the parolee from getting into certain situations (such as debt) which may contribute to an eventual return to crime. Other conditions are intended to ensure that the parole office has a rough idea of the whereabouts of the parolee.

Many of the standard conditions (and some of the special ones) are considered to be unenforceable and used only to "justify" a suspension which is really motivated by other concerns. Conditions like obtaining permission to marry or to leave a small geographical area are not consonant with formal correctional policies of minimal intervention and retention by offenders of the rights of ordinary citizens. Such conditions also create enormous resentment among parolees, regardless of their other problems.

The Working Group believes the standard conditions of parole should be reduced to the following:

- to proceed directly to the area specified in the parole agreement and report upon arrival. (This condition ensures that the parole system does not "lose" the offender and that initial contact is made with the parole officer.)

- to remain under the authority of the District Director or other designated representative. (This condition provides the requirement to report to the parole officer.)

- to remain in a designated area (individually determined and specified on each agreement) and not to leave this area without obtaining permission beforehand from the designated authority. (This condition also ensures that the parole system does not "lose" the offender. "Designated areas" must however be reviewed to ensure that they do not, as one parole officer put it, reflect "horse and buggy" days. Some designated areas in effect forbid parolees to travel to another township within the same large city, and require obtaining of permission.)

- to obtain permission from the designated representative to purchase or carry a firearm. (This condition represents a stricter standard than is required of the general population, for whom complex gun laws are in effect. The discrimination is not considered excessive, however, and permission can be obtained for parolees who need firearms to hunt and live.)

- to notify the designated representative of a change of address or employment status. (This condition is

intended to ensure the parole system does not "lose" the parolee, and also reflects a basic assumption about the importance of legitimate employment to successful adjustment in society.)

All other conditions can be required as "special" conditions by NPB or "special instructions" of the parole officer if they are necessary or appropriate. (Police reporting, for example, is not a program of all police departments; abstinence from alcohol should be required only of parolees who get into trouble when they drink.) Special conditions are currently used with restraint, and this should continue. (Of a sample of 205 full parole cases surveyed in Ottawa and Moncton during the Study, only 17 carried special conditions, most of them for alcohol abstinence.)

Requirement of restitution to the victim or community as a condition of parole has been questioned as being ultra vires. Review of this policy, and its legality, should be made by NPB. Such a requirement should at any rate only be made in cases of clear ability to pay where the restitution requirement will not create undue pressure on the parolee.

Suspension and revocation

A number of concerns have come to light as regards suspensions and revocations. The "revolving door syndrome" of rapid re-releases of revoked offenders, is primarily a problem in MS, and will be discussed under that heading, below.

There are still apparently problems with ensuring that parolees are given a full, descriptive account of the allegations which form the basis for the parole suspension. In some instances, notice consists only of an enumeration of the conditions violated, which sometimes, according to criminal lawyers consulted, lists those violations which are "hardest to disprove" and omits the true (but less easily proven) reason for the suspension. Suspension notice should include all alleged violations, together with a descriptive account of the behaviour which constituted the violation. Revocation should, moreover, not be permitted on grounds of "prevention" of a breach of conditions. Parole officers will occasionally suspend an offender for a few hours or days if they observe that he is drinking too heavily or otherwise deteriorating so severely that he is in need of a "short shock" or "time out" from his own lifestyle. While the Working Group supports the need for this kind of brief suspensions (that is, suspensions done to prevent a future breach of conditions) we do not endorse the translation of these suspensions into revocations under normal circumstances, a practice which is already apparently rather rare.

The brief received from the Criminal Lawyer's Association of Ontario also points out two interrelated sets of problems in the suspension and revocation process. The first is that parolees and MS cases may be held in custody beyond their warrant expiry date because a strict interpretation is placed on Section 20(1) of the Parole Act, which requires an inmate, upon revocation of his parole, to be "recommitted to the place of confinement from which he was allowed to go and remain at large at the time parole was granted to him, or to the corresponding place of confinement for the territorial division within which he was apprehended". Suspended offenders are thus typically held for return to the penitentiary they were released from, and distances and limitations on the availability of suitable transportation and escorts may cause considerable delays, sometimes even past warrant expiry. Delays in scheduling the offender's appearance before NPB once the transfer has been effected will also prolong the situation.

A compounded problem occurs - affecting some 200 persons a year in Toronto, according to the C.L.A. - when the offender is facing new criminal charges. There may be considerable reluctance on the part of the provincial bailiff to "ship the body" to the appropriate federal penitentiary in order for the revocation and possible re-release to occur: if bail has been set, the bailiff may wish to see the offender remain in the jurisdiction in order to appear in court or report to the police; and if bail has not been set, the warrant of remand will technically require that the defendant be held until trial or the setting of bail. In the meantime, the criminal court may be awaiting the outcome of the suspension/revocation process before making a decision as to bail. Section 457 of the Criminal Code in fact is often interpreted as not permitting bail or a bail hearing for suspended parolees ("detained in custody in respect of any other matter").

The C.L.A. makes several recommendations for resolving these interlocking problems. The Working Group endorses them. First, Section 20 of the Parole Act should be amended so as not to require recommitment to the original releasing penitentiary. (Additionally, negotiations could be undertaken, and in fact were begun some years ago, to have local jails, parole offices and CCC's designated as "penitentiaries" for the purpose of recommitment and revocation decisions, especially in brief "turnaround" cases.) Second, parole officers should inform the suspended offender of his option (NPB Policy and procedures, 106-2 [1-2]) to consent to his revocation and thereby waive these proceedings, which he may wish to do if little time is remaining before his warrant expiry or mandatory re-release date. Third, the offender should be informed as soon as possible of his next mandatory release date. (Surprisingly

often, the parole officer is unable to obtain an accurate estimate of the old and new remission standing to the offender's credit, and because of this the parolee may serve time in custody past warrant expiry. Parole officers should have available a standard way of obtaining an accurate estimate in these cases: the Working Group recommends that, as a possible method, greater care be given to the accuracy and details of entries on Penitentiary 208 [Release] forms, and that a copy of this form always be available for the parole officer to consult.) Finally, Section 457 of the Criminal Code should be amended to make it clear that suspended parolees have a right to a bail hearing.

The Working Group also recommends that delays in scheduling revocation hearings and reaching a final decision as to revocation be reduced as much as possible. An examination of the "warrant register" noting all 91 suspensions (and 7 revocations without a prior suspension) occurring from the Ottawa District parole office from January 1 to October 3, 1980, showed that the time lapsing between the date of suspension and the date of ultimate revocation may be quite lengthy. Of the 42 applicable cases for which the dates were recorded at the time of the survey, 20 revocations occurred within a month, but 11 took longer than two months. There is no required limit on the time to a post-suspension hearing. We recommend that the Parole Act be amended to require that the post-suspension hearing occur within two months of the parolee's request for it, and that "reserved decisions" as to revocation not prolong the ultimate decision beyond two months unless it is unavoidable.

The Working Group was told by a number of inmates that suspended parolees often do not bother to request their post-suspension hearing, presumably because little benefit for them is perceived to occur from hearings. Ministry data sources do not provide information on what proportion of suspended parolees request their hearing, unfortunately*. Every effort should be made to correct any delays or defects which may contribute to a low rate of request for hearings, since it is essential that the appearance and reality of justice be maintained in a process which materially affects loss of remission, potential time to be served, and the presence of a revocation on the offender's record. In particular, revocation should not normally occur without a prior hearing if the offender requests it. Such instances seem to be rather rare, but they may occur when there has been no suspension of parole: the Parole Regulations,

---

* Workload statistics from the B.C. office of the NPB provide the closest thing to an estimate of the hearing rate. In 1980, 504 suspension warrants were issued in the region, and 161 post-suspension hearings were held, or about 32% of 504. From an Ontario region sample, Latta (1981) estimates the hearing request rate at 32-38%.

20(2), require a hearing only in cases which have been suspended by the parole officer. Even where there has been no suspension, a hearing should normally occur at the offender's request unless he has obsconded and is unavailable.

Finally, many offenders complained during our consultation of the "excessive" use of suspension and revocation in non-criminal circumstances. Ministry data sources show that of the persons released on full parole or MS in any given year, about half of the eventual revocations which occur are not accompanied by a new criminal conviction. "Technical" revocations of Mandatory Supervision seem to be increasing. Of course, many of the "technical" revocations may mask a new crime which is suspected but not proven, and there is no real data on the actual circumstances surrounding suspensions and revocations. Research is need in this area.

EARNED REMISSION

The perennial question in remission is, "Can it ever be made to be truly earned?" In Chapter II, we concluded that, given the types of institutions involved and the level of resources which can realistically be expected in CSC, it is not possible to administer remission truly on the basis of evaluating inmates for exceptional, average, and below-average performance.

Reservations have also been expressed about the desirability of creating a "truly earned" remission system, in terms of the institutional tension it could generate, the confusion it would cause among sentencing judges, the implications for increasing penitentiary populations, the effect on parole decisions, the possibility of increasing disparities and unfairness, and the questionable overall benefit to be gained.

Efforts occur periodically to try to make remission "truly earned". At least three such efforts have occurred in the last few years: in 1974, in 1977, during the shift from statutory and earned remission to an "all-earned" system, and again in late 1978 and 1979, after it had become clear that the new system worked largely along the same lines as the old. At present, study is ongoing of the possibility of integrating remission with other incentives systems, such as work assignments, pay scales, temporary absences and parole. The Working Group is skeptical about the feasibility of these plans and, for the reasons noted above, has reservations about their desirability as well. Above all, remission should not determine the parole eligibility date, because of the tenuous or inconsistent connection between primary release considerations and the needs of penitentiary management and control.

Two remaining issues in remission will be discussed below. They are: disparities in application (including questions of review of failure-to-earn decisions), and loss of remission during parole revocation.

Disparities in remission

Because of the very high rates of earning of remission in CSC, differences in rates of remission are sometimes overlooked. Nonetheless, there are differences (though usually small in absolute terms) in the amount of remission earned, depending on the region, the security level and the individual penitentiary involved.

Data for the first quarter of 1980 show that there are small regional differences in the remission rates for program participation, and somewhat larger differences in regional rates for disciplinary evaluation. The number of inmates per 100 population who do not earn maximum remission for program participation does not vary much (from a low of 5.0% of inmates in the Prairie region to a high of 7.3% of inmates in the Pacific region). Similarly, the actual number of days of remission not earned for program participation per 100 inmates per month varies from 31 to 36 in all regions but the Prairies, which has a much lower rate of 21 days lost per 100 inmates per month. However, the proportion of inmates losing remission for reasons of disciplinary conduct varies from 1% to 12% in the regions, and the regional rate of loss of actual days of remission based on conduct varies from 4 to 41 days per 100 inmates per year. Again, the Prairies and Pacific region provide the lowest and highest rates of lost remission (but curiously, the rate of issuance of disciplinary "caution slips" is about the same in those two regions, and higher than in the other three regions.)

Clearly, there are marked regional differences in the relative proportions of inmates losing remission for disciplinary infractions, and in the actual number of days of remission involved. Differences in the number of caution slips issued, and in the type of staff typically involved in issuing them (custodial or program staff, for example) suggest differences in the administration of the system as well as the ultimate results in terms of days of remission (see Tables A-28 to A-31).

Other differences in remission earning are observable: compared to an overall average of 47 days of remission lost per 100 inmates per month, minimum security inmates lose an average 212 days, while medium and maximum security inmates lose an average 38 and 53 days, respectively. The fact that minimum security inmates, who are by definition considered less of a risk to society and to fellow inmates, lose over 5 times as much

remission as inmates in the next highest security level, may be troubling. On the one hand, inmates in minimum security may have more "opportunity" to get into trouble, but on the other hand, some of the differences may also be attributable to closer contact and observation between staff and inmates.

Maximum security inmates, however, lose more remission on average than do medium security inmates, though they lose less for disciplinary reasons (10 days lost for conduct in maximum compared to 23 days lost for conduct in medium) and more for non-participation or poor participation in programs (43 days lost for programs in maximum, compared to 15 days lost for programs in medium). These differences in earning rates according to security status are not easily attributable to any one factor such as program availability, use of punitive dissociation (during which no "participation" remission can be earned), restrictions on the availability of other punishments or privileges, the presence of "independent chairpersons" in disciplinary procedures at maximum security penitentiaries or the types of staff involved in evaluating inmates and issuing caution slips.

Data on the rate of earning of remission in individual penitentiaries show strong variation, suggesting that the manner of administration of the program in separate institutions may be the most important determinant of the outcome. Three medium security penitentiaries in the Pacific region show different lost remission rates of 12 days, 66 days and 81 days per 100 inmates. Two maximum security penitentiaries in Quebec have rates of 71 and 111 days' remission lost per 100 inmates per month. The Prison for Women has the highest rate of lost remission of any medium or maximum security penitentiary - 178 days lost per 100 inmates per month.

One footnote to this discussion of disparities in the awarding of remission is that some staff and inmates mentioned during our consultations that custodial staff who perceive the formal disciplinary process of punishing inmates as too difficult or cumbersome and beyond their control, have (despite a case management directive forbidding it) been using "caution slips" as a means of accomplishing punishment without conviction in disciplinary court. The practice is a difficult one to prevent without mandating the use of disciplinary court prior to any loss of remission for bad conduct. This alternative could result in more inmates being charged for more minor types of misbehaviour, and possibly losing more remission days as a result-an outcome which may not be desirable. (A multiplicity of charges can in turn affect parole chances.)

On the whole, the Working Group feels that it would be preferable for remission to operate as a system which punishes

serious misconduct in penitentiary, and is not geared towards encouraging or evaluating program participation. We feel that this would be a fairer and more equitable system than the present one, which though largely geared towards punishing misconduct, can be used in certain circumstances in ways which promote disparity and institutional tension.

However, if this recommendation to use remission only to punish misconduct is rejected, we recommend that CSC institute a system of far more specific criteria for the evaluation of program participation, the use of caution slips, and the translation of these indicators into a final determination of "number of days". In particular, guidelines are needed to help "independent" and CSC disciplinary chairpersons to decide when to take away remission as a punishment and in what amount. However, since (in terms of number of days) the largest differences appear to be in "participation" credits, guidelines for making these awards are just as important, although more difficult to specify.

The Working Group further recommends that federal inmates be given the right to appeal the loss of remission to the National Parole Board in Ottawa for an independent review of whether the circumstances of their loss of remission fit the criteria specified by CSC. The reason an appeal mechanism outside CSC is considered necessary is because of the direct effect which remission has on the time served by some inmates, and because of the need for a centralized review to reduce regional disparities in policy and application. NPB should not, however, have any role in the formulation of remission policy. This power is, we feel, best left in the hands of an authority other than the parole authority.

A final disparity worth mentioning is the one between the descriptive "earned" remission and the reality of how the program operates. If remission does not operate as a "positive" earning system, as we believe it never will (within credible limits of resource availability and system coordination), it should not be called "earned" remisson. Although this may appear to be only a semantic matter, it is extremely irksome to inmates, especially in the context of mandatory supervision, and it is inconsistent with goals of public accountability and clear communication with other agencies such as the courts. It is also not conducive to internal consistency and accountability within CSC.

Remission loss for parole revocation

The submission made to us by the Canadian Association of Elizabeth Fry Societies points out an issue of inequity in the

present remission program. Currently, an offender on parole or mandatory supervision loses the remission standing to his credit if he is revoked to penitientiary. The amount of remission he has accumulated (and will lose) is determined by the amount of time he served in penitentiary prior to release. The CAEFS submission suggests that is is inequitable that two parolees revoked for the same violation of parole should lose different amounts of remission credit, dependent on the time previously served and not on the nature of the violation of parole.

To amend this type of inequity is difficult because of the extremely narrow use made of the power of "recrediting" of remission in 1977. NPB procedures permit recrediting of remission to an offender only in cases where "undue hardship" would otherwise result, and the examples given in the Policy and Procedures Manual make it clear that the circumstances where recrediting is allowed are to be very unusual indeed. This stringent policy appears to have been an over-reaction to the wholesale recrediting of remission by penitentiary staff that took place under the dual, statutory and earned remission systems of the past. The criteria for the recrediting of remission (which we believe should remain with NPB) should be expanded to include a principle of commensurate punishment for violations committed while on parole, and a more generous notion of fostering equitable outcomes for similar circumstances.*

Other issues of remission

From the discussion on objectives in Chapter II, it is clear that remission has many functions besides reinforcing the penitentiary employment and disciplinary system. These functions include: serving as a "safety valve" for NPB caution, by releasing non-paroled inmates at the approximate two-thirds date; ensuring the supervision of non-paroled inmates by requiring that remission credits be served under MS supervision in the community; and, through these functions, reducing time served and penitentiary populations.

These functions are seen by some as dysfunctional, however. Persons released through remission at the two-thirds date can commit new offences which would otherwise have been prevented or delayed (as our analysis of "Incapacitation" in

* Both this view of the remission recrediting power and the proposed new power to review remission loss (above) by NPB require, to be properly and fairly carried out, a detailed and up-to-date system of information feedback to NPB of the amounts of remission being awarded and lost for specific types of circumstances. This feedback system will be described in greater detail in the next chapter.

Chapter II showed, about a third of the persons released through remission are revoked before warrant expiry). The creation of mandatory supervision through remission is an extremely contentious issue which is dealt with below. Early release (or reduction of time served) is seen by some critics as undue mitigation of punishment or a usurpation of the sentencing power of judges (though not all judges agree themselves with this assessment). The automatic nature of the early release created by remission is seen by others to be inconsistent with the notion of having a single authority for all early releases.

While ultimately the Working Group was not able to agree as to whether, on balance, it was better to retain remission (the pros and cons of the major alternatives are laid out in Chapter V), we did agree on a few notions and conclusions. The first was that, some popular notions to the contrary, there is nothing inherently invidious in the judge's sentence being effectively reduced or mitigated by remission. Remission has been in existence for 112 years and its effect upon the time served in penitentiary by non-paroled offenders is understood on a general level by sentencing judges, who allow for remission in their choice of sentence length.

Our second finding was that if judges did not "compensate for" remission in setting sentence, and if the abolition of remission were to mean necessarily longer time served in prison by convicted offenders, this would not, on the whole, be desirable. We agree with Ouimet (1969), Hugessen (1973) and the Law Reform Commission (1976) that, except for a very few individuals who are a physical threat to the community, offenders should spend as little time as possible in penitentiary. Imprisonment is expensive, can be harmful, and in many cases is dysfunctional to successful readjustment in the community. There would be considerable human and financial costs - but no measurable benefit - to extending the current "norm" of time served by the number of months or years which remission removes.

Third, we are not as convinced of the need for a "single releasing authority" as were some previous studies (Hugessen, 1973; Law Reform Commission, 1976). The notion of one coordinated system for all releases is theoretically sound from some perspectives, but carries (as we have seen with TA's) certain practical difficulties. Beyond practicalities, however, there can be said to be merit in maintaining instead a balance of powers in release between the judiciary, parole, and penitentiaries. By the same token as one may wish to preserve fixed parole eligibility dates (before which the inmate cannot normally be released) as a "check" on Parole Board liberality, so one may wish to preserve remission as the complementary "check" on Parole Board conservatism. In any event, the "single release authority" notion is not necessarily an ideal.

MANDATORY SUPERVISION (MS)

Mandatory Supervision (MS) is such a controversial program that it has recently been a subject of its own review (Solicitor General, 1981), which, at the time of writing, has not yet resulted in any formal recommendations.

The controversial nature of MS is, in fact, one of its most interesting facets. It is controversial to NPB because the Board is constantly being blamed for the failures of offenders released on MS, although it has no hand in and cannot prevent* these releases, even if it believes the offender will be a physical threat when released. It is controversial to offenders because they consider remission as "time off" their sentence (as it was before 1970) and they resent having to serve the remitted portion under supervision, subject to revocation (especially for non-criminal behaviour), after their release. It is controversial to the police, who because they deal with MS violations in the form of arrests, regard the overall program as a failure. It is controversial to parole officers because of the resentment and hostility of offenders which make supervision difficult and unpleasant. Parole officers also have to deal with other problems caused by or associated with MS, such as the paperwork and frustration involved in "revolving door" cases (see below), lack of release plans (Atack, 1978) and even, for some, a sense of personal risk from MS cases. Finally, it is controversial to penitentiary authorities who have to live with the "returns" from MS, revoked offenders who are often bitter and difficult to deal with.

Outside critics (Auditor General, 1978) and internal CSC authorities concerned about costs point to the contribution of MS to penitentiary populations (an estimated 319 to 433 inmate-years in 1978: Canfield and Hann, 1978) and to person-year requirements for parole officers and support staff. Civil libertarians complain of the arbitrary nature of many of the revocations from MS, the ineffectiveness and oppressive nature of supervision, and the removal, through MS, of much of the practical effect of remission.

Not surprisingly, the above groups have widely varying views of what should be done about MS, each determined largely by the nature of their involvement with the program. Singly, none of these viewpoints would make MS so controversial, but

* Other than by immediate suspension and subsequent revocation, on the day of MS release, of offenders thought to be dangerous. NPB has used this technique on a trial basis in a few recent cases to test whether the federal court will uphold the practice, though as yet no appeals have been lodged against such action.

together, they make MS a very sensitive issue indeed. The police* and inmate groups agree (if on nothing else) that "MS" is the biggest single issue in conditional release. It should be pointed out, however, that the police actually mean that remission, or the automatic release of non-paroled offenders prior to warrant expiry, is the biggest single issue in release, not the mandatory aspects of the supervision itself.

The advantages and disadvantages of the major alternatives for modifying MS are discussed under "macro models". They include such options as abolishing MS while retaining remission, abolishing both MS and remission, making post-release assistance voluntary with the offender, and establishing "separate" supervision terms (separate from the sentence) after release for all offenders. Some of the more operational issues or problems which have been raised with MS are discussed below.

Effectiveness issues in MS

MS was introduced as a "logical extension" of the community supervision process to cover all persons leaving penitentiary (not just parolees as had been the case). Some** police groups and the overwhelming majority of offenders feel that MS is ineffective in reducing recidivism. Not surprisingly, parole officers tend to disagree. The literature on supervision effectiveness generally is difficult to interpret definitively, as we have seen, and it is not known to what extent the limited optimism extractable from the literature might be further limited in cases of hostile or intractable offenders, as many persons on MS are said to be.

However, it has been seen (Chapter II) that the rates of revocation from MS in a six-year follow-up of 1974 release are not extremely different from the rates of revocation from parole releases in the same year. (The rates of violent and other recidivism from all forms of release will be examined in more detail in the next chapter). The alleged differences between parole and MS populations tend to be exaggerated. As many parole officers we consulted remarked, there are both intractable and amenable offenders to be found on both parole and MS, though MS offenders do present more overall needs for assistance and supervision than do parolees.

* Or at least, those police groups represented by The National Joint Committee of Chief of Police and Federal Correctional Services, whose brief called for the abolition of both remission and MS.

** But not all: some regional committees of the NJC of the CACP/FCS favour retention of the present system of MS (NJC Annual Report, 1979).

The Working Group was unable to agree on whether remission credits should or should not be mandatorily served under supervision in the community. There was some feeling that the bitterness felt by offenders over having to serve remission under supervision made successful intervention possible only in a few cases, and that the success rates shown by MS cases occur regardless of, or in spite of, what we do to supervise people. On the other hand, there was also some feeling that the research on supervision effectiveness is inadequate for drawing conclusions about the specific impact of intervention on either amenable or unamenable offenders. Further, removing the requirement of supervision for the "worst" offenders for the remitted portion of the sentence could cause serious public apprehension about the protections offered by corrections. Finally, those Working Group members who did not support MS abolition felt that in general it was better to work on improving and evaluating supervision as a whole, rather than to hack away piecemeal at its application to specific offender groups.

One specific problem touching MS effectiveness is the "revolving door syndrome", a situation in which, because of the workings of the former remission system, a revoked offender must be almost immediately re-released from penitentiary*. This phenomenon has been explored as deeply as present automated data systems permit by the MS Committee, which concluded that the phenomenon is caused by a multiplicity of factors, including old earned remission, street-time credit, and the length of the average supervision (especially MS) period. One option given a great deal of consideration by the MS Committee is that, to lessen the revolving door syndrome, revoked MS offenders not be permitted to earn remission on the remainder of their sentence (or that part of it which does not overlap with any new sentence they may have received). As yet, however, no recommendations on the subject have been formalized. The Working Group, for its part, was unable to agree on whether the costs of this option would outweigh the benefits.

Fairness issues in MS

There are two main fairness issues in MS: first, whether the program itself is fair, given the meaning in terms of sentence mitigation which it has taken from "earned remission", as well as the questions of its limited effectiveness and "repressive" nature; and second, whether MS offenders are treated differently from parolees (by parole officers, NPB, police, or judges) in ways which are not justified by their behaviour.

---

* The former system of earned and statutory remission called for full recrediting of the accumulated "earned" remission upon revocation. Some inmates still have some "old earned" remission to their credits.

As for the first question, the Working Group finds the inmate position on the unfairness of MS to be perfectly understandable, given the relatively control-free situation which predated the introduction of MS. However we could not agree on whether the provision of supervision to all offenders, even if of unknown effectiveness, is desirable at least until more definitive evidence of its marginal effect is in. (There is some feeling on the Working Group that assistance made available to those remission-released offenders on a voluntary basis would be an adequate, if not a better, approach to MS.)

