escorted temporary absence

Amendments were made to make it consistent with and reflect recent amendments to the CSC ETA policy.

4.3 - Accelerated review

The section on DAY PAROLE PRIOR TO ACCELERATED REVIEW is deleted. It is no longer needed given the legislative amendment governing accelerated day parole review.

6 - Detention

An amendment is made to the section WITHDRAWAL OF REFERRAL to clarify the policy as stipulated in a legal opinion on the issue.

7.1 - Release conditions

The complete policy is revised.

8.1 - Post release interventions

The complete policy is revised.

8.3 – Offenders with a long-term supervision order

This interim policy establishes policies governing the responsibilities of the National Parole Board with respect to offenders designated by the courts as long-term offenders during the long-term supervision part of their sentence.

9.1 - Reviews

This policy amendment clarifies the original intent of the policy.

9.2.1 - Elder Assisted Hearings

This is a new policy of the Board related to the provision of Elder assisted hearings.

9.3 - Observers at hearings

An amendment is made to the policy adding a section MEDIA REQUESTS FOR ATTENDANCE AT HEARINGS.

11.1 - Records of proceedings

An amendment is made to the policy adding a section CSC ACCESS TO VOICE RECORDED PROCEEDINGS.

11.2 – Decision registry

A minor amendment is made to the policy to clarify when a person may have access to a decision in the decision registry.

12 - Appeals

An amendment is made to the policy on “Appealable Decisions” reflecting that an offender can appeal a decision of the Board to impose a residency condition as a condition of parole.

14.3 – Interview Guidelines for Clemency and Pardons

This is a policy that was omitted by error from the previous version of the NPB policy manual dated June 1993.