As to the differential treatment given to parole and MS offenders after release, we are unable to judge whether (as some have claimed) MS cases receive more police "harassment", harsher judicial treatment, or lighter or harsher treatment from parole officers and NPB (both charges have been made: that parole authorities treat MS cases more casually because "they aren't ours" and nothing can be done for them; and that parole cases are treated more liberally because parole authorities want "the statistics" to look as successful as possible.) We have no direct evidence of differential treatment, but some of the groups consulted believed that these types of discriminations do occur. As recommended above, the Ministry should conduct detailed research on supervision, including MS, which would allow it to make an assessment of whether the treatment of MS cases in service delivery, nature of surveillance activities, use of suspensions and revocations, etc., differs from the handling of parole cases, and if so, whether the differences are attributable solely to differences in MS case needs and behaviour.

CHAPTER IV
SYSTEM-WIDE CONCERNS

Both during our consultations and our study of the individual elements of release, we were struck by a number of particularly stong concerns which ran as a consistent thread through all release programs. The most obvious and, some would say, most relevant concern is over violent and other criminal acts committed by persons released under federal authority. We will therefore address this concern at some length in this chapter. Other recurring concerns addressed below are sentencing, problems experienced by special offender groups (especially women, life-sentence inmates and native offenders), eligibility dates for release programs, services to and relations with provincial correctional systems, and the two-sided question of disclosure of information and protection of confidential information from disclosure.

VIOLENCE AND OTHER CRIMINAL VIOLATIONS COMMITTED BY PERSONS UNDER RELEASE

The Solicitor General's Committee on Mandatory Supervision (1981) considers the commission of violent acts by persons on MS to be the single most powerful concern about the program. (Indeed, the submission made to the Study by the National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services refers only to the problems created by the few "dangerous" persons on MS, whose movements and behaviour cannot be controlled by parole officers.) While concern over any type of criminal or even technical violations by released persons is prevalent, it is undoubtedly true that it is the violent acts committed which cause the greatest concern, fear and anger. In fact, one of the factors which contributed to the decision to undertake this Study was a series of violent acts committed in Edmonton by federal releases in 1979.

In order to address the question of violence and other violations by released offenders, we drew on several sources of information. First, we used Ministry data sources to trace the outcomes of full parole and MS cases over the last few years to determine the rate of violations, especially violent violations (data for criminal acts committed while on temporary absence or day parole are, unfortunately, not reliable and cannot be used). Second, we reviewed the case audits performed on a number of "spectacular incidents" committed by persons under conditional release. (A "spectacular incident" is a rather flexible term applied to an instance of especially disturbing criminal conduct by a federal offender under release,

especially an act which receives "spectacular" coverage in the media. NPB and, now, CSC perform a special investigation of all incidents which become designated as "spectacular".) And finally, we examined the literature on the prediction (clinical and statistical) of violence in order to determine whether any useful information could be drawn from it to improve our ability to anticipate which offenders will be a physical threat when released.

We first examined all cases of full parole or MS release occurring from 1970 to December 1978, in order to obtain an overall view of the outcomes of these cases. Table 6 presents these outcomes for 30,370 of the cases which were full-released in the period. About half the cases have successfully completed their supervision period, though about ten percent of the parole cases and one percent of the MS cases have not yet reached warrant expiry and could ultimately represent either a success or a failure. About 30% of the parole cases and 38.5% of the MS cases were readmitted to penitentiary* or were returned to penitentiary during their supervision period, either for a "technical" violation or one which involved a new conviction for an indictable offence registered in the data base.** These figures include 20.0% of the paroles and 22.3% of the MS cases whose revocations involved a new criminal conviction. An additional four percent of the parolees and 11% of the MS cases successfully completed their supervision period but were later readmitted to penitentiary for a new crime.

The most typical outcome, therefore, of either parole or MS is the successful completion of the supervision period, without detected new crime or revocation for technical or criminal reasons. Just over a fifth of all cases have so far

---

* Some cases (148 MS cases and 8 parole cases) were readmitted to penitentiary on a new offence warrant but not recorded as "revoked". These may be cases of new convictions followed by an "interruption" of MS (not yet legally possible with parole); or, they could be aberrations in the data.

** It must be noted that a "technical" revocation may actually have involved a new offence, but one which did not result in a conviction. Any undetected violations are also, of course, not recorded in these figures. There may also be some minor offences not reflected in the data (for which the offender merely received a brief stay in a provincial jail), though, according to Section 659 of the Criminal Code, all persons convicted of any new crime while still under a federal warrant must serve their prison sentence (if any) in a federal penitentiary. Finally, offences which have resulted in a revocation but not as yet in a conviction will not be reflected here as "new crime revocations".

TABLE 6

OUTCOME (TO JUNE 1980) OF RELEASES ON FULL PAROLE OR MANDATORY SUPERVISION, PERSONS RELEASED FROM JANUARY 1970 TO DECEMBER 1978

OUTCOME	FULL PAROLE NUMBER OF CASES	%	MS NUMBER OF CASES	%
Revocation without* new offence	1,575	10.8	2,574	16.2
Revocation with new conviction for indictable offence	2,903	20.0	3,533	22.3
New offence and penitentiary admission after successful completion of supervision period	563	3.9	1,731	10.9
Successful completion of supervision period, and no subsequent readmissions	8,010	55.1	7,848	49.5
Still under supervision	1,482	10.2	151	1.0
TOTAL	14,533		15,837	

* While some of these cases may have involved a new criminal act, no new conviction for an indictable offence is registered.

resulted in a conviction for a new offence before warrant expiry. About a third of all cases have been returned for any reason, technical or criminal.

Though it was impossible for us to obtain useful data* on the actual circumstances surrounding "revocations without new offence", we were able to obtain information about the types of offences for which offenders return on a "revocation with new conviction". Table 7 shows the breakdown of offence types for which full parole and MS cases were readmitted during their supervision period from January 1975 to June 1980 (the years for which the most reliable data are available). In the five year period, 3,303 persons on full release, or about 560 a year, were revoked from supervision with a new offence or readmitted on a new warrant during supervision. Of these annual readmissions, well over half (59.3%) are for "pure" property crimes: crimes like break and enter, theft and fraud which rarely involve personal contact between the offender and the victim. Another 16% of the readmissions were for robbery, a property crime which involves personal contact (and hence is often called a "crime against the person" though it does not always involve direct physical violence).

About 12% of the readmissions (391 over the 5-year period) were for clearly violent crimes such as homicide**, kidnapping, assault, rape or other personal crimes: almost half of the offences against the person group were readmitted for non-sexual assault or wounding. A total of 72 homicides resulted in the readmission of federal releases to penitentiary during the period. About five percent of the readmissions were for narcotics offences.

If this breakdown of annual readmissions can be taken as suggestive of the patterns of crimes for which a "cohort"***

---

* NPSIS contains some data on the types of reasons ticked off by parole officers on a checklist form filled out after certain suspensions. We did not examine this information because it would not tell us much about the actual circumstances of the suspension, and would be confounded by questions about whether parole officers were giving the "official grounds" or the "real reason" for the suspension.

** Including murder, manslaughter and criminal negligence causing death.

*** A "cohort" is used here to mean a group of offenders all released during the same time period. Note that Table 7 actually refers to offenders readmitted only up to June 1980 who had been released between 1975 and 1979, and thus may provide an inaccurate representation of the "ultimate" results for that cohort.

of offenders are ultimately revoked or readmitted while still under warrant, it suggests that about a fifth (from Table 6) of all full-released offenders are eventually revoked with a new conviction, and of those, about a quarter (27.6%) commit (or are detected in) an assault, robbery, homicide, rape, or other "personal" crime. We have no way of knowing how many of the "technical" revocations may "mask" a violent new crime which could not be proven or for which the charges were dropped because of the revocation; presumably, in cases of violence, the latter circumstances would be rare.

In any event, these figures suggest that the "violence" of parolees and MS cases is often exaggerated or appears, because of the visibility of failure cases, to be higher for the overall group than it actually is. This is not in any way to detract from the unquestionable heinousness of the violent crimes which have occurred. It is also not to say that 560 new-crime readmissions (not necessarily violent) by federal releases annually is "acceptable" in any absolute sense: what number is "acceptable" in the circumstances is impossible to say as an absolute. For some, of course, any new crime committed by a person still under sentence for a previous crime is unacceptable, and if it is impossible to predict with certainty who will not commit a new crime if released early, then no early releases at all should occur.

A more moderate view, however, is that early release provides some (perhaps major) benefits such as humaneness, assisting the reintegration of the offender, and controlling penitentiary populations and costs. Some also argue that only early release helps to prevent further involvement in criminal activity. The majority of offenders do not appear to become involved in new criminal activity during the period for which they are at conditional partial liberty in the community before the expiry of their sentence. (It should be noted that in the years in which these 3,303 incidents occurred, approximately 7,000 persons were released onto full parole and 13,000 onto MS.) To hold in prison the approximately 5,000 persons out under community supervision on any given day, in order to prevent the 560 annual new-crime revocations seems, in this view and in the view of the Working Group, excessive. It would be desirable, certainly, to be able to distinguish better those who will be violators, especially the violent ones, in order to detain them, but as will be seen below, the prediction of violence is as yet not within our capability, although a great deal of further study needs to be invested in the subject.

TABLE 7

OFFENCES COMMITTED UNDER SUPERVISION BY FULL PAROLE AND MS CASES RELEASED FROM JANUARY 1979 TO DECEMBER 1979 AND READMITTED OR REVOKED WITH NEW CONVICTION AS OF JUNE 1980

READMISSION OFFENCE (NEW CONVICTION)	PERSONS REVOKED FROM PAROLE	PERSONS REVOKED FROM MS	TOTAL	PERCENTAGE OF TOTAL OFFENCES
CRIMES AGAINST THE PERSON				
Murder	9	31	40	
Manslaughter	9	21	30	
Attempted murder	0	11	11	
Rape and attempted rape	10	25	35	
Sexual assault	4	23	27	
Other assaults, wounding	17	153	170	
Kidnapping, forcible confinement	6	15	21	
Criminal negligence causing death	2	0	2	
Other crimes against the person	10	45	55	
Sub-Total			391	(11.8%)
ROBBERY	127	394	521	
Sub-Total			521	(15.8%)
CRIMES AGAINST PROPERTY				
Break and enter	192	737	929	
Theft, possession of stolen goods	148	615	763	
Frauds	53	214	267	
Sub-Total			1,959	(59.3%)
NARCOTICS				
Possession of narcotics	7	26	33	
Trafficking and importing	42	72	114	
Sub-Total			147	(4.4%)
MISCELLANEOUS				
Miscellaneous Criminal Code	58	179	237	
Miscellaneous Federal and provincial statutes	2	4	6	
Escape and unlawfully at large	9	33	42	
Sub-Total			285	(8.6%)
TOTAL	705	2,598	3,303	(Grand Total)

We conclude, therefore, that the prevailing impression of a high incidence of violent recidivism by federal releases, especially MS cases, is a distorted one, and the actual rates of successful completion, and of non-violent but unsuccessful completion of supervision, are often overlooked.

A perennial question remains, however, of whether anything could have been done in specific cases to predict violent incidents or do something to control or prevent them. We reviewed the reports of two audits of a series of serious release failures. The first audit, conducted by CSC and NPB, is an analysis of 8 "spectacular incidents" committed by offenders on parole, MS and TA over a two-month period in Edmonton in 1979. The second is an NPB audit of all 49 MS cases involved in "spectacular incidents" from January, 1979 to March 31, 1980. Both studies were based on a reading of case files, but the first involved also a series of interviews with Edmonton area police, penitentiary and parole staff, and private aftercare workers.

(It should be noted, of course, that only a partial picture of violent failure or releases is given from looking at "spectacular incident" reports. As the internal review of the 1979 Edmonton incidents noted, the definition of a "spectacular incident" is quite flexible in both NPB Policy Procedures and CSC Divisional Instructions. Some types of cases seem to attract the label more than others, and not all cases of a violent nature will necessarily be designated as "spectacular". The incidents should not be taken as a random sample or population representative of "release violence".)

The internal audit done of the 1979 Edmonton incidents included the study of eight cases, though at the time some of the Edmonton press and public were referring to a "parolee crime wave" of 100 or more incidents (the others, which became lumped together with the eight federal release cases, involved provincial cases, bail cases and other offenders not on a federal release). These eight cases involved one person on an unescorted TA, three on day parole, two on full parole and two on mandatory supervision.

The most striking finding of this audit was that there appeared to be little which could have been done to prevent these eight incidents. Though the audit made a number of recommendations for procedural changes that would improve the overall system, the report states that it is likely that the outcome would have been the same even had these procedural refinements been in place. Our analysis of these incidents supports these conclusions to some extent, with reservations noted in the next parpagraph. Four of the eight offenders had no previous violence registered in their criminal records (though one of these had apparently been involved in brutal victimizations of his fellow inmates in penitentiary) and of these four, one had no prior criminal or juvenile record at all. Six out of eight had an acceptable or reasonably acceptable record in penitentiary. Four had received partial releases before the final one and had succeeded on them; one other had been on a TA program, which was cancelled for possession of contraband. Of the three out of eight incidents which were of a particularly bizarre or disturbing nature, only one allegedly involved an offender whose record of behaviour suggested mental disorder or brutal disregard for human life (the inmate who apparently victimized his fellows).

On the other hand, one of the eight cases had, prior to the "spectacular incident", been involved in violence while under supervision. This one parolee had abused his wife, threatened to kill her and had apparently fired a loaded shotgun in their home during an argument. This incident resulted in a suspension, but NPB did not ultimately revoke the parole as recommended by the parole officer. The latter incident, occurring during the release period, might arguably have resulted in revocation, and thus prevention of the ultimate violence committed by the offender while still on parole. (It can always be argued, of course, that it would have been committed later if not sooner.) In another case, the parolee was severely beaten in "some type of ruckus" at a friend's home, an incident which did not result in a suspension by the parole officer. For the most part, however, the post-release behaviour of these eight persons (in the short time there was to observe it: four cases blew up in less than a month after release) was ambiguous enough to suggest problems but not impending violence or is found in a sufficiently high number of cases as to be unreliable as a predictor; or incidents which might have been taken as "warning signs" were simply not detectable by the parole officer in the normal course of his duties.

The study by NPB of 49 "spectacular incidents" committed on MS in a 15-month period concludes that there were some cases under study in which suspension and revocation could have been more seriously considered by CSC and NPB officials. Some of the behaviour of the offenders, if considered in light of a

violent previous record, could have suggested impending problems. The tendency not to revoke or not to suspend was found to be more frequent among "revolving door" cases where a revocation would inevitably result in a relatively early re-release. It will be recalled from Chapter III that our consultation revealed some of the same reluctance to suspend or revoke in "revolving door" (or "turnaround") cases, variously blamed on parole officers or parole board members. Whatever factors are most to blame for the phenomenon, the Working Group is in agreement that the appearance and reality of "justice" demands that the time left to serve should not dictate suspension or revocation practices in serious cases, and that violence especially should normally result in revocation even in "turnaround" cases.

The MS audit also found that violence or violent "indicators" (not necessarily violent incidents, but might include things such as threats or carrying a weapon) could be found in the prior criminal record, penitentiary behaviour or supervision adjustment of all 49 cases studied, which the auditors felt were insufficiently considered during problem periods under supervision. Various other problems were identified: inadequate documentation; frequent changes in the parole officer assigned to an offender; an extremely stringent NPB practice of not placing on files certain information which is pertinent but might ultimately be seen (with negative consequences) by the offender who requests to see his file under the Canadian Human Rights Act; and instances of poor communication between CSC and NPB about the quality of the community adjustment and the content of the supervision offered.

The Edmonton and MS "audits" resulted in a total of 24 specific recommendations. For brevity's sake, we discuss these below under four substantive headings. Many of the most important of these recommendations have resulted in an identifiable change, and these are noted below. Other recommendations have been rejected by CSC, NPB or both, or are still under consideration. In any event, it is still too early to tell whether any concrete results have been felt from these changes or what the effect of their implementation will be.

1. Information needs

A number of the recommendations were primarily intended to ensure that more information is available to be considered in making decisions about release, suspension and revocation. Some of these recommendations were specifically intended to ensure the transmission of

certain information by CSC to NPB, in order that NPB can provide another caution "check" on cases.

The following recommendations have been accepted by CSC and NPB or were already policy at the time of the incidents: that there be a nationally coordinated system for preparing and processing audits of "spectacular incidents"; that information on an inmate's visits and correspondence be contained in parole documentation; that all new charges laid by police against federal releases be automatically reported to NPB; that there be an automatic update of CSC and NPB files when any new charges against a released offender are adjudicated; and that supervision reports (seen by NPB) specifically state the level of supervision* maintained on the offender. In instances where the procedures were already policy, mechanisms have been put in place to try to ensure more effective implementation of them.

A recommendation that NPB and CSC develop a more specific, common definition of a "spectacular incident" and process for carrying out the required audit, is still under discussion by CSC and NPB.

No specific action has been taken on the remaining recommendations in this group because one or both agencies disagree with them, cannot reach an agreement on how to address them, or are not in agreement that there is a problem: that more information should appear on written files rather than being suppressed or transmitted verbally, for fear of disclosure to the offender under the Canadian Human Rights Act (Bill C-25, 1977: see below); that parole officers should have more frequent contact with persons and agencies in the community with information about the released offender's adjustment; and that CSC send supervision reports to NPB every month for the first eight months after release (rejected by both agencies); that supervision reports contain more qualitative information about the nature of the supervision undertaken and of the offender's adjustment.

2. Accountability needs

Three recommendations were intended to ensure that "quality control" by NPB and CSC be implemented. They

---

* The level of supervision ("minimum standard") will determine the minimum required frequency of contact between the parole officer and the offender: every two weeks, every four weeks, or every quarter. (CSC Case Management Policy and Procedures Manual, 1980)

all require further written documentation by one or the other agency. Besides being intended to contribute to "quality control", they also seem intended to provide more information on practices to any future audit teams. NPB has agreed to supply more extensive comments on decisions to cancel a suspension (not to revoke) and to provide CSC staff with specific instructions about any new release plans set for these cases, and the information needed for a fresh "community assessment" report on the validity or feasibility of the re-release plans.

Two other "accountability" recommendations have not resulted in any action: that qualified NPB staff note in writing that they have read all supervision reports transmitted by CSC, and where possible make written comments on the case progress; and that there be more extensive written documentation of the actions taken by parole District Office Directors to ensure the quality of supervision by their parole officers.

3. "Tighten up" recommendations

A large group of recommendations are, or seem to be, ultimately directed towards a certain amount of "tightening up" of the system. This can take such forms as more contact between the system and the offender, the obtaining of more information on the offender, and a greater use of sanctions for wrongdoing.

The following recommendations have been accepted and most have monitoring systems in place to ensure their implementation: that stricter adherence be paid to notifying NPB of the proposed use of a private aftercare agency for supervision, and to ensuring that private agencies conform to certain standards for supervision and reporting required of CSC; that no release decision be made to be effective more than 2 months in the future, in order to ensure that up-to-date relevant information is considered; that NPB and CSC consider imposing more "special conditions" on CCC and CRC residents who may be in need of a stricter curfew or other conditions than are other residents of the halfway facility; that over-reliance on telephone contact between the parole officer and offender should not be tolerated; that the (brief) time left to serve by an offender under community supervision should not affect the decision to revoke the offender, especially in cases of serious criminal conduct where justice must be seen to be done; that any special conditions of a day parole

prior to MS be automatically carried over into MS unless otherwise indicated; and that NPB or, at NPB's request, CSC notify local police of the impending arrival of "high risk" MS cases, and of any specific concerns which there are about these cases.

The following recommendations of the "tightening up" variety have not resulted in action: that all released offenders be under "intensive supervision" for at least the first eight months after release (present CSC procedures state that intensive supervision should normally last four to six months); and that NPB give more consideration to special conditions and other possible "preventive measures" for persons considered particularly dangerous who are about to be released on MS.

Still under consideration is a final, rather vaguely worded recommendation that NPB consider the misconduct of a suspended parolee before considering possible new release plans, which was possibly intended to suggest that NPB should more consistently revoke released offenders who commit serious violations.

4. Justice and humaneness needs

A recommendation that NPB be more complete and candid in stating their reasons for revoking a release has been accepted on grounds of fairness, openness and accountability. A second recommendation, that the granting or denial of bail on a new criminal charge not be considered in the decision to revoke a current release, has not met with a formal response.

There has been another recent spin-off from the spate of "spectacular incidents" in the last two years - a number of parole District Offices have established more consistent and closer liaison with police departments in their area to ensure the sharing of relevant information and better communication between the agencies. This liaison, sometimes in the form of a designated parole officer as "police liaison officer", appears to have some valuable benefits in increasing understanding between police and parole, aiding efficient handling of arrest, warrant and notification procedures, and ensuring that identification and other relevant information on persons released to the area is available to police through the parole officers and vice versa. Regular meetings between parole and police officers seem productive for most offices; the designation of a specific parole service member as the usual liaison and information channel with police may be adaptable only for large city offices.

The Working Group tends to the opinion favoured by the Edmonton audit team, that it is unlikely that many of the spectacular incidents would be prevented through the implementation of the recommendations reviewed above. However, most are sound proposals from the case management viewpoint, and close evaluation of the implementation of those accepted should be conducted. In particular, a single coordinating body is needed to monitor the recommendations. The Working Group recommends that a CSC/NPB committee be established to review all the proposals made in these audits, evaluate their soundness, ensure that those which are valid but not yet accepted are implemented, and monitor the implementation and results of all those which are approved. This Committee should report to the CSC/NPB Interlinkages Committee on the progress of this implementation one year hence.

Prediction of violence

From an analysis only of violent failures on release, it may seem appropriate to conclude that violence is easily predicted. The MS audit reported that violence "indicators" were found in the records of all the offenders studied; it sometimes appears that past violence predicts future violence.

Past violence does indeed often appear in the records of persons who commit "spectacular incidents". But not all offenders with records of past violence will commit any violation, let alone a violent one, after release. Further, persons involved in violence do not always have a violent past. Past violence is not, therefore, a reliable sign of approaching violence on supervision, nor is the lack of a violent past a reliable sign that one will be non-violent in the future. However, greater incidence of violence in the past is associated with higher probabilities of violence in future, though the certainty or virtual certainty of violence in future is never assured.

There is no very accurate system for predicing violence which has yet been developed. Walker (1978:40) notes that "nobody has so far reliably defined ... a group of violent males with a probability of further violence approaching even 50 percent. In other words, we have not yet succeeded in providing criteria which would ensure that a prediction of future violence would be right more often than it would be wrong. With present criteria, it would more often be wrong." For reasons which can be demonstrated through complex mathematics, the more rare an event is, compared to the total number of persons or circumstances considered as possible "causes" of the event, the more difficult the event is to predict. And, regardless of how it may sometimes appear in the media and through other perceptions, violent recidivism among federal offenders is, as we

have seen, not frequent enough to permit accurate prediction of violence (i.e., pinpointing of all or even most of the future violent recidivists). Furthermore, even the available prediction systems which pinpoint some of the future violence do so while mistakenly "identifying" as future violent recidivists several hundred percent more individuals who will not, in fact, turn out to be violent. (Kozol, 1975; Molof, 1965; Steadman and Cocozza, 1974; Steadman and Braff, 1975; Stirrup, 1968; Wenk, Robison and Smith, 1972; Quinsey, 1977.)

An example may prove helpful. This example is drawn from real data on federal offenders released in 1970, 1971 and 1972 and "followed up" for three years after release, in an attempt to develop statistical aids to assist NPB in the prediction of recidivism (Nuffield, 1977). Because NPB was also interested in trying to predict violent recidivism, the researcher isolated only those instances of recidivism which involved actual or implied or threatened violence, in an attempt to "predict" these instances. A very broad criterion was thus selected, which included not only direct violence (homicide, assault, sexual assault, kidnapping, forcible confinement), but also all robberies, which do not necessarily involve violence. This broad criterion was selected in order to increase the "failure rate" and thus the possibility of achieving an accurate prediction: even at that, the failure rate over a three-year period (which would extend past the warrant expiry date of many of the offenders) was only 13 percent.

A numerical scoring system was developed, which (in the construction sample of 1,238 cases) resulted in the following prediction categories:

CATEGORY 1. (471 cases)
had a .05 failure rate (24 failures out of 471)

CATEGORY 2. (396 cases)
had a .10 failure rate (40 failures out of 396)

CATEGORY 3. (231 cases)
had a .20 failure rate (46 failures out of 231)

CATEGORY 4. (140 cases)
had a .33 failure rate (46 failures out of 140)

The first thing to note is that the most "dangerous" group which the system was able to isolate had a violent recidivism rate of less than 50 percent (33 percent, in fact: two successes out of every three in Category 4).

Thus, if we return to our discussion of Chapter II on incapacitation decisions and the two types of "errors" which can be made, detaining everyone in Category 4 will prevent 46 failures, (correct decisions) but will result in approximately twice as many "type two errors" (identifying as violent recidivists 94 other persons who will not actually commit violence when released). Perhaps more importantly, if our decision-maker were to release everyone in Categories 1 through 3, he would be making 110 "type one errors": in the remaining three categories, 110 persons who would not have been pinpointed will commit a violent act when released. Thus, a decision rule to release everyone in the first three categories and detain everyone in the fourth category would only "catch" about a third of all the future violent recidivists (46 out of a total 155). At the same time, 94 persons would have been detained mistakenly from Category 4: an approximate 200% "overprediction".

Applying the same calculations to a more cautious or conservative decision rule would "catch" more of the future violent recidivists, but would mistakenly identify more persons as future violent recidivists. That is, detaining all 371 persons in Categories 3 and 4 would "catch" 92 out of the total 155 future violent recidivists (or about three-fifths of them), but would mistakenly identify 279 other persons: an approximate 300% "overprediction".

Of course, it can be argued that "type one errors" are far more serious than "type two errors": it is worse to permit a violent crime to happen (at least while the offender is under sentence) than to hold 200% or even 300% too many convicted offenders in penitentiary. The 200 or 300% "overprediction" of violence and robbery in the above system would, in fact, be seen as quite acceptable to many critics, as a price to pay for correctly identifying a third or three-fifths of the future violent recidivists in the population.

The Working Group feels that, even with its rather broad criterion (including robbery) and its rather lengthy follow-up period (three years, or past warrant expiry date for many federal offenders), this violence prediction system is worthy of greater attention than it was received to date in the Ministry. We were struck, as has the Ministry Committee on MS, by the paucity of systematic efforts in the Ministry to study violence and develop more consistent, objectifiable systems for predicting possible future violent offences. We recommend that the above statistical prediction system be reviewed and re-validated on more recent data. It should also, following that process, be calculated for each federal offender at the time of admission, should be made available to CSC and NPB decision-makers on every case file, and should be placed, along

with statistical scores for general recidivism, on the Ministry data system (see below, under our seventh "system-wide concern").

CONFLICTS WITH SENTENCING

The second major system-wide concern we encountered was regarding the coordination of the release processes with the sentencing processes on which they are essentially based. We have already observed some of the problems which can occur in the interface between courts and release: difficulties in obtaining bail for persons suspended from a conditional release, for example.

However, problems of sentencing/release coordination go far deeper than these relatively minor problems. The major difficulties are that, by and large, sentencing judges are not well informed about release, that different judges behave differently in their sentencing vis-à-vis release programs, and that some judges in some instances deliberately set their sentences in such a way as to thwart the possibility of release before a certain date. (The latter difficulty would not be so much of a problem if the former difficulty did not exist, but different judges have individual approaches to dealing with the existence of release, based on different, and often highly imperfect, understandings of how release works.)

Probably all judges know that full parole eligibility normally occurs at the one-third mark in the sentence and that the last third of the sentence is, in the federal system, subject to remission. Beyond these basics, however, a considerable knowledge gap exists in the understanding of many judges. Many do not properly understand the differences between the federal and provincial systems of release, and when imposing a federal term sometimes do so in the mistaken belief that the offender will be immediately eligible for a liberal early release program, as he is in many provincial systems. Many judges are unaware that the federal system (unlike those of the provinces) requires all offenders to be supervised in the community for the remitted portion of the sentence (mandatory supervision: MS). Some judges, like the public, do not fully understand the difference between parole and MS. Some judges assume that anyone released before warrant expiry (federally or provincially) must be on "parole". Some judges believe that full remission is earned by almost all inmates while others have different estimates concerning remission. Few judges can correctly estimate the current parole rate or the possibility that a given defendant will receive parole. Some judges profess a belief - far beyond that now expressed by correctional authorities - in the rehabilitative value of

prison treatment programs, and may therefore sentence offenders on the mistaken assumption that a certain type of treatment (typically psychiatric or trade training) will be provided. Few judges understand properly the difference between temporary absence, day parole, full parole and parole by exception. Judges do not always ensure that they know what portion of his remanet an offender facing a new sentence on a new change will serve in prison after revocation.

In fairness, of course it must be said that some judicial confusion is a product of the complexity, confusion, low visibility, and conflicting objectives created by corrections itself. But we believe that, to some extent, the confusion has often proved functional to judges. Though there are some highly vocal exceptions (Bewley, 1977), it would appear that most judges strongly support the existence of both parole and remission. In fact, and understandably, several take the formal position that what happens after their pronouncement of sentence is not their concern, but falls within the purview of those correctional authorities who have the expertise to make the necessary decision.* A frequent judicial means of phrasing this official view is that "we cannot predict how the offender will work out in prison". This, rather, is for correctional officials to observe and, if appropriate, make release decisions upon.

There maybe other, less formal, reasons that judges support temporary absence, parole and remission. Perhaps, principally, these processes relieve judges of the burden of deciding precisely how long offenders should stay in prison, though their sentences will constrain the upper and lower limits of how much time is to be served. Rather, correctional authorities are given, with a majority of judges' support, the responsibility of determining the release date - and of accepting any inevitable criticism for failures committed by offenders while still under warrant. In addition, the present system relieves judges of the burden of making precise judgments about punishment, and allows them to pronounce a sentence which "sounds tougher" than it actually is, and than they really intend it to be.

Despite their support for conditional release, however, some judges set prison sentences in such a way as to ensure (so far as they understand it) that the offender will not be conditionally released until a minimum period of imprisonment

---

* This was the consensus view given us during our consultation with the provincial Chief Justices in Ottawa in November 1980.

has been served.* In more candid moments, some judges will admit to in effect tripling the sentence in order to provide for a fixed period of "denunicatory" imprisonment (prior to full parole eligibility), for a remission period, and for a "parole" or "rehabilitation" period. Hogarth (1971), in his study of Ontario magistrates, found that 59.2% of the judges were willing to acknowledge taking into account the possibility of mitigating action by the parole board. Mandel (1975) in fact makes an interesting case for the view that the introduction of parole in Canada has resulted in an overall increase in sentence length and in time served in prison.

This "tripling" effect is not, in itself, particularly troubling: judges ought to be aware and in control of what constraints their sentence will place on the upper and lower limits of imprisonment and release discretion. However, as has been suggested, some judges do not understand these constraints well, and they create anomalies in release. Further, not all judges allow for release in the same ways, and this can create disparities. Finally, of course, though it is at present fairly accurate to assume that all federal offenders will earn close to the maximum one-third remission, it is not warranted to assume that all federal offenders will be paroled, and hence the routine "tripling" of the minimum period may create inequities. The further result is that some offenders serve more time (or sometimes less time) in prison than the sentencing judge intends.

It must be acknowledged, on the other side, that correctional authorities have not always behaved in ways which would reduce conflicts with the judiciary or which would contribute to better understanding and coordination. Perhaps the most obvious example is the official contention that parole and remission do not alter the sentence of the court. All this means, in practical terms, is that they do not alter the date of warrant expiry. But all concerned understand (though some understand it imperfectly) that both parole and remission have a marked impact on the nature of the sentence: how much of it will be served in prison, and how much in the community, and under what conditions. The complexity of eligibility rules has also contributed to confusion among judges about what a sentence "means". Further, some judges may feel that release has been used, and may still be used, to violate the spirit or intent of the sentence.

---

* Again, however, not all judges understand how their sentences will affect release eligibility; the Working Group heard a particularly alarming story of an Ontario magistrate, on a visit to the Prison for Women, assuring a prisoner that despite her recent 25-year-to-life sentence, ways and means could be found for her to be released shortly by corrections officials.

Additionally, despite increasingly modest claims for rehabilitative effectiveness (Federal Corrections Agency Task Force, 1977), penitentiary officials have not systematically kept judges informed of the limited capacities of those programs (mostly psychiatric treatment and industrial training) which judges place most faith in and often assume will be readily available to the defendant. The introduction of "earned" remission in 1977 and the accompanying statements about how it would operate in a manner which truly distinguished among poor, average and exceptional performances has not contributed to a clear understanding of remission by sentencing judges. Finally, NPB has not, and currently cannot, better inform judges of the more specific criteria in use and how these will affect individual cases, such that judges would have a sound understanding of which defendants would be more and less likely to receive parole.

CSC and NPB must not only make concerted efforts to better inform judges of the formal mechanisms of release programs (and the eligibility constraints imposed by law and procedure upon them), but must also provide them with details as to the actual operation of the various release and imprisonment programs. We would suggest that an annual publication be prepared and mailed to all criminal court judges, explaining not only the formal workings of the system, but summarizing (in far more detail than is available, for example, in current Annual Reports of the Ministry) the numbers of eligible persons who did and did not receive an early release in the year (including rates of remission loss), the average amount of time served prior to release and the average percentage of the sentence served, the length of the release (particularly for TA's and day paroles), some of the characteristics of those released and not released, and the outcomes of the most recent available "cohorts" of releases. (This type of publication requires a better data feedback capability then is presently enjoyed by the Ministry. Later in this chapter we describe the data system needed.)

Also to be included in this publication would be the more specific criteria for release and revocation which we earlier recommended be developed by NPB and CSC. Finally, a brief factual description should be included of the types of programs available in every federal penitentiary, together with a statement of the number of inmates who can be accommodated in these programs. This should very definitely not be a "public relations" exercise, but a precise statement of what are very real and very tight limits upon the resources available for such programs as psychiatric and psychological assistance (typically for example one pyschologist available for every 100 to 200 inmates) and industrial employment programs (typically

able to employ less than fifteen percent of all inmates working at a job within penitentiary).

Written publications of the type described could form the basis for improved communication and coordination, but ought to be supplemented by seminars or conferences attended by judges and parole officials on a regular basis. Though attempts to organize these kinds of seminars have been made with limited success in the past, efforts should continue to try to arrange meetings.

Finally, there is one source of conflict and anomalous decisions which is of major concern both in itself and for its implications for penitentiaries and parole, namely sentence disparity. Well documented by Hogarth (1971), and the National Task Force on the Administration of Justice (1977-78) there is enormous unexplained variation in sentences given to similar offenders from region to region, city to city, and individual judge to individual judge. Sentence disparity is a tangible reality in places like Saskatchewan Penitentiary, where offenders who come principally from the three Prairie provinces arrive with very different sentence patterns.

To some extent, as we have seen, parole has the effect of evening out some disparities, particularly in longer sentences, and above we support measures which would enable it to do a better job at this (such as an improved data system to help identify anomalous sentences, and an expanded power of parole by exception).* But there are obvious and very strict limits on what can be done by a post-sentence release authority about a sentencing problem. We would therefore urge that the Canadian judiciary recognize and take action to reduce unexplained and unwarranted inequities in sentences, including the initial decision whether or not to imprison the defendant. While the Working Group has neither the mandate nor ability to recommend the best method for controlling sentences, we are convinced that methods such as requiring judges to give reasons for decisions, listing the aggravating and mitigating factors which can be taken into account, and introducing procedural refinements will not be of much help. Appellate courts, while they play in Canada a more active role in guiding sentences than in many other countries, do not provide the kind of specific direction we consider necessary, and different appellate courts behave in different ways from province to province. We do recommend that, as part of the federal government's Criminal Law Review exercise, serious study be made of numerical sentencing guidelines projects (Gottfredson

---

* Ironically, the existence of parole and remission may, by removing from judges the burden of determining the exact duration of imprisonment, contribute to judges' failure to come to grips with sentence disparity.

et al., 1979) and presumptive sentencing in California and other U.S. States, though these innovations appear to be too new as yet to be well understood for their effects on sentence disparity (See Chapter V).

ELIGIBILITY DATES

The discussion under this topic is, of course, closely tied to the above discussion of conflicts with sentencing. One of the reasons eligibility dates are of concern to correctional authorities is that they are, for the most part, fixed (through Regulation) by the determination of the sentence. A nine-year sentence will mean full parole eligibility at three years; a three-year sentence will mean full parole eligibility at one year. Thus, sentence disparity translates directly into disparity in release eligibility. Short sentences translate into rapid mandatory release dates. Long sentences translate into long minimum stays in penitentiary. Some offences, such as narcotics importing, even carry a legislative provision removing judicial discretion to set the sentence below a certain number of years.

Requiring minimum periods to be served prior to release eligibility is principally intended to ensure that a certain denunciatory (or deterrent) period is served by all inmates, and allows the correctional system to reassure the public that sentenced offenders cannot be let out before a certain date (though both the public and, to a lesser extent, the judiciary still have a highly imperfect perception of eligibility dates). Minimum periods prior to release eligibility are often supported by parole and political authorities, both in order to allow them to give these assurances to the public, and to provide them with a barometer, or standard of punishment or judicial intent, after which they are free to make release decisions based on more traditionally "correctional" criteria, such as risk and treatment.

There are numerous disadvantages to or arguments against minimum periods, however. First, like any fixed mandatory provision, they are often a source of frustration to penitentiary and parole authorities. They are, by definition, both arbitrary and inflexible, and do not permit decision-makers to make those distinctions among unique individuals and unique circumstances which are the hallmark of "discretionary justice". Opponents of minimum periods argue that no such legislatively-fixed provision is appropriate in a system (such as most North American justice systems) which places such a high priority on responding to the unimaginable variety in human behaviour and circumstance. The strength of the belief in discretionary justice, in fact, is what apparently causes

such phemomena as prosecutors refusing to lay charges which carry stiff minimum penalties, juries refusing to convict on charges which they know would result in the death penalty, and penitentiary authorities resorting to extended gradual release for inmates who do not "belong" in prison. The parole by exception power, before it was cut back to its present state, was undoubtedly intended to serve as a legal safety valve for the kinds of cases in which fixed minimum periods simply seemed too harsh.

Second, minimum periods prior to release eligibility periods are, we have seen, imperfectly understood by sentencing judges, especially with the recent blurring of the distinctions among temporary absences, day paroles and full paroles. Many judges believe that offenders are eligible for close to full release much earlier than is the case, and they accordingly fix their sentence (and thus the real eligibility date) higher than what they really intend, and higher than a judge who understood the provisions better would do in the same case. Opponents of minimum periods argue that these kinds of disparities and unintended consequences would be removed through removal of minimum periods, since though the maximum sentence would still serve as some kind of indicator of judicial intent, the parole board would not be constrained to observe a minimum period of imprisonment before being able to consider release.

Third, minimum periods create confusion among offenders and case preparation staff as to when to apply for releases which do not carry an automatic review date. This can be especially confusing, and can create institutional tension, in instances where the eligibility date has been changed non-retroactively, and two different inmates convicted of the same offence at different times and receiving the same sentence length may have different eligibility dates.

Finally, minimum periods are not always seen by parole boards as the above-mentioned "standard" of punishment. That is, though it is not stated NPB policy, parole board members may, in some individual cases try to estimate what the judge "meant" by a fifteen-year sentence: did he "mean" the inmate should serve five years (full parole eligibility date), or did he "mean" that the inmate should serve ten years (mandatory release date), or did he mean that NPB should choose any term in between that it saw fit? Parole boards are sometimes so leery of appearing to countermand judicial intent that they may indulge in this kind of second-guessing, thus injecting yet another level of disparity into the equation. (NPB may in these cases attempt to contact the sentencing judge to inquire as to his intentions, or to obtain a transcript of the judge's remarks at the time of sentencing.)

Beyond initial arguments about the propriety of eligibility dates, per se, there are, of course, disputes about the levels at which these dates are set. Our basic (and rather typically North American) sentence structure of dividing the sentence into thirds - rather than for example setting the parole eligibility date at one-quarter or one-half the sentence, or the mandatory release date at nine-tenths of the sentence - lends symmetry to our system, but is indisputably arbitary. Requiring that inmates serve at least six months prior to eligibility for an unescorted TA is likewise an arbitary function (though not to say a non-functional one).

The Working Group was unable to agree categorically on either the level or the overall validity of eligibility dates. On the one hand, they do clearly create problems which either must be lived with, or circumvented in ways which are mostly cumbersome and inappropriate, such as executive clemency or parole by exception. On the other hand, we do have sympathy for the "balance of powers" argument, which seeks to place part of the decision power with judges (in setting the maximum term and thus the minimum period of imprisonment to be served), part with the penitentiary authorities (in the administration of remission), and part with the parole authorities (in the discretion over the middle one-third of the sentence).

It is clear, however, that there are problems of clarity and confusion caused by minium periods. We feel better communication with the judiciary in this area is essential, and recommend that in future, every effort should be made to avoid adding any further complexity to eligibility rules.

SPECIAL OFFENDER GROUPS

A number of concerns have been brought to our attention regarding identifiable groups of offenders who have, or appear to have, a particular problem or set of problems with the release process. We were not able to explore these problems in depth, but we note the following concerns and issues for follow-up by future policy groups.

Female offenders are in a unique position federally because there is only one federal penitentiary for women in Canada, the Prison for Women in Kingston. This means that, unless she can obtain a transfer under the federal-provincial Exchange of Service Agreements, the federal female inmate will serve her sentence in an area which can be thousands of kilometers from her home. Additionally, she will serve her sentence in maximum security regardless of her circumstances. The number and quality of prison programs available for her have also traditionally been less than those afforded to men,

though recent years may have witnessed some improvement in program availability. However, the distance from home, the security status involved, and the difference in the types of programs available combine to make individual program planning and release planning more difficult and less meaningful for women. Temporary absences to home are a virtual financial impossibility for some women, and given present rules about the non-exceptional inclusion of travel time in TA time limits, may be a logistical problem as well*.

In their submission to the Study, the Canadian Association of Elizabeth Fry Societies makes a number of recommendations for improving the lot of the female offender vis-à-vis release. Of these, we think three are of particular merit and should be given more study. First, more liberal use should be made of parole by exception (and, we might suggest, of early day paroles) to enable women to be moved closer to their home communities under federal correctional supervision; this "reverse discrimination" may be justified on the humaneness grounds that government policy about jails for women creates an additional deprivation (separation from home and family) not suffered in such high proportions and so automatically by men. Second, funds should be made available to finance conditional releases, particularly TA's, for pre-release planning in areas distant from Kingston. Third, funds should be made available for the Ministry to hire (either directly or through a private agency) a special caseworker who would be assigned full-time to participate in the case management team, to liaise with private aftercare and community service agencies who may be dealing with the female offender before or after release, and generally to ensure more meaningful release and pre-release planning for women. This last suggestion is intended to reflect the apparent fact that the present complement of classification officers is insufficient to deal adequately with the special problems and needs presented by the inmates at the Prison for Women. It is self-evident, finally, that vocational, educational and other programs for women should be brought to a standard which at least matches that available to a comparable male population.

Native offenders have a lower full parole release rate and a higher revocation rate than the population as a whole (Demers, 1978). This is not an indicator of racism in corrections, but in many cases reflects a lack of release plans considered appropriate by releasing authorities. Native offenders sometimes consider this judgment of their release

---

* NPB may, in "exceptional" circumstances, add an additional 48 hours to a TA permit to allow for long-distnce travel. Elsewhere, we have recommended that travel time not be included in the time limits set for TA's (see Chapter III).

plans to be an insistence by authorities that Natives try to adapt their plans and post-release lifestyle to a standard appropriate for white offenders, but not necessarily for Natives.

The Working Group was not in a position to examine this problem in the detail it deserves. We recommend that the Solicitor General's recently constituted study group on Native offenders and the criminal justice system give special attention to the release question during their initial six-month survey of the problems faced by Natives.

Life-sentence inmates present unique problems for the penitentiary and release systems. Those convicted of first-degree murder automatically receive a 25-year minimum term prior to parole eligibility, though after 15 years they may apply to the court to have this term reduced. Second-degree murderers face a 10 to 25-year minimum term, with a similar option to seek a judicial review after 15 years. Generally speaking, other lifers are eligible after serving seven years in penitentiary. Unescorted temporary absences and day paroles are not available to lifers prior to three years before full parole eligibility. Remission does not affect lifers in any way which has real meaning.

To many of the penitentiary officials we talked to, this situation represents a prison management problem which is beginning to be felt and which will be increasingly felt in future. Since lifers have such long periods of "dead time" to serve without hope of relief and without direct incentives to good behaviour, many penitentiary officials believe that they create, and will increasingly create, direct and indirect disciplinary problems. Most murderers are young men and women when they enter penitentiary, and contemplating the age they will be and the years they will have "missed" by the time they are eligible for release can be an extremely difficult reality to adjust to. While no evidence is yet available to demonstrate that these inmates become involved in more disciplinary problems than do other inmates, some officials at Dorchester, for example, blamed lifers for an indirect influence on problems recently experienced there.

Lifers experience particular problems in making release plans because of the extended minimum periods they have to serve. Lengthy imprisonment causes some degree of "institutionalization" which makes it difficult for the inmate to conceptualize his future in terms of release plans. The years he has served have also typically severed most of his contacts with the community and impaired his ability to make realistic release plans. It is difficult to know when to begin

release planning, and the gradual release process itself may be a long, tortuous procedure.

In 1969, Ouimet remarked on the excessive length which a ten-year minimum prior to parole eligibility represented. The Working Group is of the view that long-term inmates may represent a significant problem for penitentiaries (including for populations in the mid-term and long-term future), and that long minimum periods seriously impair the chances of realistic planning of and success on parole. More importantly perhaps, these lengthy minimum periods violate our own sense of humaneness. Though Ouimet deplored minimum terms of ten years or more, and we are inclined to agree, we feel that it is not realistic at this time to propose that, for example, all life sentences carry a seven-year minimum. We accordingly recommend that all minimum terms be subject to judicial review and possible reduction after ten years in prison, under the procedures established for the present provision for review of cases of first- and second-degree murder after 15 years (Criminal Code, Section 762).

ACCESS TO INFORMATION

Some, though not all, of the field staff we consulted said that they were experiencing problems as a result of those provisions of the Canadian Human Rights Act (1977) which permit citizens to have access to information kept about them in federal information banks. The problems reported were of two complementary types: either offenders were gaining access to information which was placing justice officials or third parties in potential danger; or officials, for fear of offenders' gaining access to certain information, were not placing that information on files, some of which could be critical to important decision-making, especially by NPB. A third and related worry is that police, provincial officials, and other persons will refuse to transmit to federal officials important information which they fear may be disclosed.*

Section 54 of the Human Rights Act outlines a series of allowable exemptions to disclosure requirements. These include exemptions for "national security", investigations of crime, impediments to the functioning of a quasi-judicial board, possible physical or other harm to any person, and information obtained on an express or implied promise of confidentiality. Nevertheless, some field staff do report problems in protecting

* Police officials in Edmonton, for example, partially in consideration of this issue, refused to share certain information with CSC and NPB staff for a time. The addition of a police-parole liaison officer has alleviated this problem, however.

certain information from disclosure and have expressed concern about this matter. Many NPB members also report concern over this question. Some police have complained of the fact that their reports do not enjoy a "blanket" exemption (only documents which contain police opinion or advice are exempted).

However, generally speaking, there has been little noticeable decrease in information supplied by police to the Ministry since implementation of the Act in early 1978. If field staff identify information on a file as having been obtained on a promise of confidentiality, or indicate that its disclosure could harm an individual, a request for an exemption is virtually always made and successfully obtained. Part of the problem in the past appears to have been that field staff have not always elaborated their requests for exemptions with specific and supportable information. However, the new guidelines for exemptions recently developed within the Ministry, together with a possible need for refresher training for field staff, may serve to alleviate many of the problems reported. The Ministry will be closely monitoring this program in future.

SERVICES TO AND RELATIONS WITH PROVINCIAL AUTHORITIES

NPB has responsibility not only for making decisions about persons in federal penitentiaries, but in some provinces also exercises the paroling authority for provincial prisoners.* In fact, prior to 1977, NPB handled all provincial paroles except in B.C. and Ontario, where provincial boards had jurisdiction over the indeterminate portion of definite-indeterminate sentences. Since the introduction of enabling legislation in 1977 (Parole Act 5.1), three provinces have chosen to create provincial boards with jurisdiction over all provincial prisoners: B.C., Ontario and Quebec.

The reasons for the creation of these provincial authorities have been various, but are largely related to a desire and a perceived need for the province to have complete control over decisions made about the prisoners in its jails. A provincial board is thought to increase the chances of a coordinated, coherent correctional system within the province. Additionally, NPB has been unable, because of its workload, to give adequate consideration to provincial inmates serving very brief terms: in many instances the prisoner's mandatory release date will be reached at virtually the same time as case

* The parole power is actually, by virtue of the Parole Act, entirely a federal power, which may be delegated to provincial authorities through Section 5.1.

preparation for parole has been completed.* Resource limitations have also not enabled NPB to grant hearings to provincial prisoners, as it does to federal inmates, and this has caused human rights and equity concerns. Resource problems have in addition caused a lengthier turnover time than some provincial authorities are prepared to accommodate, given pressures to get prisoners out as soon as possible. Overcrowding in some provincial jails, combined with a current parole rate which is historically rather low, has also caused these provinces to feel that a provincial board could be more responsive to their needs. Since many provincial systems are heavily oriented towards community-based corrections, having a provincial release authority can enable them to make more internally consistent decisions about who should and should not be participating in community programs.

Those provinces which have not yet opted for their own parole authority have been influenced in that decision by a number of factors. In some of the smaller provinces, funding of an indigenous board may be a problem, including the anticipated consequent increases in related staff. Additionally, the negative publicity attendant on the inevitable parole failures is not an aspect of control which is entirely welcomed, and some authorities may fear a negative impact on their entire community-based correctional system from these kinds of failures.

Nevertheless, there is still the possibility of greater provincial entry into the parole decision-making and supervision areas. There have been some discussions around the creation of an Atlantic regional board, the costs of which would be shared by all the provinces involved. The possibility has also been raised of a "joint" federal-provincial parole board for decisions made about inmates residing in Alberta.

These types of negotiations will doubtless continue while concerns remain about the service available through NPB and CSC for parole decision-making and supervision. A federal-provincial association of persons involved in parole, the Canadian Association of Paroling Authorities, has been formed recently to provide a forum for discussion of topics of mutual interest and concern. NPB is also currently studying proposals to have NPB notify appropriate provincial prisoners of their eligibility dates, to institute automatic parole review rather than review only upon application by a provincial prisoner, greater attention to short-sentence prisoners, an accelerated decision and case preparation

* Though in some instances, those prisoners serving short terms (under 6 months, for example) are not automatically considered for parole under the new provincial authority either.

process, the conduct of hearings for provincial prisoners on whom NPB makes decisions, increased local participation in parole decisions, involvement of provincial staff in case preparation for parole decisions, and supervision of provincial parolees by provincial authorities.

CAPA is a promising vehicle for increased cooperation and discussion among parole authorities of their mutual concerns, and its progress should be considered by the Ministry as a priority concern. A particular concern should be coordination of standards, procedures and programs for temporary absence and day parole in the federal and provincial jurisdictions, and the question of federal offenders on mandatory supervision being supervised, through exchange of service agreements, by provincial authorities. Additionally, an ongoing project of NPB to study proposals for improving services to the provinces should continue to be given strong support.

DATA FEEDBACK SYSTEM

One of the principal concerns not only of the persons we consulted, but of the Working Group itself, is the complete lack of a viable, useful data feedback system which would enable decision-makers to have detailed, up-to-date information on the numbers and types of persons being granted and refused the various release forms each month. By this we do not necessarily mean to criticize the Ministry's management information systems, which have never been designed or intended to provide the kind of extremely current feedback which we feel is essential. Instead, we recommend that all parole board members and regional executive officers, wardens, classification officers, parole officers and regional CSC Offender Programs managers be automatically provided with a standard-format description of the decisions made about conditional releases in their own and all other regions every month.* Most of the information needed for this monthly feedback, with the exception of statistical risk prediction scores, is already available in the Ministry data sources, but the data system is not geared or formatted for the feedback needed.

This feedback publication should include the following information on all releases granted and refused, indicating the number of cases falling within various groupings of this information:

---

* NPB is already exploring the possibilities of setting up computer terminals at regional and national headquarters to permit some kinds of feedback. Whatever the regional activities, the feedback we describe here should be a minimum requirement coordinated through national headquarters.

- release type
- sentence length
- time served in penitentiary
- proportion of sentence served
- statistical estimation of risk and of violent risk
- type of admission
- major offence
- releasing institution and security status
- age
- number of previous imprisonments
- number of previous convictions for indictable offences
- marital status
- special conditions (specify)

Additionally, for TA's, the following information should be supplied:

- escort status
- group or single
- purpose of release (in greater detail than "rehabilitative/medical/humanitarian")
- length of release
- part of approved series/not part of series
- releasing authority

For day paroles, the following information should also be required:

- length of approved release, and actual length of release as implemented
- receiving institution (if any)
- reporting requirements
- purpose of release (in detail)

This regular, up-to-date feedback will help decision-makers to "see" their policies and the differences between their policies and those of other regions and other penitentiaries, enabling more control (if desired) or manipulation of policies in a systematic fashion.

Additionally, on a quarterly basis, all concerned officials should receive information on the outcomes of releases granted either in that quarter (in the case of TA's) or in the equivalent quarter of the previous year, to permit a one-year follow-up of each quarterly "cohort". This outcome information should show the results for the total group, as well as for each category of case information used in the monthly publication (e.g., outcomes for persons released on break and enter). The outcomes should be grouped as follows:

- still under supervision
- suspended, not revoked
- suspended, suspension cancelled
- revoked for technical reasons (specify)
- revoked with new criminal charge (specify charge)
- other

CHAPTER V
MAJOR DIRECTIONS FOR RELEASE

Part of our mandate to examine release "from first principles" was to study various major directions which release might conceivably take which would redefine the objectives of release (or reorder the priorities attached to them), which could make us more effective at achieving our objectives, or which would in some way represent a new philosophy.

We have seen in the preceding chapters that the release processes need to come to grips with various questions of objectives. Some of release's most important objectives or functions are not explicitly or formally recognized, and thus probably not very systematically or effectively achieved. Other objectives which are stated as the key "formal" objectives are at issue because they either present great difficulty in implementation, or because we do not have the specific knowledge of how to achieve them with any measurable degree of success. Finally, of course, there is disagreement from various quarters about whether release ought to be pursuing the objectives or having the effects which are observed.

In this chapter, we will discuss a few "models" for sentencing and release systems which will exemplify certain distinct approaches to objectives. They will serve to represent certain "ideal" or "extreme" views of what release is intended, or primarily intended, to do. Some of these "models", for example, emphasize goals of incapacitation and punishment above other goals. Some of them would allow for great flexibility in the choice of some kinds of goals, but are directed primarily at other kinds of goals such as restraint or natural justice. Finally, some of these models can encompass diverse and even conflicting views of objectives, depending on the form they take and the individuals espousing them.

It is important to note that, though the "status quo" is not discussed below as a "model", we are not thereby implying that is not a viable alternative. Rather, the purpose of this Chapter is to examine major innovative proposals and what can be drawn from them.

The "models" we will discuss are:

- "Flat sentencing". All forms of early release (prior to warrant expiry) are abolished. This model reflects concern primarily for objectives of equity, proportionality between offence and punishment, accountability, and clarity and certainty of

punishment. Among its proponents there are, however, strong disagreements about the degree of punishment (and by necessity, incapacitation) to be exacted.

- Single release authority. By contrast to the first model, early releases from prison are retained, and are under the authority of a single correctional body separate from the penitentiary authority (remission is abolished). This model emphasizes goals of incapacitation risk reduction coordination of decision-making, and simplification.

- Institutional authority. Under this model, all early release decisions are made by penitentiary authorities. It emphasizes goals of incapacitation, risk reduction, coordination of decision-making, and control and management of offenders.

- Appellate models. These models would preserve various forms of release, which would or could be administered initially by penitentiary authorities, but would be subject to review by an independent body concerned with coordinating policy, reducing disparity, and preserving the appearance and reality of fairness. The available "appellate" models differ from our present system in ways both large and small.

- Minimalist models. These models would allow for and encourage release as early as possible, and would employ the minimal form of intervention possible in the circumstances. They are premised on objectives of restraint, cost-effectiveness, risk reduction, and the human rights principle of minimal interference in citizens' lives.

- Guidelines. These models preserve administrative discretion as to release, but create explicit, objectifiable decision rules for guiding the exercise of that discretion. They can reflect various types of approaches, but are based primarily on goals of equity, accountability, and clarity.

FLAT SENTENCING

The recent popularity of "flat sentencing" - the abolition of early release, or at least of parole - has been a product of numerous developments and numerous viewpoints from both conservative and liberal philosophies in criminal justice. (Law Reform Commission, 1976; Mandel, 1975; Bewley, 1978.) Recent research (Gottfredsen et al., 1975; Cosgrove et al., 1978) has been interpreted to mean that though the parole decision-making process appears to be very complex, it can be "explained" (to the extent it is explainable) through a very few factors or dimensions (such as risk, or the seriousness of the crime). This "demystification" of parole has been accompanied by further indications that the factors which are most important to the parole decision process are factors which are known at the time of judicial sentencing. This has led some critics to argue that sentencing judges, who supposedly sentence offenders under conditions of greater visibility and protection for human rights, ought to take back the sentencing power from the parole boards.

Elimination of parole would, in the view of some advocates, bring greater certainty and equity to correctional terms, since the disparities evident in parole would be eliminated. These critics claim that parole judgments are marred by considerations which perhaps ought not to influence the time to be served: considerations of who the offender is (how good or bad he seems) rather than what the offender did on this occasion; considerations of his correctional treatment (which critics argue is a bankrupt ideal since there is no apparent evidence of rehabilitative effectiveness); and considerations of his future risk (which is not particularly well predicted, especially in the case of violence). Some flat sentencing proponents argue that it is fundamentally unfair to punish offenders on the basis of something they might do in future. Critics of parole also point to its susceptibility to fluctuations dependent on sensational parole failures reported in the media, on penitentiary pressures and concerns, and on the idiosyncrasies of individual decision-makers. Parole is thought to be inherently inhumane because of the uncertainty and anxiety it causes inmates. Finally, there are those who would like to see parole eliminated because they would like to see criminals serve longer in penitentiary; there are also those who would like to see parole eliminated at the same time as sentencing reforms are instituted in order to ensure that criminals serve shorter terms in penitentiary, and indeed that fewer people go to jail in the first instance.

The "flat sentencing" model is premised not just on criticisms of parole, but on belief in a system of equal punishments meted out for offences of equal severity. This "commensurate deserts" notion is thought by some to fulfill objectives not only of equity, accountability and fairness, but also of general deterrence. If "two years means two years", it may have through its certainty a greater impact on potential offenders. The authority (and hence the effectiveness) of the sentencing court would be enhanced by flat sentencing, claim its supporters. Finally, punishment of the particular offence

is thought by some to be the only relevant consideration in sentencing, a function for which only a judge is needed.

Twelve U.S. states* have now passed legislation eliminating the traditional parole authority in favour of flat sentencing. (Most have retained remission, however, on grounds of prison disciplinary considerations, and some have even increased its effect.) They have done so in widely varying ways. In Maine, for example, parole was eliminated during a criminal code review, and through maximum terms were reduced somewhat from their former levels, no real additional controls were placed on judicial discretion within these still lengthy permissible maximums. In California, an entirely different sentence structure which drastically curtailed judicial sentence discretion was set up (presumptive sentencing**) at the same time as parole was eliminated, and presumptive terms were set with deliberate consideration for the average amounts of time served in prison which had been the norm for various offence types in the state. In Indiana, the introduction of a new system of five "classes" of felony sentences resulted in both parole abolition and few additional controls on judicial sentencing discretion, since the presumptive and maximum sentence under each class of felony offences was set so high and the allowable range around each presumptive term was set so wide.

It is still largely too early to tell what the effects of these parole abolition experiences in the U.S. will be. The early evidence suggests that, in practice, "flat sentencing" reforms may have (or not have) the following effects:

- The "certainty" of flat sentencing (in the sense of a certain type of offence being likely to invoke a certain predictable sentence) may be more illusory than real, for various reasons. First, unless judicial discretion is circumscribed concurrently, then certainty of sentence is no more assured under

---

* These are: Alaska, California, Colorado, Illinois, Indiana, Maine, Minnesota, Missouri, New Mexico, New Jersey, North Carolina, Tennessee. In addition Arizona and Pennsylvania have passed determinate sentencing laws, but these retain traditional parole authority release.

** In presumptive sentencing, the legislative defines a range of punishment (e.g. "2, 3, or 4 years") within which the judges sets the sentence, which for the most cases would "presumptively" be the middle term (in our example, 3 years). Canadian and most other sentencing structures define in law only the maximum which can be imposed (not the "norm").

the "flat sentence" model than it is at present, which is to say very little. In fact, variation in the punishments served for similar offences may increase under this model because of the absence of the sentence equalization "by-products" of parole which as was seen of NPB (Chapter II), is a very significant effect. Second, even under flat sentencing reforms designed to curtail sentencing disparities, there are rarely any controls placed on prosecutorial authority to which much of the sentence discretion may "flow". And third, a great deal of discretion is typically left to the judge to choose a non-carceral alternative, to set consecutive or concurrent sentences, to add to or substract from the sentence for aggravating or mitigating circumstances, and so on, such that more judicial discretion than is immediately apparent still remains left in many flat sentence reforms.

- A second type of certainty, that experienced by the prisoner in knowing precisely how long he will serve, may be achieved by flat sentencing, though in some jurisdictions an increase in remission may bring the potential for continued uncertainty, and in other jurisdictions, some form of discretionary authority (though perhaps not called a parole board) may be preserved which can affect the time served in prison after sentence has been set, particularly through revocation during the supervision period that is often determined by remission.

- Especially if no additional controls have been placed on sentencing discretion, flat sentencing may (it is still too early to tell) cause increases in prison populations. Increased use of prison terms (more people sent to prison) may be an effect of flat sentencing in that it focuses so much attention on prison as a sentencing option. Increased time served in prison may be an effect if sentences increase or stay substantially the same, though compensatory increases in remission can ease the effect. To counteract this, some of the newer bills introduced in the U.S. to implement flat sentencing have in fact explicitly directed the body charged with setting new sentence ranges to consider prison populations and the former norm for time served in setting presumptive sentences*. Some flat sentencing laws, in an attempt

---

* Basing future sentences on past averages has also been criticized as a system which institutionalizes past practices which have been excessive.

to keep prison populations down, have also directed that a community-based sentence be presumptive, as in Illinois.

- A flat sentencing system may be more susceptible to sensational failures and public and political pressure than the system it replaces. More of the responsibility for sentencing rests with the judge, who is more visible and possibly more open to the pressure of bad press and the immediate demands of the situation. The original or originally drafted sentence lengths for flat sentencing bills are certainly susceptible to being increased during legislative debate, and after passage, through piecemeal amendments during times of "crisis".

- A flat sentencing system may have negative effects on the prison system. It can markedly increase the discretion exercised by prison authorities (through remission) and if inappropriately administered, could increase inmate anxiety and prison tensions. It could affect program participation and the williness of correctional authorities to maintain a range of programs and activities which is so important to management of penitentiaries, if not to rehabilitation. If the abolition of parole were seen to be an insufficient reform, finally, it could lead to abolition of remission as well - with the attendant effects on prison populations. However, there is as yet no evidence of these negative effects occurring on the prison system in the flat sentencing states the U.S.

Comments on flat sentencing

Flat sentencing has a "common sense" appeal because it is premised on principles of fairness (you should be punished for what you did, rather than who you are or what you may do), equity (people committing similar crimes should receive similar punishments), humaneness (it eliminates some forms of coercion, manipulation and dishonesty towards prisoners, and it is easier to be in prison knowing when your release date will be than wondering if you will be paroled). It also embodies the theory that general deterrence will be enhanced by the disappearance of at least one of the sources of subsequent mitigation of the sentence.

But we have seen, there are reasons to be cautious in expecting that flat sentencing will in fact result in a system of greater equity, fairness, humaneness, or certainty. Parole

abolition may also result in increased prison populations and increased time spent in prison. As our earlier discussions have indicated, the Working Group does not feel that an increase in imprisonment would be desirable, from the standpoint of cost-effectiveness, humaneness, or risk reduction. For the foreseeable future in Canada, moreover, there are only very slight possibilities that effective controls on judicial sentencing discretion can be devised and implemented, and while that remains the case, flat sentencing presents a danger of increases, rather than decreases, in inequities and harshness of punishment.

Nevertheless, we feel certain that this model will continue to be attractive to many, because of its potential benefits and its simplicity. Below we present some of the information which would be needed and cautions which would need attention for this model to be actively considered in Canada.

- A better understanding is necessary of the effects which various changes in sentence lengths and resultant time served in prison would have on penitentiary populations and inmate behaviour. In particular, commissions or other bodies established to propose new penalty schemes should have available statistical advice on current penalties and informed judgments about possible effects on judicial sentence behaviour which could occur as a result of a new sentencing scheme.

- Some of the U.S. states which created sentencing commissions (e.g. Minnesota) to develop new penalty schemes specified that these schemes were to reflect principles of restraint as well as the realities of current institutional capacity and normative punishment levels. Sentencing commissions which are set up by, but independent of, the legislature may be somewhat less susceptible to pressures to propose high presumptive and maximum terms and severe additional punishments which can be imposed under aggravating circumstances.

- Thought should be given to placing concomitant controls on prosecutorial discretion. The elimination of one discretionary body (the parole board) enhances the power and influence left to the other discretionary authorities, the judge and prosecutor. Under a scheme where judicial discretion is also narrowed, the prosecutor's decisions as to how to charge the defendant

and what additional punishments* to invoke will become even more significant. This may simply result in much of the system's disparity remaining, but residing with the prosecutor instead of the judge or parole board. Prosecutors may not be the best group, organizationally, professionally and philosophically, to hold so much of the sentencing discretion. At the very least, attention should be paid to developing guidelines for the exercise of prosecutorial discretion (as in Washington State), to restricting the range of effect which this discretion may have, and to efforts to try to eliminate plea bargaining (as in the State of Alaska).

- It is very difficult to find the proper balances and levels in placing controls or guidelines on decisions about how to charge offenders, about whether to use a custodial or non-custodial sentence, about what length of prison sentence to choose, and whether or not to invoke additional punishments for out-of-the-ordinary offences or offenders. While mandatory, fixed sentences (i.e., the total elimination of judicial sentence discretion) are undesirable and in effect unachievable,** it is unlikely that much control of sentencing would result from preserving the existing levels of permissible sentences and relying upon voluntary self-control by judges. The range of discretion available to judges and prosecutors should therefore be narrowed (to reduce disparity), but not to a point where it encourages the system to find other ways of making the distinctions among individuals which decision-makers consider, and will under any system consider, to be both fair and essential to the smooth operations of the pleading and sentencing processes.

---

* Under many presumptive sentencing schemes, there is some specification of the aggravating and mitigating circumstances which should be taken into account in setting the "presumption"; the threat of invoking these aggravating and mitigating factors into additional punishments (such as a possible additional six months for carrying a weapon during the crime) is part of the bargaining power often given to the prosecutor under the schemes.

** Mandatory penalties cannot allow, in our view, for all the reasonable distinctions even in severity of offence which one might wish to make. They also tend to be subverted in practice by the low-visibility exercise of discretion elsewhere in the system.

SINGLE RELEASE AUTHORITY

At the other extreme from the "flat sentencing" model is the notion of having a single discretionary authority to make a wide variety of release decisions after the initial pronouncement of sentence.* In its extreme form, this model would give the release authority power to release at any point during the sentence (no minimum times would have to be served prior to parole elibility) and nothing would require release prior to the expiry of the warrant. In Canada, no recent major reports have recommended such an extreme system, though the National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services (NJC) have recommended (1980) that NPB be given full control of the last portion of the sentence (from parole eligibility until warrant expiry; remission would be abolished and with it, mandatory supervision). A similar suggestion was made by the Criminal Lawyers' Association in Toronto, which also recommended that to encourage release of most offenders by the two-thirds (former MS) date, the onus should shift at the two-thirds date to NPB to demonstrate why the inmate should not be released. Any inmate could be kept until warrant expiry, however.

In its extreme form, the single release authority model is associated primarily with ideals of incapacitation, and often also with risk reduction: incapacitation because it increases or is intended by some of its advocates to increase the length of time for which risky offenders can be detained, and risk reduction, because it is concerned with allowing the parole board maximum discretion to make decisions based on clinical judgment of an inmate's readiness, including by means of "testing" him on gradual release or ensuring that he completes a "decompression" cycle or some other prison program before he is fully released. The single release authority model does not have to be premised on a strong treatment ideal, but it does place a high premium on wider discretion to make rational, coordinated release decisions without "artificial" constraints (such as eligibility dates and MS dates). The precise orientation or policy of the releasing authority, however, can vary markedly from simple risk assessment (incapacitation), to emphasis on gradual release (as for the Law Reform Commission's "separation" sentence cases), or even to a commensurate deserts philosophy. Before California's introduction of flat sentencing, in fact, its parole board based its release guidelines on a relative scale of offence severity, with minor variations for prior record: both these

---

* Under this model, we will discuss only those simple release authorities constituted like a traditional parole board: organizationally separate from the prison authority, but within a corrections department.

factors, were seen purely in terms of just retribution for the nature of the offence, with prior offenders simply "deserving" to serve more time.

In Canada at present, however, the "single release authority" model seems to be proposed from three different perspectives. The first is a concern about the ineffectiveness of MS, which is inextricably coupled to the second concern, about "automatic" release of risky offenders prior to warrant expiry date through remission. Some police are particularly prone to seeing MS as ineffective in controlling recidivism, because they are often in close contact with the more visible cases of failure on MS. They also share some of the frustrations experienced by parole officers over "revolving door" cases who are taken off the street for unacceptable behaviour, but who reappear from penitentiary shortly afterwards. Frustration with MS is often translated into the proposal that all non-paroled offenders should stay in penitentiary until warrant expiry. For NPB, it is frustrating to be continually blamed for having "paroled" MS cases, and to be unable to prevent the "automatic" release of some potentially violent persons prior to warrant expiry. According to advocates of this model, NPB should be given wider discretion to make risk assessments and incapacitative decisions throughout the sentence - or at least for the last two-thirds of it.

The third, and perhaps less pressing, concern which lends weight to the single releasing authority model is concern for coordination under a single authority of all decisions which lead up to or result in a "release". Such an authority can develop systematic release plans, facilitate opportunities for participation in partial release, and make decisions based on release-relevant concerns. The gradual release model has taken on increased significance since Hugessen (1973) and the growth of day parole and temporary absences as a "test" for full parole or a preparation for MS. Rational release decisions should not be constrained (goes the argument) by considerations of denunciation (as in parole eligibility dates) or by the application of a virtually "automatic" system of time credits for "just keeping your nose clean".

Various objections have been raised to the single release authority model. Perhaps most importantly, there is more reluctance today than, for example, five or 10 years ago to vest any single agency with control over all or even most of the sentence, within limits set by warrant expiry. Mistrust expressed by the Chief Justice about NPB's "unfettered power ... without precedent among administrative agencies empowered to deal with a person's liberty" (Mitchell v. Regina, (1976) 25 Cr. 570) would probably become more of a concern under the

single release authority model, simply because the release authority would have more power to use or abuse. Recent and incoming procedural protections may allay some of this concern, however.

The lack of empirical proofs of some of the rationales underlying parole's discretionary decision-making has also caused some drawing back from this model. Parole as an aid to the "reform and rehabilitation" of the offender is, as we have seen, as yet an unproven effect. The limited efficiency of current clinical and statistical prediction of recidivism, calls into question the practicability of risk selection as an objective. The "testing" of offenders through gradual release is open to question as a means of either reducing risk or improving risk prediction, though some research (e.g. in Massachusetts) has pointed to some evidence of a risk reduction effect.

Practical considerations also raise queries about the single release authority. If judicial sentences do not decrease enough to compensate for the abolition of remission, penitentiary populations may rise, a concern to which NPB is officially and actually rather unresponsive. Critics claim that the additional time served by non-paroled inmates would represent greater punishment and incapacitation, but would be of little ultimate benefit, and would have demonstrable costs in human and financial terms, and perhaps also in terms of risk reduction. NPB would almost certainly incapacitate (not parole) a large number of persons on grounds of their dangerousness, who would not later commit an act of violence: violence is so infrequent when compared to the total number of offenders under consideration that overprediction and over-incapacitation on grounds of presumed dangerousness is almost, as has been seen, a mathematical certainty. Critics argue that it is unjust, counterproductive, and too costly to detain until warrant expiry all non-paroled offenders in order to prevent the serious crimes which will be committed by the few. From this viewpoint, mandatory release at two-thirds is a good "safety valve" for the conservative decisions of the parole board.

Another objection raised to this model is that offenders released at warrant expiry, presumbly the "worst" offenders, would not be subject to supervision after release. The Working Group supports the availability of post-release assistance to all offenders, though not necessarily on a compulsory basis. However, the "single release authority" model does not necessarily mean an end to the supervision of prisoners released after warrant expiry: this model can include the provision of a "separate supervision term" after release, which is unrelated to the initial "imprisonment term". Various arrangements are possible whereby a released prisoner who

re-offends while under this supervision term may be returned to prison to serve either the remainder of the period in prison, or to serve some period of it up to a maximum limit. Curiously, the "separate supervision term" concept has been applied so far only in the flat sentencing states*, but there is no reason that it could not be applied in models which retain discretionary parole release.

Comments on the single release authority model

As in the previous model, a great deal more will need to be known about the probable effects on sentencing and time served of the model. In addition, the effects on inmate anxiety, penitentiary population, community supervision, and prison discipline (by the abolition of remission) would have to be considered.

Most importantly, however, if parole board authority is to be increased there is arguably a more pressing need for more structuring of, or controls on, their discretion. Philosophically, there would be a need for the release authority to specify its orientation more precisely than at present. Given current concerns about disparity, lack of "mission" and unclear objectives in parole, it does not seem reasonable to increase NPB authority before a review of objectives and specification of decision criteria has been carried out. For example, if parole were to define its role simply as ensuring equal punishment for inmates who committed similar crimes, government would be in a better position to evaluate whether it would make sense to retain minimum eligibility limits and "automatic" early release dates.

RELEASE BY PENITENTIARY AUTHORITY

The arguments for placing all releases in the hands of the penitentiary service are essentially similar to those for placing all releases in the hands of the parole authority. This model would, like the other, allow for coordination of all decision-making by a single authority, without "artificial" constraints from eligibility dates or mandatory early release dates. Often, though not necessarily, implied in the model is the expectation or hope that decisions made will affect the inmate's ultimate risk of re-offending after release. To these arguments are added those that the penitentiary service knows the inmate best and can judge what is best for him at what time. Currently, there is some feeling that if CSC were

* In Colorado, for example, flat presumptive sentences are accompanied by separate supervision periods of 1 year served by all state prisoners after release, and revocations lead to a 6 month return to prison.

responsible for all releases, there would be more releases, and more "cascading" as a result of greater concern for efficient use of resources within CSC.

The "extreme" of this model has not been proposed in Canadian official reports for years, though Hugessen reflected it by recommending "local" review boards on which wardens were represented. Sympathy for this model was found among some of the CSC staff we consulted, however. This model usually takes less extreme forms, such as proposals that NPB commit itself early "in principle" to a release plan for the inmate which is prepared by CSC case management staff as part of the inmate's "individual program plan" (IPP). Another proposal is that remission play a more important role in the release process by becoming "truly earned" and deductible not only from the maximum but also from the parole eligibility date, or in some other way determining when NPB will consider the inmate for release.

Criticisms of this model are the same as those of the single parole authority model, except that fears of placing too much authority in the hands of one body may actually be greater under this model. The possibilities for improper use of release power, or use of release power on the basis of the wrong factors, are considered in this model greater in this model, because of the pressures of the penitentiary environment to constantly control inmates through rewards and punishments. Pressure from inmates on authorities to grant releases is also greater under this model, since the authorities are in closer contact with inmates. The primarily "penitentiary" orientation of authorities under this model is also thought by its critics to be less desirable because of the possibility of too much weight being given to penitentiary adjustment and not enough to community concerns. Adjustment to penitentiary is not generally considered a good predictor of post-release success or failure.

Comments on release by penitentiary authority

The lack of recent support for this model (outside CSC itself) reflects fear about placing the release power in the hands of authorities who already have almost full control over virtually all other aspects of an inmate's life, and by authorities whose prime orientation and constant struggle is to find ways to keep the "lid on" and otherwise encourage appropriate behaviour on the part of both staff and inmates.

In the inmates' rights area generally, and in the release area particularly, the long-term trend has been away from control by individual penitentiary authorities and towards

review by independent authorities such as the Correctional Investigator, the Federal Court, and NPB. This reflects the prevalent view that effective remedies are needed from penitentiary authority decisions. When the person's release to the free world is at stake, concern for review by independent authorities becomes even more important. This is at the base of the current "balance of powers" model, or sharing of release power among the judiciary, parole and penitentiary authorities. It can be expected to continue for the foreseeable future, and until more is known about effective remedies from penitentiary decisions, shifts of release power to penitentiary authorities should not be done wholesale. The next model we examine is in fact concerned entirely with creating the final release authority as a more effective check on penitentiary discretion.

APPELLATE MODELS

Various models for release have proposed that the ultimate releasing authority should assume far more of a role in setting clear policy and ensuring effective review of decisions or recommendations made at the first level by institutional staff. The Law Reform Commission model would allow appeal to the original sentencing court at any time during a "denunciation" sentence in order to effect a change in the length or manner of service of the sentence. For separation sentences, however, the LRC creates a "Sentence Supervision Board" (SSB) which oversees decisions made at the outset by penitentiary staff about releasing inmates on various gradual early releases which are intended to test readiness for full release. Their rationale is that an "independent and impartial" body like a Sentence Supervision Board, whose independence would be further reinforced by being "subject to the general control and supervision of the superior courts", is needed to ensure that deserving inmates are not "lost" in the opportunity system, that criteria, standards and procedures are followed in individual cases, and that an effective appeal mechanism is made available.

Critics of this model (which in many ways bears similarities to the current system) claim that it is essentially indistinguishable, or would be in practice, from the current system, which does not presently serve as an adequate check on penitentiary decisions. The Sentence Supervision Board is not described in great detail by the LRC, but what details are given of the scheme do not distinguish it in significant organizational or professional respects from the current NPB. The LRC does call for the Sentence Supervision Board to produce "express criteria for decision-making", but gives little indication of what these criteria might be other

than that they would encompass a series of presumptive decisions about "testing" and "decompressing" the offender on gradual release. Critics claim that if these criteria are not in fact expressly and objectifiably articulated, there will be no effective policy guidance and no meaningful review of release decisions by the SSB. These same objections touch on another criticism, which is that, in the absence of express criteria, disparity will actually increase because release "policy" will be made by dozens of different case management staff across the country, and review of negative decisions will not be an effective check on this multiple disparity source. The high concordance rates between NPB and case preparation staff show that an NPB/SSB may not operate with much independence from case preparation staff. Finally, the effectiveness of the SSB would be determined, to some extent, by inmate willingness to appeal decisions which they are dissatisfied with. It can often be extremely difficult for an inmate to pursue an appeal through CSC staff who made the original negative decision which is under review. Reliance on inmate appeals is a rather tenuous basis for effective, "independent" review.

To some extent, the second major "appellate" model addresses some of these concerns about independence and effective review. With variations, we were given numerous suggestions to change the parole board into a body (or individual) which operates in a judicial manner. According to some of our consultation participants, the board should be a separate body within the federal court, staffed by persons trained in law and operating in a judicial manner. For others, the power to amend sentences or modify the manner of their service should be shared on a rotating basis by all sentencing judges in a given area, as a periodic duty which would supposedly enhance all judges' understanding of sentence discretion and the post-sentencing process. A final appellate model is the juge de l'application des peines, a "sentence administration judge" in France who makes decisions about early release from other judges' initial sentences.

The chief attraction of the more legalistic "appellate" models is, of course, that they are legalistic: they would presumably operate to provide greater procedural protections for inmates, would allow open discussion of the factors to be considered, and would allow formal argumentation of the inmate's (and possibly also the state's) case for release or continued detention. Advocates of these notions are principally concerned about the low visibility of parole, the lack of specification of rules of evidence or criteria for decision-making, and the lack of legal training among board members which might serve to encourage uniform, fair

decisions. It remains to be seen, however, whether these models would in fact provide a greater protection for inmates or would result in "better" decisions, however defined. Some critics would also argue that releasing authorities need to be better informed about the realities of corrections than judges, even judges who are appointed as "corrections/sentence administration" judges, could be expected to be.

It is worth describing the juge de l'application des peines in some greater detail, if only to highlight some of the problems which were encountered with this particular method in France. There is one or more juge de l'application des peines for each district, and by the law of 1958-59, these judges were created in order to effect the participation of judges in the protection of offender rights, and to bring about the individualization of treatment during an era of faith in the rehabilitative ideal. The JAP was created to effect releases of all kinds (TA's, day paroles, full paroles) as well as to affect the conditions and obligations of sentence. There quickly developed strong conflicts between the JAP (who had the decision power) and the prison administration (who had control over resources and the execution of the decisions). A requirements to visit the prisons once a month, together with the enormous number and range of decisions to be made, soon placed a strain on the capacities of the JAP to effect his mandate. Perhaps as a result of these conflicts, in 1972 the JAP was brought more into the stream of corrections by the creation of a Commission de l'application des peines (CAP), a body composed of officials from the local penitentiary who advised the JAP.

Accusations of various types surrounded the JAP, especially following the modifications of 1972, including that releases had become a means of maintaining good order and discipline, rather than promoting rehabilitation. However, tension between the JAP and the prison authorities increased to such an extent that in 1978, the law was amended to introduce minimum periods prior to release eligibility, and to require the agreement of the CAP to all temporary absences on terms over three years. These reforms were in part occasioned by adverse reaction to the over-liberal granting of TA's and remission by the JAP. The 1978 amendments have been severely criticized by the judiciary as a move towards making the JAP an administrative, not a judicial authority, away from the role of protecting offender rights, and in the direction of placing the JAP under the effective authority of the correctional bureaucracy. (Outheillet-Lamonthézie, 1974; Aydalot, 1973; Plawski, 1979; Note, 1976).

The French experience seems to suggest that there will be enormous resource difficulties for a JAP set up along these lines, such that the JAP may soon come, de facto if not de jure, under the domination of the correctional officials who are advising him. Whether the JAP could be protected from these influences through organizational or professional orientation remains to be seen. Certainly, however, there is some reason for caution in drawing conclusions about the JAP as a means of protecting the appearance or reality of "justice".

Comments on appellate models

Appellate models depend heavily on the kind of interest in and resource committment to "express criteria" and strong safeguards advocated by the Law Reform Commission. No effective review or "watchdogging" of the administration of release by case management authorities appears to be possible without a clear basis for initial decisions, appeal and review. Further exploration of appellate models must futher take into account the need for "independence" without naiveté about corrections, or independence may soon become illusory (or be eliminated in order to promote better coordination).

MINIMALIST MODELS

Minimalist models need not be premised on any particular philosophy of release other than that it should represent the least intervention possible consonant with public protection. Minimalist approaches are based on cost-effectiveness and restraint notions, but also on notions of risk reduction, since there is thought to be a connection between the cheapest and most humane measures, and those measures which are most effective (or least harmful) to the readaptation of the offender to society.

Minimal intervention begins before decisions about release, of course, and can extend to attempts to prevent offenders from entering prison in the first place. For the federal release system, a minimalist model would involve presumptive release of all offenders at the earliest possible date, supervision for as short a period as possible under minimal restrictions (if not under a voluntary supervision scheme), and return to penitentiary only for new criminal offences. In terms of the current system, this would probably mean release of most offenders at parole eligibility (or sooner), parole supervision not to endure past the mandatory release date, and the abolition of MS for offenders not paroled. One example of a modified minimalist model was created for NPB in 1977, involving presumptive release for the all offenders who score well on a statistical score for

predicing violent (as opposed to any criminal or technical) recidivism. The remainder of offenders would be "tested" and "decompressed" through gradual, partial releases later in the sentence (Nuffield, 1979).

Minimalist models argue that in the absence of specific evidence about "what works", it is best (and the best use of shrinking resources) to make the least intervention which can still serve important criminal justice aims such as preservation of the denunciatory portion of the sentence. Minimalists argue that the current luxury of relatively abundant resources will be short-lived, and it will become necessary to allocate resources to those offenders who truly need or want them. Some research suggests that the greater the penetration of an individual into criminal justice control systems, the less his chances of succeeding eventually. Minimal interventions are thus thought by some to "work" at least as well as more extensive or vigorous programs in corrections. Finally, minimalist systems are typically cheaper and more humane.

The Working Group is sympathetic to the minimalist view, but recognizes that it may not be the most politically realistic approach at this time, though it may suit anticipated budgetary restraints in the 1980's. In particular, it is far more difficult from the standpoint of public acceptance for a government to remove or relax controls once they have been imposed, than it is to increase or maintain controls: this is probably one of the major "realistic" factors behind the continuation of MS. One minimalist view is clearly worth pursuing, however, and that is the search for better means of identifying which offenders are most worthy of being controlled, in order to allow us to exercise minimal control over the remainder (Ouimet, 1969).

GUIDELINE MODELS

Guideline models for release arose in the 1960's and 1970's as a result of empirical research on decision-making and criminal recidivism, and as part of a human rights concern for greater accountability, visibility, objectivity and equity in criminal justice decision-making.

Possibily the first formal guideline application in criminal justice was to pretrial release decisions in New York City (Vera Institute, 1962). Courts were facing increasing workload pressures which made the increasing number of decisions to be made as to whom to release prior to trial a major problem. Because the major consideration in pretrial release is concern over appearance for trial, evaluation of how to assess the likelihood of appearance was undertaken.

Researchers examining the problem found that using a simple numerical checklist, it was possible to make accurate assessments of how likely various defendants would be to appear for trial if released on their own recognizance. These assessments could be initially made and verified by staff of the court (subject to approval by the judge), thus freeing judges' time for other matters. Perhaps more significantly, evaluations showed that the introduction of the numerical assessment system allowed more persons to be released prior to trial (and without cash bail or sureties) while actually bringing about a reduction in the percentage of persons who failed to appear later for trial. The reason for this phenomenon was that the numerical system was apparently more accurate than were judges at predicting who would fail to appear.

As parole was increasingly the subject of empirical research, applications of the Vera system to parole began to appear. Research on parole decision-making (e.g. Gottfredson et al., 1973) seemed to contradict the belief and assertion made by parole boards that the parole decision is made on the basis of an extremely wide variety of factors, and that each case is considered in a unique fashion on its individual merits. Rather, researchers found that a "hidden policy", of which even parole boards were unaware, existed which could "explain" a great deal of the variance in individual cases decisions. Among parole boards (such as the federal U.S. Parole Commission and in Minnesota) which had wide discretion and were not in many instances constrained by long minimum periods to be served prior to parole eligibility, parole decisions were found to be largely accounted for by only two basic factors: the severity of the offence for which the prisoner was serving time, and the likelihood that the prisoner would commit another crime if released (risk of recidivism). Among parole boards (such as North Carolina) which were constrained by minimum periods to be served prior to release eligibility, parole decisions were found to be almost entirely a product of the risk of recidivism, and in some instances, but less significantly, the institutional conduct of the prisoner.

From this apparent finding that the complexity of parole decisions is more apparent than real, some U.S. states proceeded to formalize the "hidden policies" discovered through research in order to increase visibility and accountability, and to decrease the chances of the "hidden policy" being applied in somewhat differing ways to different prisoners. Accordingly, in those jurisdictions where the severity of the offence was not "taken care of" through the "barometer" of the minimum eligibility date, a standard scale of offence severity was developed, into which each prisoner's current offence could be categorized. Similarly, and in view of the finding that

numerical or statistical systems for prediction of risk are more accurate than professional clinical judgment (e.g. Meehl, 1954; Gottfredson, 1973; Heinz et al., 1976), several U.S. jurisdictions "translated" concern about risk into the use of a statistical scoring system. The formalizing of the risk and crime-seriousness dimensions into standarized scales was intended to ensure the best possible overall prediction and to decrease the chances of individual board members' applying these dimensions in different ways to different cases (unless special circumstances suggested the need to step outside the guidelines). These dimensions then became translated into "presumptive" lengths of time to be served by individual prisoners in non-exceptional circumstances.

"Guidelines" models are thus premised on notions of clarifying and objectifying policy, conscious decisions not to allow other factors to intrude unless there is good reason to do so, and attempting to apply policy as equitably as possible to individual cases. Guidelines are also premised on the notion that it is more humane to inform prisoners in a fairly precise fashion of what they will be "judged" on and how much time they can expect to serve unless their case presents an exception from the general rule.

Criticism of "guidelines" models is of several types. In the first instance, many parole boards and corrections personnel question whether parole decisions are in fact as "simple" as research suggests that they are. Since research cannot "explain" all the variance in parole decisions, these critics argue that other complex and individual factors make up the balance of the variance in parole decisions - not, as the researchers suggest, that the unexplained variance in decisions is simply disparity caused by vague formal and informal policies and differences in approaches taken by different parole board members or panels. Second, critics may object to only a few basic dimensions being used as the foundation for parole decisions, arguing that greater flexibility is needed to consider any number of things, including underworld connections, special humaneness considerations such as family crises, or the presence of other outstanding warrants in other jurisdictions. (Supporters of "guidelines" models argue that these factors can simply be used, as necessary, as reasons to step outside guidelines in individual cases. Factors which are really intended to address questions of risk, however, would not be seen as allowable exemptions from guidelines: attempting to inject "clinical" factors, such as family ties, to improve statistical risk assessments would only reduce their efficiency, according to the guidelines model.)

It is also argued that "guidelines" are less, not more, humane than traditional case-by-case approaches because they try to fit most cases into a Procrustean structure which does not allow for sufficient discretion to take into account unique behaviours and circumstances. The use of a numerical system is also seen as somehow "inhuman" and inappropriate to traditional approaches of discretionary justice. It is claimed that prisoners would prefer a human face on justice, rather than having to "fight the computer". As was seen earlier, however, some research suggests that prisoners prefer to know their probable release date as soon as possible, and to the extent that guidelines systems are consistent with decision predictability and traditional approaches are not, the latter system may from the prisoner's perspective be less humane.

It is also argued, against guidelines systems, that they tend to formalize or "freeze" existing policies rather than seeking improved approaches. They may also prevent future innovation for the same reason. (Guidelines supporters argue, per contra, that it is also impossible to improve and innovate unless once can "see" current policy, which the empirical approach at least allows the decisions-makers to do.) Guidelines critics arque, finally, that disparity is not greatly reduced by these systems in certain practical applications, since the decision-maker's power to step outside his guidelines for defensible reasons still allows him discretion which can be rather broad. It is extremely difficult to assess whether this may be true, since follow-up evaluations of the kind needed are not always available.

Comments on guidelines models

The Working Group has recommended earlier (Chapter III) that an extensive study be made of the factors which enter into NPB decisions, both to shed more light on the complexity or simplicity of "hidden policy" and to determine how much unwarranted disparity is present in NPB decisions.* To this extent, we recognize the validity of the empirical approach to the "demystification" of parole, and support greater visibility and objectivity in decision criteria. We were unable to agree, however, on whether the "Guidelines" approach should be carried to the more formal types of implementation observed in some jurisdictions.

In future study of this approach, it is important to recognize the critical nature of the amount of discretion which

---

* The Executive Committee of NPB in November 1980 endorsed the notion of such an in-depth study of the factors involved in parole decision-making, but were not prepared to endorse the development of a guideline system at that time.

is to be preserved in the guidelines, and the amount of "mandatoriness" which is to be used. If the amount of discretion preserved is extremely broad, the system will run the danger of not reducing disparity at all. If too many controls are placed on discretion, it can lead to inappropriate and inflexible decisions. This is a very difficult balance to strike, though it should be recognized that a certain amount of dissatisfaction among decision-makers over the breadth of discretion and the mandatory controls may or can be a sign that the guidelines are working properly.

Future study of this approach in Canada should also bear in mind the possibility of using an innovative policy for parole rather than of "freezing" any current "hidden policy" which may emerge. If decision-makers are not content with a system which considers only risk, for example, there is no requisite reason not to make a policy decision to include other factors (such as sentence equalization or "institutional behaviour"), which would still fit the guidelines approach so long as they were objectively and consistently applied. Our recommendation above (Chapter II) that the Ministry take a hard look at what objectives it wishes release to serve should be read in the light of this approach.

CHAPTER VI

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Release Study was an internal inquiry into all forms of conditional release, ordered by the Solicitor General in 1980. Its mandate was threefold: to examine the incidence of violent and other violations of conditional release, to examine the problems, issues and concerns with the current system, and to examine release from "first principles": what is it trying to accomplish, and how realistic are its objectives?

The Study first reviewed the objectives of release in the broad context of the purposes of imprisonment. It was found that release has many goals and functions, some of which are not recognized or even intended as "objectives", but whose effects are clearly present. The formal or "official" objectives of release, especially those stated in the three statutory criteria for parole, were found to be either too vague (selection of "undue risks") or based on assumptions which are open to serious question (ensuring that the inmate has received the "maximum benefit" from incarceration, and that parole will aid his "reform and rehabilitation"). The unintended functions and effects of release may be at least as important to the sentencing and correctional systems as the official goals, but their informal status does not permit them to be pursued in an effective or consistent fashion. Some of these unintended functions and effects include the reduction or control of penitentiary populations, the mitigation of punishment, the evening out of sentence disparity, the control and management of penitentiary inmates and programs, and cost savings. Many of the functioning which are important to one agency are not a priority with the other, and vice versa.

The initial finding and recommendation of the Working Group was therefore that the objectives of release need to be addressed in workshops held on a Ministry level* in order to try to achieve more agreement on what we are trying to accomplish, whether any of the traditional objectives should be rejected as unrealistic or inconsistent with modern correctional thinking, whether any of the unintended functions should be recognized and pursued more systematically, how any new objectives set might be articulated in a more specific operational fashion in order to reduce vagueness, and whether changes could be instituted to make the release system more effective at pursuing its goals. Connected to this initial finding and recommendation, the Working Group found an insufficient level of systematic self-

---

* By "on a Ministry level" we mean in an exercise involving all three major sectors of the Solicitor General involved in correctional (NPB, CSC and the Ministry Secretariat).

monitoring and self-evaluation throughout the imprisonment and release processes, a deficiency which seriously affects the system's ability to address questions of the realism of its objectives and the effectiveness with which they are achieved.

The Study next proceeded to an examination of more operational issues and problems, taking each release program in turn: temporary absence, day parole, full parole, earned remission and mandatory supervision. Some of the findings, of course, relate to the integration of two or more of these processes, and many of the recommendations are similar for various programs: we recommend, for example, the development of more specific, operational criteria for the administration of all release programs, and the availability of more current, detailed feedback to decision-makers on the decisions being made and their outcomes.

Temporary absence has been an extremely successful program of some 50,000 releases annually, of which fewer than one percent are declared unlawfully at large, detained by the police, or terminated for misbehaviour. There have been serious concerns among penitentiary personnel, however, about the recent decreases in the numbers of UTA's, apparently due largely to restrictions imposed in 1977 on the number of hours an inmate may be absent from penitentiary in a given quarter. To remedy this, and to allow for more flexible use of TA's to relieve institutional tension and to reward deserving inmates, we recommend that there be a three-day humanitarian UTA available, at the Warden's discretion, which need not be reserved for extraordinary circumstances such as a family death, but could be used for more broadly "humane" purposes. In addition, we recommend that the limit on rehabilitative UTA's be extended from 72 hours per quarter to 72 hours per month. Cases presently not "delegated" by NPB would, however, remain under NPB authority.

To reduce costs and to make more effective use of community resources, civilian volunteers should be permitted to serve as TA escorts or supervisors. Travel time should not be included in the duration limits imposed on TA's. Every effort should be made to reduce any unnecessary use of community assessments and supervision for TA's. Study should be made of the practicability (given resource limitations) of automatic reviews of inmates for UTA at the date of eligibility. UTA decisions delegated to CSC may be granted at that time, but all UTA denials (if appealed by the inmate), and all TA's administered by NPB, would require NPB involvement at that time.

Day parole was found to be a program which is growing but whose objectives are still unclear and under active debate by decisions-makers and practitioners. We found that there was a

strong current of opinion among Ministry staff and private agencies that day parole is over-used both as a "test" for full release and as a rehabilitative or supportive technique. This may account, in part, for its high success rate of about 80%. We recommend it be used only in cases of clear need or uncertainty about serious risk to the public, and not for the less serious or "risky" offenders. Day parole with a requirement of residence in a halfway facility should not normally be used, merely as a means of achieving release prior to full parole eligibility; an expanded power of parole by exception should be used in these types of cases. The fee paid to private agencies for use of their halfway facilities was found to be too low as it seriously affects their ability to provide adequate program, security and wages to their staff, and the fee should be re-negotiated by a Ministry committee. Block funding should be considered as a payment mechanism which would provide more program stability for such facilities. Negotiations should be undertaken with the provinces to remove obstacles to providing all released inmates and day parolees in CCC's and CRC's with health insurance coverage from the date of release. More sites should be designated as "penitentiaries" for the purpose of effecting the administrative release of day parole offenders onto full parole or MS. Better communication is needed to give inmates a more accurate picture of what is expected from CCC or CRC residence. There sould be more formal recognition of the need not to put heavy pressure on recently released inmates in halfway facilities for the first brief period of shock and difficult adjustment to normal society. A hearing prior to day parole termination should be mandatory unless the offender waives it. Study should be made of the practicability of automatic review of all inmates for day parole at the time of eligibility.

Full parole selection suffers from vague and questionable statutory criteria, and needs to be reviewed as part of the above-noted Ministry workshops on correctional objectives. Disparities in selection for full parole were found to be a major concern, and we recommend an extensive empirical study of full parole decisions, to determine how much variance can be explained through various legal, organizational, and individual case factors. Parole by exception should be made less "exceptional" through expansion of the current, virtually prohibitive, criteria. There should be more controls on the process for selection and training of new NPB members. Study should be made of the use of screening bodies for potential appointments, and of civil service merit hiring, to protect NPB from the appearance and reality of political appointment. The NPB Internal Review Committee should be strengthened by having a separate membership, and by being permitted to reverse appealed decisions on their substantive merits, to hold hearings, and to establish procedures for the written sharing of information and

reasoning on significant IRC decisions. Once the IRC proces has been strengthened, discussions should be undertaken with the Correctional Investigator to determine the practicability of his reviewing parole decisions after the exhaustion of internal reviews. Finally, there is some feeling across the country that the parole rate may be too low; MS cases succeed on supervision at a rate only about 10-15% lower than the success rates of paroled offenders. Overall, about 70% of parolees are not revoked during their supervision period.

Parole supervision has been subject to a great deal of criticism based on research which suggests that offender recidivism is determined much more by factors such as previous criminal involvement than by interventions by government officials. However, the Working Group found this research to be less than definitive, and finds that community supervision has fewer negative effects than imprisonment, and represents a cheaper and more humane program. However, a great deal more research is needed into the actual delivery of specific services to offenders by parole officers, and the effects of these services individually on different types of offenders. There has not been within CSC the needed commitment to community supervision in terms of the provision of resources, training, innovation and evaluation.

The Working Group found a great deal of practical experience and research which leads us to recommend that the "team" and "brokerage" models of parole supervision be more actively pursued and supported through start-up funds and training from national headquarters. The private aftercare agencies are not being used as effectively as they might be, namely in the provision of more diverse and specialized services to offenders than government agencies can provide. More exploration should be done of block funding to encourage and support innovative private agency programs. CSC parole officer man-year formulas should provide for time spent in community resource development. Greater use of volunteers in parole supervision should be encouraged through start-up projects supported at national headquarters. More consideration should be given to the option of relaxing minimum standards for supervision in lower-risk cases in order to permit more effective allocation of existing resources to more pressing cases.

The present conditions of parole are, in some cases, onerous, unrealistic, and unenforceable. The Working Group recommends that they be narrowed to require reporting to the parole office and remaining under the authority of the CSC, remaining in a designated area not bounded by unnatural geographical or municipal borders, obtaining permission to

purchase or carry a firearm, and notifying the parole officer of a change of address or employment status. All other requirements should be designated as "special conditions" by NPB. The practice of specifying restitution to the victim as a condition of parole should be reviewed to determine its legal status and fairness. Reasons given for the suspension of parole or MS should be supplied to the offender in writing and with as much detail as possible of the circumstances surrounding the suspension. Revocation should not be permitted on grounds of preventing a breach of conditions. Research is needed into the ground of actual suspensions and revocations, to address complaints that revocation is over-used in non-criminal circumstances.

Supervised persons often experience difficulties in obtaining bail or a bail hearing when they are under suspension for parole or MS breaches. Possible changes to the Criminal Code should be explored to deal with this, and negotiations shold be undertaken to allow provincial facilities and parole offices to be designated as "penitentiaries" for the purpose of revocations in "turnaround" cases. Post-suspension hearing to discuss possible revocation of parole or MS should always be held unless the offender waives the right. Hearings should occur as soon as possible, and normally within two months of notice of request for a hearing.

Finally, the Working Group noted that parole supervision staff morale is low, though we could make few specific recommendations to improve it. The problem seems to be tied to a loss of a sense of "mission" in community corrections, which is tied to the above-noted apparent lack of commitment to the community end of CSC. Other contributory factors appear to be a perceived emphasis on "quantity control", minimum standards, paperwork, and having to serve both CSC and NPB "masters". These problems should be carefully monitored to determine whether they can be remedied in future.

Earned remission was found to offer little promise as a "positive" motivator of exceptional or industrious inmate behaviour. However, it may serve to punish and deter negative behaviour, and may discourage voluntary inmate unemployment. We recommend that it be used as a punishment for unacceptable conduct, and not be used for evaluation of an inmate's "program participation". More specific criteria for its removal should be used to prevent apparent disparities and loss of remission should be reviewable, on appeal by the inmate, to NPB. The term "earned" should be eliminated. Though there was some feeling that remission has little effect on inmate behaviour, either "negative" or "positive", its retention as a control on penitentiary population size was found to be desirable, given

uncertainties about whether sufficient reductions in judicial sentences would accompany its abolition. Finally, criteria for the recrediting of remission should be relaxed to allow for the consideration of a principle of commensurate desserts after parole or MS revocation, since the amount of remission lost for parole or MS revocation is presently determined, not by the nature of the behaviour which caused the revocation, but by the amount of time served in penitentiary prior to release.

Mandatory supervision is a highly controversial program, more controversial in fact than one would expect from a simple examination on its merits, but the diversity of different groups concerned about it (NPB, police, offenders, parole officers) have increased its visibility as an issue. The Working Group was of the view that it is desirable that all persons released from penitentiary have available some form of post-release assistance (as MS provides), but some felt that this should be available on a voluntary basis for non-paroled offenders. Research is needed to determine whether, as some claim, MS offenders are treated differently from parolees simply because they are MS offenders. In particular, the use of technical revocations (as opposed to new-conviction revocations) in MS cases (as indeed in parole cases) should be examined.

Other concerns were reviewed by the Study. The first and most significant of these is recidivism on release, especially violent recidivism. We found the failure rates on various forms of release to be exaggerated, especially for MS, and in some instances, such as TA, to be so low as to suggest that too conservative a selection process may be in place. We examined recidivism from full parole and MS in some detail, and found that fewer than a fifth of all cases return to penitentiary with a new conviction prior to warrant expiry (though some "technical" revocations may mask a new crime which is suspected but unproven). Of these new-crime revocations, 15% involved a clearly violent crime such as assault, homicide or kidnapping, and another 13% were for robbery, which may involve actual violence. This is not to detract from the seriousness and reprehensability of the violent recidivism which does occur, but popular notions of the frequency of violence appear to be out of proportion to its actual incidence.

The Working Group found little systematic attention devoted to either predicting violence or providing treatment for potentially violent offenders in penitentiary. This may be partially a product of the relative lack of scientific knowledge of how to predict rare events and how to intervene successfully in people's lives, let alone in potentially violent situations.

The second system-wide concern encountered was the lack of coordination and understanding between sentencing authorities and releasing authorities. Release is not particularly well understood by some judges, who may increase their sentence to "allow for" an anticipated early release which may not occur, or may occur much later than expected. Many judges also appear to have much more confidence in the effectiveness of imprisonment and of correctional programs than do correctional officials. We recommend an annual publication to judges, providing more operational information about the actual practice of release, and emphasizing the limited nature of prison treatment.

The Working Group also noted the particular difficulties experienced, or apparently experienced, by certain special offender groups such as Natives, life-sentence inmates and women. It was not possible to explore the Native question in detail, and we recommend that the Minister's special committee on Natives examine difficulties experienced by Natives in preparing release plans which will be acceptable and functional. Lifers can experience a very tortuous preparation and gradual release process, and the lengthy periods of "dead time" which they serve prior to eligibility can be both disfunctional and inhumane. In particular, we recommend that all lifers serving minimum periods of longer than 10 years be able to apply to a court for reduction of that period after the service of 10 years. Women, being normally able to serve a federal sentence only in the maximum-security Prison for Women, experience particular difficulties in planning, obtaining and paying travel expenses for release. We recommend that study be made of three possible changes. First, more liberal use could be made of parole be exception and day parole to move women closer to their home communities under correctional supervision. Second, government funds could be made available to finance releases to areas distant from PW. Third, there may be a need for a special caseworker at PW to help deal with the special release planning and coordination problems experienced by women.

We also reviewed the difficulties reported by some staff in protecting confidential information from disclosure under the Canadian Human Rights Act. New procedures put in place to guide the protection of information which could harm an individual or which would disclose case opinions made on an understanding of confidentiality appear to be adequate, but should be closely monitored by the Ministry. Services to provinces with no parole board of their own are also a concern, since some provinces have complained of lengthy delays in case preparation and of difficulties in NPB's exercise of paroling authority over provincial prisoners. Resolution of these possibly through federal-provincial discussions should be considered a Ministry

priority. Finally, the Working Group considers essential the creation of a management information system which will provide timely monthly feedback to key personnel on the persons being granted and denied various forms of release in their own and other regions.

Lastly, the Study reviewed the major available "models" for release which have been proposed in Canada and elsewhere for defining the proper philosophy which should guide release and the manner in which release should be administered. Many of these models contain elements or reflect approaches which may be meaningful and useful to release in Canada. As "macro" systems, however, which would involve a major re-ordering of release discretion, or its elimination in certain forms, these models may create system imbalances of major significance, about which little is as yet known.

Based on the limited available knowledge about these new models, the Working Group cannot recommend the adoption of any of them as an alternative to the status quo. The available "macro models" for reform should, however, continue to be studied and monitored, especially in the light of any re-ordering of priorities and objectives which may occur as a result of the Study's first recommendation.

APPENDIX A

STATISTICAL INFORMATION

The following data were obtained through the use of a combined data base developed for the Release Study, incorporating into a single offender-based file all the information available on release programs, in the Inmate Record System, National Parole Service Information System, and Temporary Absence data base. These tables were compiled by Release Study staff, not by the management information staff of CSC or NPB. The figures contained in this Appendix may differ from those which appear in other Ministry publications, but in most cases the differences are slight. We believe that the figures contained herein are at least as accurate as those found in other sources.

Though these programs were in operation much earlier, individual case data are available on temporary absence only from July 1976, and on day parole only from 1974.

A few tables are included from other data source surveys. If so, the source is noted.

TABLE A-1

AVERAGE (MEAN) AGGREGATE SENTENCE FOR PERSONS RELEASED FROM FEDERAL PENITENTIARY IN 1978 AND 1979, BY OFFENCE GROUP AND RELEASE TYPE

Admission Offence Group	Aggregate Sentence (months)								
	All Releases			Parole Releases			M.S. Releases		
	No. of Cases	Average Sentence	Standard Deviation	No. of Cases	Average Sentence	Standard Deviation	No. of Cases	Average Sentence	Standard Deviation
CRIMES AGAINST THE PERSON									
Murder	70	life	*	70	life	*	0	N/A	N/A
Manslaughter	323	71	46	182	81	52	141	59	33
Attempted murder	69	89	61	34	111	69	35	67	42
Rape and attempted rape	354	52	30	157	54	26	197	50	32
Sexual assault	103	34	19	16	45	23	87	31	18
Other assaults, wounding	359	34	22	80	42	20	279	32	23
Kidnapping, forcible confinement	76	54	44	31	76	58	45	38	20
Criminal negligence causing death	24	33	19	13	36	16	9	29	23
Other crimes against the person	267	37	24	103	42	22	164	33	24
ROBBERY	2,353	50	39	968	62	49	1,385	42	29
CRIMES AGAINST PROPERTY									
Break and enter	1,922	31	19	463	38	22	1,459	29	17
Theft, possession of stolen goods	844	28	18	177	37	19	667	25	17
Frauds	489	33	24	132	41	24	357	30	23
NARCOTICS									
Possession of narcotics	54	28	16	25	35	10	29	21	17
Trafficking and importing	1,048	52	33	702	55	34	346	45	30
MISCELLANEOUS									
Miscellaneous Criminal Code	316	35	23	99	47	26	217	30	20
Miscellaneous Federal and provincial statutes	11	50	35	3	66	62	8	44	23
Escape and unlawfully at large	72	20	15	5	38	14	67	19	14

* Life imprisonment is mandatory for murder.

TABLE A-2

NUMBER OF ETA'S AND UTA'S GRANTED EACH QUARTER,
JULY 1976 TO SEPTEMBER 1980, BY REGION

Year and Quarter	Atlantic	Quebèc	Ontario	Prairies	Pacific	Total
1976-3	951	2,248	3,459	1,742	3,342	11,742
1976-4	911	2,136	2,417	2,037	3,180	10,681
1977-1	928	2,167	5,317	2,453	3,412	14,277
1977-2	729	2,528	2,734	2,588	3,761	12,340
1977-3	917	2,522	4,066	2,560	3,715	13,780
1977-4	949	2,989	3,145	2,254	3,800	13,137
1978-1	1,065	2,802	3,070	2,226	3,087	12,250
1978-2	1,143	3,048	2,886	2,013	3,937	13,027
1978-3	1,115	3,179	2,539	1,872	3,655	12,360
1978-4	1,015	3,921	2,995	1,665	3,273	12,869
1979-1	1,163	3,225	2,712	1,869	3,206	12,175
1979-2	1,457	3,221	2,818	1,598	3,979	13,073
1979-3	1,425	3,551	2,580	1,870	4,660	14,086
1979-4	1,372	3,577	2,773	1,553	4,341	13,616
1980-1	1,477	3,559	2,866	1,636	4,390	13,929
1980-2	1,753	3,410	2,456	1,695	4,644	13,958
1980-3	1,026	2,367	1,812	1,233	3,131	9,569
Total	19,399	50,473	50,651	32,868	63,533	216,924
% of Grand Total	8.9	23.3	23.4	15.1	29.3	GRAND TOTAL

TABLE A-4

PURPOSE OF ETA'S AND TA'S
GRANTED FROM JULY 1976 TO SEPTEMBER 1980

Purpose of TA	Number of TA's	Percentage of TA's
REHABILITATIVE		
Sports	38,099	17.6
Social Project	21,130	9.7
Visit family	18,084	8.3
Transition to Community	15,617	7.2
Work Release	13,038	6.0
Visit wife	7,689	3.5
Visit friend	6,761	3.1
Education	1,858	1.1
Job seeking	1,225	0.6
Other	40,037	18.5
SUB-TOTAL		75.6
MEDICAL		
Medical	42,299	19.5
Dental	4,067	1.9
Psychiatric	1,079	0.5
SUB-TOTAL		21.9
ADMINISTRATIVE		
PRE-RELEASE	3,267	1.5
HUMANITARIAN		
Family death	1,134	0.5
Family illness	705	0.3
Family marriage	135	0.1
Other	700	0.3
SUB-TOTAL		1.2

TABLE A-5

TOTAL NUMBER OF UNESCORTED AND ESCORTED TEMPORARY ABSENCES FROM JULY 1976 TO SEPTEMBER 1989, BY YEAR AND QUARTER AND BY GROUP STATUS

Year and Quarter	Number (and Percentage) of TA's Granted	
	Group	Single
1976-3	5,296 (45.1)	6,446 (54.9)
1976-4	4,520 (42.3)	6,161 (57.7)
1977-1	6,653 (46.6)	7,624 (53.4)
1977-2	5,362 (43.4)	6,978 (56.6)
1977-3	6,428 (46.6)	7,352 (53.4)
1977-4	6,249 (47.6)	6,888 (52.4)
1978-1	6,238 (50.9)	6,012 (49.1)
1978-2	7,371 (56.6)	5,656 (43.4)
1978-3	6,687 (54.1)	5,673 (45.9)
1978-4	6,788 (52.7)	6,081 (47.3)
1979-1	6,901 (56.7)	5,274 (43.3)
1979-2	7,197 (55.1)	5,876 (44.9)
1979-3	8,182 (58.1)	5,904 (41.9)
1979-4	7,597 (55.8)	6,019 (44.2)
1980-1	8,071 (57.9)	5,858 (42.1)
1980-2	11,211 (80.3)	2,747 (19.7)
1980-3	9,569 -	N/A -
TOTAL	120,354 (55.5)	96,570 (44.5)

TABLE A-6

NUMBER OF GROUP AND SINGLE TA'S GRANTED, JULY 1976 TO SEPTEMBER 1980, BY PENITENTIARY

Penitentiary	Number of TA's Granted		
	Group	Single	Total
Maximums:			
B.C. Penitentiary[1]	21	424	445
Kent[2]	89	101	190
Edmonton[3]	206	2	208
Saskatchewan Penitentiary	41	537	578
Millhaven	265	972	1,273
Prison for Women	2,647	4,850	7,497
Laval	148	1,372	1,520
Archambault	334	1,189	1,523
Centre de développement Correctionel	139	1,541	1,680
Dorchester	309	2,075	2,384
Mediums:			
William Head	2,711	3,022	5,733
Matsqui	2,073	2,282	4,355
Mountain	16,426	3,558	19,984
Mission[4]	443	1,129	1,572
Stony Mountain	1,036	3,505	4,541
Drumheller	2,740	5,965	8,705
Bowden	2,759	3,484	6,243
Collins Bay	819	2,559	3,378
Joyceville	1,945	3,202	5,147
Warkworth	2,316	3,599	5,915
Leclerc	2,678	3,765	6,443
Cowansville	946	3,851	4,797
Federal Training Centre	3,133	4,278	7,411
La Macaza[5]	1,371	1,023	2,394
Springhill	5,999	3,087	9,086

TABLE A-6 (cont'd)

Minimums			
Pandora Centre	0	0	0
Robson Centre	0	5	5
Agassiz[6]	5,559	1,201	6,750
Elbow Lake	11,532	1,429	12,961
Ferndale	8,216	1,927	10,143
Osborne Centre	0	1	1
Rockwood	2,595	3,748	6,343
Saskatchewan Farm Annex	1,068	1,345	2,413
Drumheller Trailer	34	1,631	1,665
Altadore Centre	0	3	3
Scarboro Cent	0	3	3
Grierson Centre	405	1,685	2,090
Oskana Centre	0	0	0
Montgomery Centre	0	463	463
Bath	1,332	1,124	2,456
Frontenac	840	1,943	2,783
Landry Crossing	2,110	644	2,754
Beaver Creek	10,575	2,718	13,293
Pittsburgh	1,883	1,832	3,715
Beniot XV[7]	0	1	1
Martineau Centre[8]	0	0	0
St. Hubert Centre	0	0	0
Ogilvy Centre	0	0	0
Sherbrooke Centre[9]	0	0	0
Montée St. Francois	9,132	4,738	13,870
St. Anne des Plaines	6,507	2,758	9,265
Westmorland	5,061	1,668	6,729
Shulie Lake	774	41	815
Dungarvon[10]	264	120	384
Carlton Centre	0	0	0
Parrtown Centre	0	0	0
REGIONAL PSYCHIATRIC CENTRES			
RPC Pacific	113	524	637
RPC Prairies	37	37	74
RPC Ontario	8	453	461
REGIONAL RECEPTION CENTRES			
RPC Ontario	267	1,282	1,549
RPC Quebec	314	1,163	1,477

TABLE A-6 (cont'd)

1 Closed 10/77
2 Opened 8/79
3 Opened 10/78
4 Opened 1/78
5 Opened 8/77
6 Closed 10/78
7 Opened 10/77
8 Opened 1/78
9 Opened 1/79
10 Closed 5/77

TABLE A-7

NUMBER AND PERCENTAGE OF GROUP AND UNESCORTED TA'S GRANTED, JULY 1976 TO SEPTEMBER 1980, BY REGION AND SECURITY STATUS

Region and Security Status	Total Number of TA's Granted	Group TA's		Unescorted TA's	
		Number Granted	Percentage of Total	Number Granted	Percentage of Total
Maximum:					
Atlantic	2,384	309	13.0	378	15.9
Quebec	6,290	935	14.9	519	8.3
Ontario	10,744	3,187	29.7	1,693	15.8
Prairie	860	284	33.0	311	36.2
Pacific	2,019	353	17.5	76	3.8
Total	22,297	5,068	22.7	2,977	13.4
Medium:					
Atlantic	9,086	5,999	66.0	1,417	15.6
Quebec	21,045	8,128	38.6	6,931	32.9
Ontario	14,442	5,080	35.2	3,595	24.9
Prairie	19,490	6,535	33.5	6,671	34.2
Pacific	31,644	21,653	68.4	4,644	14.7
Total	95,707	47,395	49.5	23,258	24.3
Minimum:					
Atlantic	7,928	6,099	76.9	1,132	14.3
Quebec	23,136	15,639	67.6	6,315	27.3
Ontario	25,464	16,740	65.7	6,933	25.5
Prairie	12,518	4,102	32.8	6,705	53.6
Pacific	29,869	25,307	84.7	3,350	11.2
Total	98,915	67,887	68.6	24,435	24.7

TABLE A-8

NUMBER OF INMATES RELEASED ON TA EACH QUARTER, JULY 1976 TO SEPTEMBER 1980

Year and Quarter	Number of Inmates Released on TA
1976-3	3,232
1976-4	3,109
1977-1	3,538
1977-2	3,444
1977-3	3,619
1977-4	3,413
1978-1	3,348
1978-2	3,561
1978-3	3,561
1978-4	3,609
1979-1	3,366
1979-2	3,592
1979-3	3,448
1979-4	3,425
1980-1	3,477
1980-2	3,598
1980-3	2,877

TABLE A-9

FREQUENCY OF TEMPORARY ABSENCES GRANTED PER YEAR TO INMATES RECEIVING A TA,* JULY 1976 TO SEPTEMBER 1980, BY YEAR

Year	Number of Inmates Receiving TA's							
	1 TA	2 TA's	3 TA's	4 TA's	5-9 TA's	10-19 TA's	20+ TA's	TOTAL
July-Dec. 1976	2,509	964	545	335	674	341	169	5,537
1977	3,678	1,652	953	708	1,413	700	548	9,652
1978	4,145	1,790	1,067	680	1,338	690	484	10,194
1979	3,908	1,678	1,023	633	1,316	713	547	9,818
Jan.-Sept. 1980	3,164	1,318	746	469	1,010	500	362	7,569
TOTAL	17,404	7,402	4,334	2,285	5,751	2,944	2,110	42,770
% of GRAND TOTAL	40.7	17.3	10.1	6.6	13.4	7.0	4.9	100.0

* Table does not reflect the numbers of inmates who did not receive any TA in the year. In any given year, about 13,000 persons are in or admitted to penitentiary.

TABLE A-10A

OUTCOME OF ESCORTED TEMPORARY ABSENCES GRANTED* FROM JULY 1976 TO SEPTEMBER 1980, BY YEAR****

YEAR	Return On Time	Return With Extension	Return Late	Declared Unlawfully At Large	Detained by Police	Termination **	Pre-Release ***
July-Dec. 1976	12,815	386	160	5	15	1	1
1977	28,145	1,477	747	26	10	0	10
1978	30,714	2,610	1,408	55	1	0	3
1979	33,126	2,287	2,624	62	0	1	2
Jan.-Sept. 1980	23,763	1,675	1,624	37	0	0	3
TOTAL	128,586	8,445	1,624	185	26	2	19
% of GRAND TOTAL	89.4	5.9	4.6	0.1	0.0	0.0	0.0

* Does not include 22,424 TA's granted but cancelled prior to execution.

** A "termination" would be made for unacceptable behaviour while on TA, other than failure to return on time.

*** These are "administrative" pre-release TA's which end on the day of granting of a day parole, full parole, or MS.

**** The columns do not add up properly because of some missing dates in the TA system.

TABLE A-10B

OUTCOME OF UNESCORTED TEMPORARY ABSENCES GRANTED* FROM JULY 1976 TO SEPTEMBER 1980, BY YEAR**

YEAR	Return On Time	Return With Extension	Return Late	Declared Unlawfully At Large	Detained by Police	Termination **	Pre-Release ***
July-Dec. 1976	7,665	438	405	51	0	0	89
1977	15,144	985	1,051	153	13	13	577
1978	7,121	212	718	122	13	13	733
1979	5,603	177	674	115	11	11	726
Jan.-Sept. 1980	3,814	104	443	70	7	7	487
TOTAL	39,401	1,916	3,292	512	44	44	2,613
% of GRAND TOTAL	82.4	4.0	6.9	1.1	0.1	0.1	5.5

* Does not include 2,858 TA's granted but cancelled prior to execution.

** A "termination" would be made for unacceptable behaviour while on TA, other than failure to return on time.

*** These are "administrative" pre-release TA's which end on the day of granting of a day parole, full parole, or MS.

**** The columns do not add up properly because of some missing dates in the TA system.

TABLE A-11

TA FAILURE* RATE, JULY 1976 TO SEPTEMBER 1980, BY REGION AND SECURITY STATUS

Region and Security Status	Total Number of TA's Granted	TA Failures*	
		Number	Percentage of Total
Maximum:			
Atlantic	2,384	10	0.4
Quebec	6,290	5	0.1
Ontario	10,744	24	0.2
Prairie	860	3	0.3
Pacific	2,019	4	0.2
Total	22,297	46	0.2
Medium:			
Atlantic	9,086	38	0.4
Quebec	21,045	144	0.7
Ontario	14,442	135	0.9
Prairie	19,490	146	0.7
Pacific	31,644	65	0.2
Total	95,707	528	0.6
Minimum:			
Atlantic	7,928	24	0.3
Quebec	23,136	47	0.2
Ontario	25,464	88	0.3
Prairie	12,518	32	0.3
Pacific	29,869	32	0.1
Total	98,915	223	0.2

* A TA "failure" is defined as an early termination, being detained by the police, or being declared unlawfully at large.

TABLE A-12

NUMBER OF DAY PAROLES* GRANTED,
1967 TO FIRST QUARTER OF 1980

Year of Granting	Number of Day Paroles Granted
1967	19
1968	11
1969	47
1970	123
1971	336
1972	394
1973	1,127
1974	1,750
1975	1,449
1976	1,716
1977	1,988
1978	2,713
1979	2,624
Jan-March 1980	596

* Includes "temporary paroles" in 1973 1974 and 1975.

TABLE A-13

NUMBER (AND PERCENTAGE) OF M.S. RELEASES
WHO HAD PARTICIPATED IN DAY PAROLE PROGRAM,
BY YEAR, 1974-1979

Year of M.S. Release	Number (and Percentage) Participating				
	Day Parole Granted & Cancelled	Successful Day Parole	Day Parole Failure	No Day Parole	Total M.S. Releases
1974	32 (1.3)	330 (13.5)	13 (0.5)	2,075 (84.7)	2,450
1975	59 (2.4)	538 (22.2)	23 (0.9)	1,803 (74.4)	2,423
1976	61 (2.4)	597 (23.4)	9 (0.3)	1,880 (73.8)	2,547
1977	57 (2.0)	642 (23.1)	5 (0.2)	2,077 (74.7)	2,781
1978	51 (1.8)	609 (21.4)	127 (4.4)	2,054 (72.3)	2,841
1979	49 (1.9)	514 (20.1)	253 (9.9)	1,741 (68.1)	2,557
TOTAL	309 (2.0)	3,230 (20.7)	430 (2.8)	11,630 (74.5)	15,599

TABLE A-14

NUMBER (AND PERCENTAGE) OF FULL PAROLE RELEASES WHO HAD PARTICIPATED IN DAY PAROLE PROGRAM, BY YEAR, 1974-1979

Year of Full Parole Release	Number (and Percentage) Participating				
	Day Parole Granted & Cancelled	Successful Day Parole	Day Parole Failure	No Day Parole	Total Full Parole Releases
1974	20 (1.4)	371 (27.3)	1 (0.0)	967 (71.1)	1,359
1975	5 (0.3)	570 (45.1)	0 (0.0)	689 (54.5)	1,264
1976	11 (1.0)	466 (44.1)	2 (0.0)	578 (54.7)	1,057
1977	18 (1.2)	694 (46.9)	0 (0.0)	796 (51.9)	1,481
1978	8 (0.5)	865 (55.2)	7 (0.4)	687 (43.8)	1,567
1979	15 (0.8)	1,033 (59.9)	36 (2.1)	640 (37.1)	1,724
TOTAL	77 (0.9)	3,999 (47.3)	46 (0.5)	4,330 (51.2)	8,452

TABLE A-15

PROBABILITY OF RECEIVING PARTIAL* AND FULL RELEASE TYPES, FOR PERSONS ADMITTED TO PENITENTIARY AFTER JULY 1976 AND RELEASED FROM JANUARY, 1978 TO JUNE 1980

Partial Release Participation**	Proportion of All Cases	No. of Cases	Percentage of Cases Receivi Full Parole
Cases granted ETA, UTA and DP	.26	2,579	56
Cases granted no ETA, UTA or DP	.17	1,751	18
Cases successful at ETA, UTA and DP	.22	2,196	64
Cases failing at ETA, UTA and DP	.00	0	N/A
Successful ETA (and no other release types)	.15	1,468	26
Successful UTA (and no other release types)	.07	687	21
Successful DP (and no other release types)	.04	389	60
Failure on ETA (and no other release types)	***	12	8
Failure on UTA (and no other release types)	***	11	0
Failure on DP (and no other release types)	.01	58	16
Successful ETA and UTA (no DP)	.18	1,786	33
Successful ETA and DP (no UTA)	.07	749	61
Successful UTA and DP (no ETA)	.03	321	61
No TA granted	.22	2,198	25
ETA success	.67	6,808	43
No ETA	.32	3,264	28
ETA failure	***	40	10
UTA success	.53	5,364	44
No UTA	.44	4,454	32
UTA failure	.02	205	12
DP success	.37	3,729	62
No DP	.58	5,853	25
DP failure	.05	531	11
All cases		10,112	37

* The column titled "Proportion of all Cases" gives the probability of participating in each pattern of partial releases.

** Abbreviations in the Table refer to escorted temporary absence (ETA), unescorte temporary absence (UTA), and day parole (DP).

*** Numbers in this cell are too small to permit meaningful calculation.

TABLE A-16

OUTCOME (TO JUNE 1980) OF DAY PAROLES GRANTED
FROM JANUARY 1967 TO MARCH 1980[2]

Type of Termination	No. of Cases	% of Cases
Forfeited for new conviction[2]	562	3.8
Revoked without new conviction	681	4.7
Terminated by NPB[3]	1,139	7.8
DP expired while suspended	2	0.0
Regular expiry of DP program[4]	910	6.2
Early termination (DP program ending before expiry of approved period)[5]	1,319	9.0
Termination through release onto full parole or MS	753	5.2
Other terminations[6]	263	1.8
No record of termination[7]	8,963	61.3
Died during DP	26	0.2
TOTAL	14,618	100.0

1 It should be noted that the number of cases in this table does not add up to the number of day paroles "granted" in Table 12 because of data base inadequacies. This Table does not include 614 day paroles granted but then cancelled prior to execution. For summary purposes, the first four categories in this Table, plus the "other terminations" category, have been counted as day parole "failures", yeilding an overall failure rate of 18.1%. See notes, below.

2 "Forfeiture" of parole is a term formerly used to denote what was an automatic parole revocation upon grounds of new criminal conviction.

3 This cateogry denotes an early termination of day parole for reasons related to unacceptable behaviour on the part of the offender, such as failure to conform to the rules of a CCC.

4 This category denotes a termination of day parole through the expiration of the approved period (typically four months), without any renewal of the program, continuation, or release onto full parole or MS.

5 This category denotes an early termination of day parole as a result of the purpose for which it was granted ending prior to the expiration of the approved period. For example, a day parole granted to allow the inmate to pick apples might be terminated early if the apples ran out before the four-month approved period.

6 Though NPB surveys suggest that some of the persons in this category may simply be early terminations (as above). However, we have counted all these entries as "failures" in our overall totals.

7 These cases have all been counted as "successes" because they presumably indicate that the day parole was continued, is still active, or expired at the end of the program. We are assuming, in other words, that any negative outcome of the day parole to date would have been recorded.

CONTINUED

2 OF 3

the parolee from getting into certain situations (such as debt) which may contribute to an eventual return to crime. Other conditions are intended to ensure that the parole office has a rough idea of the whereabouts of the parolee.

Many of the standard conditions (and some of the special ones) are considered to be unenforceable and used only to "justify" a suspension which is really motivated by other concerns. Conditions like obtaining permission to marry or to leave a small geographical area are not consonant with formal correctional policies of minimal intervention and retention by offenders of the rights of ordinary citizens. Such conditions also create enormous resentment among parolees, regardless of their other problems.

The Working Group believes the standard conditions of parole should be reduced to the following:

- to proceed directly to the area specified in the parole agreement and report upon arrival. (This condition ensures that the parole system does not "lose" the offender and that initial contact is made with the parole officer.)

- to remain under the authority of the District Director or other designated representative. (This condition provides the requirement to report to the parole officer.)

- to remain in a designated area (individually determined and specified on each agreement) and not to leave this area without obtaining permission beforehand from the designated authority. (This condition also ensures that the parole system does not "lose" the offender. "Designated areas" must however be reviewed to ensure that they do not, as one parole officer put it, reflect "horse and buggy" days. Some designated areas in effect forbid parolees to travel to another township within the same large city, and require obtaining of permission.)

- to obtain permission from the designated representative to purchase or carry a firearm. (This condition represents a stricter standard than is required of the general population, for whom complex gun laws are in effect. The discrimination is not considered excessive, however, and permission can be obtained for parolees who need firearms to hunt and live.)

- to notify the designated representative of a change of address or employment status. (This condition is

intended to ensure the parole system does not "lose" the parolee, and also reflects a basic assumption about the importance of legitimate employment to successful adjustment in society.)

All other conditions can be required as "special" conditions by NPB or "special instructions" of the parole officer if they are necessary or appropriate. (Police reporting, for example, is not a program of all police departments; abstinence from alcohol should be required only of parolees who get into trouble when they drink.) Special conditions are currently used with restraint, and this should continue. (Of a sample of 205 full parole cases surveyed in Ottawa and Moncton during the Study, only 17 carried special conditions, most of them for alcohol abstinence.)

Requirement of restitution to the victim or community as a condition of parole has been questioned as being ultra vires. Review of this policy, and its legality, should be made by NPB. Such a requirement should at any rate only be made in cases of clear ability to pay where the restitution requirement will not create undue pressure on the parolee.

Suspension and revocation

A number of concerns have come to light as regards suspensions and revocations. The "revolving door syndrome" of rapid re-releases of revoked offenders, is primarily a problem in MS, and will be discussed under that heading, below.

There are still apparently problems with ensuring that parolees are given a full, descriptive account of the allegations which form the basis for the parole suspension. In some instances, notice consists only of an enumeration of the conditions violated, which sometimes, according to criminal lawyers consulted, lists those violations which are "hardest to disprove" and omits the true (but less easily proven) reason for the suspension. Suspension notice should include all alleged violations, together with a descriptive account of the behaviour which constituted the violation. Revocation should, moreover, not be permitted on grounds of "prevention" of a breach of conditions. Parole officers will occasionally suspend an offender for a few hours or days if they observe that he is drinking too heavily or otherwise deteriorating so severely that he is in need of a "short shock" or "time out" from his own lifestyle. While the Working Group supports the need for this kind of brief suspensions (that is, suspensions done to prevent a future breach of conditions) we do not endorse the translation of these suspensions into revocations under normal circumstances, a practice which is already apparently rather rare.

The brief received from the Criminal Lawyer's Association of Ontario also points out two interrelated sets of problems in the suspension and revocation process. The first is that parolees and MS cases may be held in custody beyond their warrant expiry date because a strict interpretation is placed on Section 20(1) of the Parole Act, which requires an inmate, upon revocation of his parole, to be "recommitted to the place of confinement from which he was allowed to go and remain at large at the time parole was granted to him, or to the corresponding place of confinement for the territorial division within which he was apprehended". Suspended offenders are thus typically held for return to the penitentiary they were released from, and distances and limitations on the availability of suitable transportation and escorts may cause considerable delays, sometimes even past warrant expiry. Delays in scheduling the offender's appearance before NPB once the transfer has been effected will also prolong the situation.

A compounded problem occurs - affecting some 200 persons a year in Toronto, according to the C.L.A. - when the offender is facing new criminal charges. There may be considerable reluctance on the part of the provincial bailiff to "ship the body" to the appropriate federal penitentiary in order for the revocation and possible re-release to occur: if bail has been set, the bailiff may wish to see the offender remain in the jurisdiction in order to appear in court or report to the police; and if bail has not been set, the warrant of remand will technically require that the defendant be held until trial or the setting of bail. In the meantime, the criminal court may be awaiting the outcome of the suspension/revocation process before making a decision as to bail. Section 457 of the Criminal Code in fact is often interpreted as not permitting bail or a bail hearing for suspended parolees ("detained in custody in respect of any other matter").

The C.L.A. makes several recommendations for resolving these interlocking problems. The Working Group endorses them. First, Section 20 of the Parole Act should be amended so as not to require recommitment to the original releasing penitentiary. (Additionally, negotiations could be undertaken, and in fact were begun some years ago, to have local jails, parole offices and CCC's designated as "penitentiaries" for the purpose of recommitment and revocation decisions, especially in brief "turnaround" cases.) Second, parole officers should inform the suspended offender of his option (NPB Policy and procedures, 106-2 [1-2]) to consent to his revocation and thereby waive these proceedings, which he may wish to do if little time is remaining before his warrant expiry or mandatory re-release date. Third, the offender should be informed as soon as possible of his next mandatory release date. (Surprisingly

often, the parole officer is unable to obtain an accurate estimate of the old and new remission standing to the offender's credit, and because of this the parolee may serve time in custody past warrant expiry. Parole officers should have available a standard way of obtaining an accurate estimate in these cases: the Working Group recommends that, as a possible method, greater care be given to the accuracy and details of entries on Penitentiary 208 [Release] forms, and that a copy of this form always be available for the parole officer to consult.) Finally, Section 457 of the Criminal Code should be amended to make it clear that suspended parolees have a right to a bail hearing.

The Working Group also recommends that delays in scheduling revocation hearings and reaching a final decision as to revocation be reduced as much as possible. An examination of the "warrant register" noting all 91 suspensions (and 7 revocations without a prior suspension) occurring from the Ottawa District parole office from January 1 to October 3, 1980, showed that the time lapsing between the date of suspension and the date of ultimate revocation may be quite lengthy. Of the 42 applicable cases for which the dates were recorded at the time of the survey, 20 revocations occurred within a month, but 11 took longer than two months. There is no required limit on the time to a post-suspension hearing. We recommend that the Parole Act be amended to require that the post-suspension hearing occur within two months of the parolee's request for it, and that "reserved decisions" as to revocation not prolong the ultimate decision beyond two months unless it is unavoidable.

The Working Group was told by a number of inmates that suspended parolees often do not bother to request their post-suspension hearing, presumably because little benefit for them is perceived to occur from hearings. Ministry data sources do not provide information on what proportion of suspended parolees request their hearing, unfortunately*. Every effort should be made to correct any delays or defects which may contribute to a low rate of request for hearings, since it is essential that the appearance and reality of justice be maintained in a process which materially affects loss of remission, potential time to be served, and the presence of a revocation on the offender's record. In particular, revocation should not normally occur without a prior hearing if the offender requests it. Such instances seem to be rather rare, but they may occur when there has been no suspension of parole: the Parole Regulations,

---

* Workload statistics from the B.C. office of the NPB provide the closest thing to an estimate of the hearing rate. In 1980, 504 suspension warrants were issued in the region, and 161 post-suspension hearings were held, or about 32% of 504. From an Ontario region sample, Latta (1981) estimates the hearing request rate at 32-38%.

20(2), require a hearing only in cases which have been suspended by the parole officer. Even where there has been no suspension, a hearing should normally occur at the offender's request unless he has obsconded and is unavailable.

Finally, many offenders complained during our consultation of the "excessive" use of suspension and revocation in non-criminal circumstances. Ministry data sources show that of the persons released on full parole or MS in any given year, about half of the eventual revocations which occur are not accompanied by a new criminal conviction. "Technical" revocations of Mandatory Supervision seem to be increasing. Of course, many of the "technical" revocations may mask a new crime which is suspected but not proven, and there is no real data on the actual circumstances surrounding suspensions and revocations. Research is need in this area.

EARNED REMISSION

The perennial question in remission is, "Can it ever be made to be truly earned?" In Chapter II, we concluded that, given the types of institutions involved and the level of resources which can realistically be expected in CSC, it is not possible to administer remission truly on the basis of evaluating inmates for exceptional, average, and below-average performance.

Reservations have also been expressed about the desirability of creating a "truly earned" remission system, in terms of the institutional tension it could generate, the confusion it would cause among sentencing judges, the implications for increasing penitentiary populations, the effect on parole decisions, the possibility of increasing disparities and unfairness, and the questionable overall benefit to be gained.

Efforts occur periodically to try to make remission "truly earned". At least three such efforts have occurred in the last few years: in 1974, in 1977, during the shift from statutory and earned remission to an "all-earned" system, and again in late 1978 and 1979, after it had become clear that the new system worked largely along the same lines as the old. At present, study is ongoing of the possibility of integrating remission with other incentives systems, such as work assignments, pay scales, temporary absences and parole. The Working Group is skeptical about the feasibility of these plans and, for the reasons noted above, has reservations about their desirability as well. Above all, remission should not determine the parole eligibility date, because of the tenuous or inconsistent connection between primary release considerations and the needs of penitentiary management and control.

Two remaining issues in remission will be discussed below. They are: disparities in application (including questions of review of failure-to-earn decisions), and loss of remission during parole revocation.

Disparities in remission

Because of the very high rates of earning of remission in CSC, differences in rates of remission are sometimes overlooked. Nonetheless, there are differences (though usually small in absolute terms) in the amount of remission earned, depending on the region, the security level and the individual penitentiary involved.

Data for the first quarter of 1980 show that there are small regional differences in the remission rates for program participation, and somewhat larger differences in regional rates for disciplinary evaluation. The number of inmates per 100 population who do not earn maximum remission for program participation does not vary much (from a low of 5.0% of inmates in the Prairie region to a high of 7.3% of inmates in the Pacific region). Similarly, the actual number of days of remission not earned for program participation per 100 inmates per month varies from 31 to 36 in all regions but the Prairies, which has a much lower rate of 21 days lost per 100 inmates per month. However, the proportion of inmates losing remission for reasons of disciplinary conduct varies from 1% to 12% in the regions, and the regional rate of loss of actual days of remission based on conduct varies from 4 to 41 days per 100 inmates per year. Again, the Prairies and Pacific region provide the lowest and highest rates of lost remission (but curiously, the rate of issuance of disciplinary "caution slips" is about the same in those two regions, and higher than in the other three regions.)

Clearly, there are marked regional differences in the relative proportions of inmates losing remission for disciplinary infractions, and in the actual number of days of remission involved. Differences in the number of caution slips issued, and in the type of staff typically involved in issuing them (custodial or program staff, for example) suggest differences in the administration of the system as well as the ultimate results in terms of days of remission (see Tables A-28 to A-31).

Other differences in remission earning are observable: compared to an overall average of 47 days of remission lost per 100 inmates per month, minimum security inmates lose an average 212 days, while medium and maximum security inmates lose an average 38 and 53 days, respectively. The fact that minimum security inmates, who are by definition considered less of a risk to society and to fellow inmates, lose over 5 times as much

remission as inmates in the next highest security level, may be troubling. On the one hand, inmates in minimum security may have more "opportunity" to get into trouble, but on the other hand, some of the differences may also be attributable to closer contact and observation between staff and inmates.

Maximum security inmates, however, lose more remission on average than do medium security inmates, though they lose less for disciplinary reasons (10 days lost for conduct in maximum compared to 23 days lost for conduct in medium) and more for non-participation or poor participation in programs (43 days lost for programs in maximum, compared to 15 days lost for programs in medium). These differences in earning rates according to security status are not easily attributable to any one factor such as program availability, use of punitive dissociation (during which no "participation" remission can be earned), restrictions on the availability of other punishments or privileges, the presence of "independent chairpersons" in disciplinary procedures at maximum security penitentiaries or the types of staff involved in evaluating inmates and issuing caution slips.

Data on the rate of earning of remission in individual penitentiaries show strong variation, suggesting that the manner of administration of the program in separate institutions may be the most important determinant of the outcome. Three medium security penitentiaries in the Pacific region show different lost remission rates of 12 days, 66 days and 81 days per 100 inmates. Two maximum security penitentiaries in Quebec have rates of 71 and 111 days' remission lost per 100 inmates per month. The Prison for Women has the highest rate of lost remission of any medium or maximum security penitentiary - 178 days lost per 100 inmates per month.

One footnote to this discussion of disparities in the awarding of remission is that some staff and inmates mentioned during our consultations that custodial staff who perceive the formal disciplinary process of punishing inmates as too difficult or cumbersome and beyond their control, have (despite a case management directive forbidding it) been using "caution slips" as a means of accomplishing punishment without conviction in disciplinary court. The practice is a difficult one to prevent without mandating the use of disciplinary court prior to any loss of remission for bad conduct. This alternative could result in more inmates being charged for more minor types of misbehaviour, and possibly losing more remission days as a result-an outcome which may not be desirable. (A multiplicity of charges can in turn affect parole chances.)

On the whole, the Working Group feels that it would be preferable for remission to operate as a system which punishes

serious misconduct in penitentiary, and is not geared towards encouraging or evaluating program participation. We feel that this would be a fairer and more equitable system than the present one, which though largely geared towards punishing misconduct, can be used in certain circumstances in ways which promote disparity and institutional tension.

However, if this recommendation to use remission only to punish misconduct is rejected, we recommend that CSC institute a system of far more specific criteria for the evaluation of program participation, the use of caution slips, and the translation of these indicators into a final determination of "number of days". In particular, guidelines are needed to help "independent" and CSC disciplinary chairpersons to decide when to take away remission as a punishment and in what amount. However, since (in terms of number of days) the largest differences appear to be in "participation" credits, guidelines for making these awards are just as important, although more difficult to specify.

The Working Group further recommends that federal inmates be given the right to appeal the loss of remission to the National Parole Board in Ottawa for an independent review of whether the circumstances of their loss of remission fit the criteria specified by CSC. The reason an appeal mechanism outside CSC is considered necessary is because of the direct effect which remission has on the time served by some inmates, and because of the need for a centralized review to reduce regional disparities in policy and application. NPB should not, however, have any role in the formulation of remission policy. This power is, we feel, best left in the hands of an authority other than the parole authority.

A final disparity worth mentioning is the one between the descriptive "earned" remission and the reality of how the program operates. If remission does not operate as a "positive" earning system, as we believe it never will (within credible limits of resource availability and system coordination), it should not be called "earned" remisson. Although this may appear to be only a semantic matter, it is extremely irksome to inmates, especially in the context of mandatory supervision, and it is inconsistent with goals of public accountability and clear communication with other agencies such as the courts. It is also not conducive to internal consistency and accountability within CSC.

Remission loss for parole revocation

The submission made to us by the Canadian Association of Elizabeth Fry Societies points out an issue of inequity in the

present remission program. Currently, an offender on parole or mandatory supervision loses the remission standing to his credit if he is revoked to penitientiary. The amount of remission he has accumulated (and will lose) is determined by the amount of time he served in penitentiary prior to release. The CAEFS submission suggests that is is inequitable that two parolees revoked for the same violation of parole should lose different amounts of remission credit, dependent on the time previously served and not on the nature of the violation of parole.

To amend this type of inequity is difficult because of the extremely narrow use made of the power of "recrediting" of remission in 1977. NPB procedures permit recrediting of remission to an offender only in cases where "undue hardship" would otherwise result, and the examples given in the Policy and Procedures Manual make it clear that the circumstances where recrediting is allowed are to be very unusual indeed. This stringent policy appears to have been an over-reaction to the wholesale recrediting of remission by penitentiary staff that took place under the dual, statutory and earned remission systems of the past. The criteria for the recrediting of remission (which we believe should remain with NPB) should be expanded to include a principle of commensurate punishment for violations committed while on parole, and a more generous notion of fostering equitable outcomes for similar circumstances.*

Other issues of remission

From the discussion on objectives in Chapter II, it is clear that remission has many functions besides reinforcing the penitentiary employment and disciplinary system. These functions include: serving as a "safety valve" for NPB caution, by releasing non-paroled inmates at the approximate two-thirds date; ensuring the supervision of non-paroled inmates by requiring that remission credits be served under MS supervision in the community; and, through these functions, reducing time served and penitentiary populations.

These functions are seen by some as dysfunctional, however. Persons released through remission at the two-thirds date can commit new offences which would otherwise have been prevented or delayed (as our analysis of "Incapacitation" in

* Both this view of the remission recrediting power and the proposed new power to review remission loss (above) by NPB require, to be properly and fairly carried out, a detailed and up-to-date system of information feedback to NPB of the amounts of remission being awarded and lost for specific types of circumstances. This feedback system will be described in greater detail in the next chapter.

Chapter II showed, about a third of the persons released through remission are revoked before warrant expiry). The creation of mandatory supervision through remission is an extremely contentious issue which is dealt with below. Early release (or reduction of time served) is seen by some critics as undue mitigation of punishment or a usurpation of the sentencing power of judges (though not all judges agree themselves with this assessment). The automatic nature of the early release created by remission is seen by others to be inconsistent with the notion of having a single authority for all early releases.

While ultimately the Working Group was not able to agree as to whether, on balance, it was better to retain remission (the pros and cons of the major alternatives are laid out in Chapter V), we did agree on a few notions and conclusions. The first was that, some popular notions to the contrary, there is nothing inherently invidious in the judge's sentence being effectively reduced or mitigated by remission. Remission has been in existence for 112 years and its effect upon the time served in penitentiary by non-paroled offenders is understood on a general level by sentencing judges, who allow for remission in their choice of sentence length.

Our second finding was that if judges did not "compensate for" remission in setting sentence, and if the abolition of remission were to mean necessarily longer time served in prison by convicted offenders, this would not, on the whole, be desirable. We agree with Ouimet (1969), Hugessen (1973) and the Law Reform Commission (1976) that, except for a very few individuals who are a physical threat to the community, offenders should spend as little time as possible in penitentiary. Imprisonment is expensive, can be harmful, and in many cases is dysfunctional to successful readjustment in the community. There would be considerable human and financial costs - but no measurable benefit - to extending the current "norm" of time served by the number of months or years which remission removes.

Third, we are not as convinced of the need for a "single releasing authority" as were some previous studies (Hugessen, 1973; Law Reform Commission, 1976). The notion of one coordinated system for all releases is theoretically sound from some perspectives, but carries (as we have seen with TA's) certain practical difficulties. Beyond practicalities, however, there can be said to be merit in maintaining instead a balance of powers in release between the judiciary, parole, and penitentiaries. By the same token as one may wish to preserve fixed parole eligibility dates (before which the inmate cannot normally be released) as a "check" on Parole Board liberality, so one may wish to preserve remission as the complementary "check" on Parole Board conservatism. In any event, the "single release authority" notion is not necessarily an ideal.

MANDATORY SUPERVISION (MS)

Mandatory Supervision (MS) is such a controversial program that it has recently been a subject of its own review (Solicitor General, 1981), which, at the time of writing, has not yet resulted in any formal recommendations.

The controversial nature of MS is, in fact, one of its most interesting facets. It is controversial to NPB because the Board is constantly being blamed for the failures of offenders released on MS, although it has no hand in and cannot prevent* these releases, even if it believes the offender will be a physical threat when released. It is controversial to offenders because they consider remission as "time off" their sentence (as it was before 1970) and they resent having to serve the remitted portion under supervision, subject to revocation (especially for non-criminal behaviour), after their release. It is controversial to the police, who because they deal with MS violations in the form of arrests, regard the overall program as a failure. It is controversial to parole officers because of the resentment and hostility of offenders which make supervision difficult and unpleasant. Parole officers also have to deal with other problems caused by or associated with MS, such as the paperwork and frustration involved in "revolving door" cases (see below), lack of release plans (Atack, 1978) and even, for some, a sense of personal risk from MS cases. Finally, it is controversial to penitentiary authorities who have to live with the "returns" from MS, revoked offenders who are often bitter and difficult to deal with.

Outside critics (Auditor General, 1978) and internal CSC authorities concerned about costs point to the contribution of MS to penitentiary populations (an estimated 319 to 433 inmate-years in 1978: Canfield and Hann, 1978) and to person-year requirements for parole officers and support staff. Civil libertarians complain of the arbitrary nature of many of the revocations from MS, the ineffectiveness and oppressive nature of supervision, and the removal, through MS, of much of the practical effect of remission.

Not surprisingly, the above groups have widely varying views of what should be done about MS, each determined largely by the nature of their involvement with the program. Singly, none of these viewpoints would make MS so controversial, but

---

* Other than by immediate suspension and subsequent revocation, on the day of MS release, of offenders thought to be dangerous. NPB has used this technique on a trial basis in a few recent cases to test whether the federal court will uphold the practice, though as yet no appeals have been lodged against such action.

together, they make MS a very sensitive issue indeed. The police* and inmate groups agree (if on nothing else) that "MS" is the biggest single issue in conditional release. It should be pointed out, however, that the police actually mean that remission, or the automatic release of non-paroled offenders prior to warrant expiry, is the biggest single issue in release, not the mandatory aspects of the supervision itself.

The advantages and disadvantages of the major alternatives for modifying MS are discussed under "macro models". They include such options as abolishing MS while retaining remission, abolishing both MS and remission, making post-release assistance voluntary with the offender, and establishing "separate" supervision terms (separate from the sentence) after release for all offenders. Some of the more operational issues or problems which have been raised with MS are discussed below.

Effectiveness issues in MS

MS was introduced as a "logical extension" of the community supervision process to cover all persons leaving penitentiary (not just parolees as had been the case). Some** police groups and the overwhelming majority of offenders feel that MS is ineffective in reducing recidivism. Not surprisingly, parole officers tend to disagree. The literature on supervision effectiveness generally is difficult to interpret definitively, as we have seen, and it is not known to what extent the limited optimism extractable from the literature might be further limited in cases of hostile or intractable offenders, as many persons on MS are said to be.

However, it has been seen (Chapter II) that the rates of revocation from MS in a six-year follow-up of 1974 release are not extremely different from the rates of revocation from parole releases in the same year. (The rates of violent and other recidivism from all forms of release will be examined in more detail in the next chapter). The alleged differences between parole and MS populations tend to be exaggerated. As many parole officers we consulted remarked, there are both intractable and amenable offenders to be found on both parole and MS, though MS offenders do present more overall needs for assistance and supervision than do parolees.

---

* Or at least, those police groups represented by The National Joint Committee of Chief of Police and Federal Correctional Services, whose brief called for the abolition of both remission and MS.

** But not all: some regional committees of the NJC of the CACP/FCS favour retention of the present system of MS (NJC Annual Report, 1979).

The Working Group was unable to agree on whether remission credits should or should not be mandatorily served under supervision in the community. There was some feeling that the bitterness felt by offenders over having to serve remission under supervision made successful intervention possible only in a few cases, and that the success rates shown by MS cases occur regardless of, or in spite of, what we do to supervise people. On the other hand, there was also some feeling that the research on supervision effectiveness is inadequate for drawing conclusions about the specific impact of intervention on either amenable or unamenable offenders. Further, removing the requirement of supervision for the "worst" offenders for the remitted portion of the sentence could cause serious public apprehension about the protections offered by corrections. Finally, those Working Group members who did not support MS abolition felt that in general it was better to work on improving and evaluating supervision as a whole, rather than to hack away piecemeal at its application to specific offender groups.

One specific problem touching MS effectiveness is the "revolving door syndrome", a situation in which, because of the workings of the former remission system, a revoked offender must be almost immediately re-released from penitentiary*. This phenomenon has been explored as deeply as present automated data systems permit by the MS Committee, which concluded that the phenomenon is caused by a multiplicity of factors, including old earned remission, street-time credit, and the length of the average supervision (especially MS) period. One option given a great deal of consideration by the MS Committee is that, to lessen the revolving door syndrome, revoked MS offenders not be permitted to earn remission on the remainder of their sentence (or that part of it which does not overlap with any new sentence they may have received). As yet, however, no recommendations on the subject have been formalized. The Working Group, for its part, was unable to agree on whether the costs of this option would outweigh the benefits.

Fairness issues in MS

There are two main fairness issues in MS: first, whether the program itself is fair, given the meaning in terms of sentence mitigation which it has taken from "earned remission", as well as the questions of its limited effectiveness and "repressive" nature; and second, whether MS offenders are treated differently from parolees (by parole officers, NPB, police, or judges) in ways which are not justified by their behaviour.

---

* The former system of earned and statutory remission called for full recrediting of the accumulated "earned" remission upon revocation. Some inmates still have some "old earned" remission to their credits.

As for the first question, the Working Group finds the inmate position on the unfairness of MS to be perfectly understandable, given the relatively control-free situation which predated the introduction of MS. However we could not agree on whether the provision of supervision to all offenders, even if of unknown effectiveness, is desirable at least until more definitive evidence of its marginal effect is in. (There is some feeling on the Working Group that assistance made available to those remission-released offenders on a voluntary basis would be an adequate, if not a better, approach to MS.)

As to the differential treatment given to parole and MS offenders after release, we are unable to judge whether (as some have claimed) MS cases receive more police "harassment", harsher judicial treatment, or lighter or harsher treatment from parole officers and NPB (both charges have been made: that parole authorities treat MS cases more casually because "they aren't ours" and nothing can be done for them; and that parole cases are treated more liberally because parole authorities want "the statistics" to look as successful as possible.) We have no direct evidence of differential treatment, but some of the groups consulted believed that these types of discriminations do occur. As recommended above, the Ministry should conduct detailed research on supervision, including MS, which would allow it to make an assessment of whether the treatment of MS cases in service delivery, nature of surveillance activities, use of suspensions and revocations, etc., differs from the handling of parole cases, and if so, whether the differences are attributable solely to differences in MS case needs and behaviour.

CHAPTER IV
SYSTEM-WIDE CONCERNS

Both during our consultations and our study of the individual elements of release, we were struck by a number of particularly stong concerns which ran as a consistent thread through all release programs. The most obvious and, some would say, most relevant concern is over violent and other criminal acts committed by persons released under federal authority. We will therefore address this concern at some length in this chapter. Other recurring concerns addressed below are sentencing, problems experienced by special offender groups (especially women, life-sentence inmates and native offenders), eligibility dates for release programs, services to and relations with provincial correctional systems, and the two-sided question of disclosure of information and protection of confidential information from disclosure.

VIOLENCE AND OTHER CRIMINAL VIOLATIONS COMMITTED BY PERSONS UNDER RELEASE

The Solicitor General's Committee on Mandatory Supervision (1981) considers the commission of violent acts by persons on MS to be the single most powerful concern about the program. (Indeed, the submission made to the Study by the National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services refers only to the problems created by the few "dangerous" persons on MS, whose movements and behaviour cannot be controlled by parole officers.) While concern over any type of criminal or even technical violations by released persons is prevalent, it is undoubtedly true that it is the violent acts committed which cause the greatest concern, fear and anger. In fact, one of the factors which contributed to the decision to undertake this Study was a series of violent acts committed in Edmonton by federal releases in 1979.

In order to address the question of violence and other violations by released offenders, we drew on several sources of information. First, we used Ministry data sources to trace the outcomes of full parole and MS cases over the last few years to determine the rate of violations, especially violent violations (data for criminal acts committed while on temporary absence or day parole are, unfortunately, not reliable and cannot be used). Second, we reviewed the case audits performed on a number of "spectacular incidents" committed by persons under conditional release. (A "spectacular incident" is a rather flexible term applied to an instance of especially disturbing criminal conduct by a federal offender under release,

especially an act which receives "spectacular" coverage in the media. NPB and, now, CSC perform a special investigation of all incidents which become designated as "spectacular".) And finally, we examined the literature on the prediction (clinical and statistical) of violence in order to determine whether any useful information could be drawn from it to improve our ability to anticipate which offenders will be a physical threat when released.

We first examined all cases of full parole or MS release occurring from 1970 to December 1978, in order to obtain an overall view of the outcomes of these cases. Table 6 presents these outcomes for 30,370 of the cases which were full-released in the period. About half the cases have successfully completed their supervision period, though about ten percent of the parole cases and one percent of the MS cases have not yet reached warrant expiry and could ultimately represent either a success or a failure. About 30% of the parole cases and 38.5% of the MS cases were readmitted to penitentiary* or were returned to penitentiary during their supervision period, either for a "technical" violation or one which involved a new conviction for an indictable offence registered in the data base.** These figures include 20.0% of the paroles and 22.3% of the MS cases whose revocations involved a new criminal conviction. An additional four percent of the parolees and 11% of the MS cases successfully completed their supervision period but were later readmitted to penitentiary for a new crime.

The most typical outcome, therefore, of either parole or MS is the successful completion of the supervision period, without detected new crime or revocation for technical or criminal reasons. Just over a fifth of all cases have so far

---

* Some cases (148 MS cases and 8 parole cases) were readmitted to penitentiary on a new offence warrant but not recorded as "revoked". These may be cases of new convictions followed by an "interruption" of MS (not yet legally possible with parole); or, they could be aberrations in the data.

** It must be noted that a "technical" revocation may actually have involved a new offence, but one which did not result in a conviction. Any undetected violations are also, of course, not recorded in these figures. There may also be some minor offences not reflected in the data (for which the offender merely received a brief stay in a provincial jail), though, according to Section 659 of the Criminal Code, all persons convicted of any new crime while still under a federal warrant must serve their prison sentence (if any) in a federal penitentiary. Finally, offences which have resulted in a revocation but not as yet in a conviction will not be reflected here as "new crime revocations".

TABLE 6

OUTCOME (TO JUNE 1980) OF RELEASES ON FULL PAROLE OR MANDATORY SUPERVISION, PERSONS RELEASED FROM JANUARY 1970 TO DECEMBER 1978

OUTCOME	FULL PAROLE NUMBER OF CASES	%	MS NUMBER OF CASES	%
Revocation without* new offence	1,575	10.8	2,574	16.2
Revocation with new conviction for indictable offence	2,903	20.0	3,533	22.3
New offence and penitentiary admission after successful completion of supervision period	563	3.9	1,731	10.9
Successful completion of supervision period, and no subsequent readmissions	8,010	55.1	7,848	49.5
Still under supervision	1,482	10.2	151	1.0
TOTAL	14,533		15,837	

* While some of these cases may have involved a new criminal act, no new conviction for an indictable offence is registered.

resulted in a conviction for a new offence before warrant expiry. About a third of all cases have been returned for any reason, technical or criminal.

Though it was impossible for us to obtain useful data* on the actual circumstances surrounding "revocations without new offence", we were able to obtain information about the types of offences for which offenders return on a "revocation with new conviction". Table 7 shows the breakdown of offence types for which full parole and MS cases were readmitted during their supervision period from January 1975 to June 1980 (the years for which the most reliable data are available). In the five year period, 3,303 persons on full release, or about 560 a year, were revoked from supervision with a new offence or readmitted on a new warrant during supervision. Of these annual readmissions, well over half (59.3%) are for "pure" property crimes: crimes like break and enter, theft and fraud which rarely involve personal contact between the offender and the victim. Another 16% of the readmissions were for robbery, a property crime which involves personal contact (and hence is often called a "crime against the person" though it does not always involve direct physical violence).

About 12% of the readmissions (391 over the 5-year period) were for clearly violent crimes such as homicide**, kidnapping, assault, rape or other personal crimes: almost half of the offences against the person group were readmitted for non-sexual assault or wounding. A total of 72 homicides resulted in the readmission of federal releases to penitentiary during the period. About five percent of the readmissions were for narcotics offences.

If this breakdown of annual readmissions can be taken as suggestive of the patterns of crimes for which a "cohort"***

---

* NPSIS contains some data on the types of reasons ticked off by parole officers on a checklist form filled out after certain suspensions. We did not examine this information because it would not tell us much about the actual circumstances of the suspension, and would be confounded by questions about whether parole officers were giving the "official grounds" or the "real reason" for the suspension.

** Including murder, manslaughter and criminal negligence causing death.

*** A "cohort" is used here to mean a group of offenders all released during the same time period. Note that Table 7 actually refers to offenders readmitted only up to June 1980 who had been released between 1975 and 1979, and thus may provide an inaccurate representation of the "ultimate" results for that cohort.

of offenders are ultimately revoked or readmitted while still under warrant, it suggests that about a fifth (from Table 6) of all full-released offenders are eventually revoked with a new conviction, and of those, about a quarter (27.6%) commit (or are detected in) an assault, robbery, homicide, rape, or other "personal" crime. We have no way of knowing how many of the "technical" revocations may "mask" a violent new crime which could not be proven or for which the charges were dropped because of the revocation; presumably, in cases of violence, the latter circumstances would be rare.

In any event, these figures suggest that the "violence" of parolees and MS cases is often exaggerated or appears, because of the visibility of failure cases, to be higher for the overall group than it actually is. This is not in any way to detract from the unquestionable heinousness of the violent crimes which have occurred. It is also not to say that 560 new-crime readmissions (not necessarily violent) by federal releases annually is "acceptable" in any absolute sense: what number is "acceptable" in the circumstances is impossible to say as an absolute. For some, of course, any new crime committed by a person still under sentence for a previous crime is unacceptable, and if it is impossible to predict with certainty who will not commit a new crime if released early, then no early releases at all should occur.

A more moderate view, however, is that early release provides some (perhaps major) benefits such as humaneness, assisting the reintegration of the offender, and controlling penitentiary populations and costs. Some also argue that only early release helps to prevent further involvement in criminal activity. The majority of offenders do not appear to become involved in new criminal activity during the period for which they are at conditional partial liberty in the community before the expiry of their sentence. (It should be noted that in the years in which these 3,303 incidents occurred, approximately 7,000 persons were released onto full parole and 13,000 onto MS.) To hold in prison the approximately 5,000 persons out under community supervision on any given day, in order to prevent the 560 annual new-crime revocations seems, in this view and in the view of the Working Group, excessive. It would be desirable, certainly, to be able to distinguish better those who will be violators, especially the violent ones, in order to detain them, but as will be seen below, the prediction of violence is as yet not within our capability, although a great deal of further study needs to be invested in the subject.

TABLE 7

OFFENCES COMMITTED UNDER SUPERVISION BY FULL PAROLE AND MS CASES RELEASED FROM JANUARY 1979 TO DECEMBER 1979 AND READMITTED OR REVOKED WITH NEW CONVICTION AS OF JUNE 1980

READMISSION OFFENCE (NEW CONVICTION)	PERSONS REVOKED FROM PAROLE	PERSONS REVOKED FROM MS	TOTAL	PERCENTAGE OF TOTAL OFFENCES
CRIMES AGAINST THE PERSON				
Murder	9	31	40	
Manslaughter	9	21	30	
Attempted murder	0	11	11	
Rape and attempted rape	10	25	35	
Sexual assault	4	23	27	
Other assaults, wounding	17	153	170	
Kidnapping, forcible confinement	6	15	21	
Criminal negligence causing death	2	0	2	
Other crimes against the person	10	45	55	
Sub-Total			391	(11.8%)
ROBBERY	127	394	521	
Sub-Total			521	(15.8%)
CRIMES AGAINST PROPERTY				
Break and enter	192	737	929	
Theft, possession of stolen goods	148	615	763	
Frauds	53	214	267	
Sub-Total			1,959	(59.3%)
NARCOTICS				
Possession of narcotics	7	26	33	
Trafficking and importing	42	72	114	
Sub-Total			147	(4.4%)
MISCELLANEOUS				
Miscellaneous Criminal Code	58	179	237	
Miscellaneous Federal and provincial statutes	2	4	6	
Escape and unlawfully at large	9	33	42	
Sub-Total			285	(8.6%)
TOTAL	705	2,598	3,303	(Grand Total)

We conclude, therefore, that the prevailing impression of a high incidence of violent recidivism by federal releases, especially MS cases, is a distorted one, and the actual rates of successful completion, and of non-violent but unsuccessful completion of supervision, are often overlooked.

A perennial question remains, however, of whether anything could have been done in specific cases to predict violent incidents or do something to control or prevent them. We reviewed the reports of two audits of a series of serious release failures. The first audit, conducted by CSC and NPB, is an analysis of 8 "spectacular incidents" committed by offenders on parole, MS and TA over a two-month period in Edmonton in 1979. The second is an NPB audit of all 49 MS cases involved in "spectacular incidents" from January, 1979 to March 31, 1980. Both studies were based on a reading of case files, but the first involved also a series of interviews with Edmonton area police, penitentiary and parole staff, and private aftercare workers.

(It should be noted, of course, that only a partial picture of violent failure or releases is given from looking at "spectacular incident" reports. As the internal review of the 1979 Edmonton incidents noted, the definition of a "spectacular incident" is quite flexible in both NPB Policy Procedures and CSC Divisional Instructions. Some types of cases seem to attract the label more than others, and not all cases of a violent nature will necessarily be designated as "spectacular". The incidents should not be taken as a random sample or population representative of "release violence".)

The internal audit done of the 1979 Edmonton incidents included the study of eight cases, though at the time some of the Edmonton press and public were referring to a "parolee crime wave" of 100 or more incidents (the others, which became lumped together with the eight federal release cases, involved provincial cases, bail cases and other offenders not on a federal release). These eight cases involved one person on an unescorted TA, three on day parole, two on full parole and two on mandatory supervision.

The most striking finding of this audit was that there appeared to be little which could have been done to prevent these eight incidents. Though the audit made a number of recommendations for procedural changes that would improve the overall system, the report states that it is likely that the outcome would have been the same even had these procedural refinements been in place. Our analysis of these incidents supports these conclusions to some extent, with reservations noted in the next parpagraph. Four of the eight offenders had no previous violence registered in their criminal records (though one of these had apparently been involved in brutal victimizations of his fellow inmates in penitentiary) and of these four, one had no prior criminal or juvenile record at all. Six out of eight had an acceptable or reasonably acceptable record in penitentiary. Four had received partial releases before the final one and had succeeded on them; one other had been on a TA program, which was cancelled for possession of contraband. Of the three out of eight incidents which were of a particularly bizarre or disturbing nature, only one allegedly involved an offender whose record of behaviour suggested mental disorder or brutal disregard for human life (the inmate who apparently victimized his fellows).

On the other hand, one of the eight cases had, prior to the "spectacular incident", been involved in violence while under supervision. This one parolee had abused his wife, threatened to kill her and had apparently fired a loaded shotgun in their home during an argument. This incident resulted in a suspension, but NPB did not ultimately revoke the parole as recommended by the parole officer. The latter incident, occurring during the release period, might arguably have resulted in revocation, and thus prevention of the ultimate violence committed by the offender while still on parole. (It can always be argued, of course, that it would have been committed later if not sooner.) In another case, the parolee was severely beaten in "some type of ruckus" at a friend's home, an incident which did not result in a suspension by the parole officer. For the most part, however, the post-release behaviour of these eight persons (in the short time there was to observe it: four cases blew up in less than a month after release) was ambiguous enough to suggest problems but not impending violence or is found in a sufficiently high number of cases as to be unreliable as a predictor; or incidents which might have been taken as "warning signs" were simply not detectable by the parole officer in the normal course of his duties.

The study by NPB of 49 "spectacular incidents" committed on MS in a 15-month period concludes that there were some cases under study in which suspension and revocation could have been more seriously considered by CSC and NPB officials. Some of the behaviour of the offenders, if considered in light of a

violent previous record, could have suggested impending problems. The tendency not to revoke or not to suspend was found to be more frequent among "revolving door" cases where a revocation would inevitably result in a relatively early re-release. It will be recalled from Chapter III that our consultation revealed some of the same reluctance to suspend or revoke in "revolving door" (or "turnaround") cases, variously blamed on parole officers or parole board members. Whatever factors are most to blame for the phenomenon, the Working Group is in agreement that the appearance and reality of "justice" demands that the time left to serve should not dictate suspension or revocation practices in serious cases, and that violence especially should normally result in revocation even in "turnaround" cases.

The MS audit also found that violence or violent "indicators" (not necessarily violent incidents, but might include things such as threats or carrying a weapon) could be found in the prior criminal record, penitentiary behaviour or supervision adjustment of all 49 cases studied, which the auditors felt were insufficiently considered during problem periods under supervision. Various other problems were identified: inadequate documentation; frequent changes in the parole officer assigned to an offender; an extremely stringent NPB practice of not placing on files certain information which is pertinent but might ultimately be seen (with negative consequences) by the offender who requests to see his file under the Canadian Human Rights Act; and instances of poor communication between CSC and NPB about the quality of the community adjustment and the content of the supervision offered.

The Edmonton and MS "audits" resulted in a total of 24 specific recommendations. For brevity's sake, we discuss these below under four substantive headings. Many of the most important of these recommendations have resulted in an identifiable change, and these are noted below. Other recommendations have been rejected by CSC, NPB or both, or are still under consideration. In any event, it is still too early to tell whether any concrete results have been felt from these changes or what the effect of their implementation will be.

1. Information needs

A number of the recommendations were primarily intended to ensure that more information is available to be considered in making decisions about release, suspension and revocation. Some of these recommendations were specifically intended to ensure the transmission of

certain information by CSC to NPB, in order that NPB can provide another caution "check" on cases.

The following recommendations have been accepted by CSC and NPB or were already policy at the time of the incidents: that there be a nationally coordinated system for preparing and processing audits of "spectacular incidents"; that information on an inmate's visits and correspondence be contained in parole documentation; that all new charges laid by police against federal releases be automatically reported to NPB; that there be an automatic update of CSC and NPB files when any new charges against a released offender are adjudicated; and that supervision reports (seen by NPB) specifically state the level of supervision* maintained on the offender. In instances where the procedures were already policy, mechanisms have been put in place to try to ensure more effective implementation of them.

A recommendation that NPB and CSC develop a more specific, common definition of a "spectacular incident" and process for carrying out the required audit, is still under discussion by CSC and NPB.

No specific action has been taken on the remaining recommendations in this group because one or both agencies disagree with them, cannot reach an agreement on how to address them, or are not in agreement that there is a problem: that more information should appear on written files rather than being suppressed or transmitted verbally, for fear of disclosure to the offender under the Canadian Human Rights Act (Bill C-25, 1977: see below); that parole officers should have more frequent contact with persons and agencies in the community with information about the released offender's adjustment; and that CSC send supervision reports to NPB every month for the first eight months after release (rejected by both agencies); that supervision reports contain more qualitative information about the nature of the supervision undertaken and of the offender's adjustment.

2. Accountability needs

Three recommendations were intended to ensure that "quality control" by NPB and CSC be implemented. They

---

* The level of supervision ("minimum standard") will determine the minimum required frequency of contact between the parole officer and the offender: every two weeks, every four weeks, or every quarter. (CSC Case Management Policy and Procedures Manual, 1980)

all require further written documentation by one or the other agency. Besides being intended to contribute to "quality control", they also seem intended to provide more information on practices to any future audit teams. NPB has agreed to supply more extensive comments on decisions to cancel a suspension (not to revoke) and to provide CSC staff with specific instructions about any new release plans set for these cases, and the information needed for a fresh "community assessment" report on the validity or feasibility of the re-release plans.

Two other "accountability" recommendations have not resulted in any action: that qualified NPB staff note in writing that they have read all supervision reports transmitted by CSC, and where possible make written comments on the case progress; and that there be more extensive written documentation of the actions taken by parole District Office Directors to ensure the quality of supervision by their parole officers.

3. "Tighten up" recommendations

A large group of recommendations are, or seem to be, ultimately directed towards a certain amount of "tightening up" of the system. This can take such forms as more contact between the system and the offender, the obtaining of more information on the offender, and a greater use of sanctions for wrongdoing.

The following recommendations have been accepted and most have monitoring systems in place to ensure their implementation: that stricter adherence be paid to notifying NPB of the proposed use of a private aftercare agency for supervision, and to ensuring that private agencies conform to certain standards for supervision and reporting required of CSC; that no release decision be made to be effective more than 2 months in the future, in order to ensure that up-to-date relevant information is considered; that NPB and CSC consider imposing more "special conditions" on CCC and CRC residents who may be in need of a stricter curfew or other conditions than are other residents of the halfway facility; that over-reliance on telephone contact between the parole officer and offender should not be tolerated; that the (brief) time left to serve by an offender under community supervision should not affect the decision to revoke the offender, especially in cases of serious criminal conduct where justice must be seen to be done; that any special conditions of a day parole

prior to MS be automatically carried over into MS unless otherwise indicated; and that NPB or, at NPB's request, CSC notify local police of the impending arrival of "high risk" MS cases, and of any specific concerns which there are about these cases.

The following recommendations of the "tightening up" variety have not resulted in action: that all released offenders be under "intensive supervision" for at least the first eight months after release (present CSC procedures state that intensive supervision should normally last four to six months); and that NPB give more consideration to special conditions and other possible "preventive measures" for persons considered particularly dangerous who are about to be released on MS.

Still under consideration is a final, rather vaguely worded recommendation that NPB consider the misconduct of a suspended parolee before considering possible new release plans, which was possibly intended to suggest that NPB should more consistently revoke released offenders who commit serious violations.

4. Justice and humaneness needs

A recommendation that NPB be more complete and candid in stating their reasons for revoking a release has been accepted on grounds of fairness, openness and accountability. A second recommendation, that the granting or denial of bail on a new criminal charge not be considered in the decision to revoke a current release, has not met with a formal response.

There has been another recent spin-off from the spate of "spectacular incidents" in the last two years - a number of parole District Offices have established more consistent and closer liaison with police departments in their area to ensure the sharing of relevant information and better communication between the agencies. This liaison, sometimes in the form of a designated parole officer as "police liaison officer", appears to have some valuable benefits in increasing understanding between police and parole, aiding efficient handling of arrest, warrant and notification procedures, and ensuring that identification and other relevant information on persons released to the area is available to police through the parole officers and vice versa. Regular meetings between parole and police officers seem productive for most offices; the designation of a specific parole service member as the usual liaison and information channel with police may be adaptable only for large city offices.

The Working Group tends to the opinion favoured by the Edmonton audit team, that it is unlikely that many of the spectacular incidents would be prevented through the implementation of the recommendations reviewed above. However, most are sound proposals from the case management viewpoint, and close evaluation of the implementation of those accepted should be conducted. In particular, a single coordinating body is needed to monitor the recommendations. The Working Group recommends that a CSC/NPB committee be established to review all the proposals made in these audits, evaluate their soundness, ensure that those which are valid but not yet accepted are implemented, and monitor the implementation and results of all those which are approved. This Committee should report to the CSC/NPB Interlinkages Committee on the progress of this implementation one year hence.

Prediction of violence

From an analysis only of violent failures on release, it may seem appropriate to conclude that violence is easily predicted. The MS audit reported that violence "indicators" were found in the records of all the offenders studied; it sometimes appears that past violence predicts future violence.

Past violence does indeed often appear in the records of persons who commit "spectacular incidents". But not all offenders with records of past violence will commit any violation, let alone a violent one, after release. Further, persons involved in violence do not always have a violent past. Past violence is not, therefore, a reliable sign of approaching violence on supervision, nor is the lack of a violent past a reliable sign that one will be non-violent in the future. However, greater incidence of violence in the past is associated with higher probabilities of violence in future, though the certainty or virtual certainty of violence in future is never assured.

There is no very accurate system for predicing violence which has yet been developed. Walker (1978:40) notes that "nobody has so far reliably defined ... a group of violent males with a probability of further violence approaching even 50 percent. In other words, we have not yet succeeded in providing criteria which would ensure that a prediction of future violence would be right more often than it would be wrong. With present criteria, it would more often be wrong." For reasons which can be demonstrated through complex mathematics, the more rare an event is, compared to the total number of persons or circumstances considered as possible "causes" of the event, the more difficult the event is to predict. And, regardless of how it may sometimes appear in the media and through other perceptions, violent recidivism among federal offenders is, as we

have seen, not frequent enough to permit accurate prediction of violence (i.e., pinpointing of all or even most of the future violent recidivists). Furthermore, even the available prediction systems which pinpoint some of the future violence do so while mistakenly "identifying" as future violent recidivists several hundred percent more individuals who will not, in fact, turn out to be violent. (Kozol, 1975; Molof, 1965; Steadman and Cocozza, 1974; Steadman and Braff, 1975; Stirrup, 1968; Wenk, Robison and Smith, 1972; Quinsey, 1977.)

An example may prove helpful. This example is drawn from real data on federal offenders released in 1970, 1971 and 1972 and "followed up" for three years after release, in an attempt to develop statistical aids to assist NPB in the prediction of recidivism (Nuffield, 1977). Because NPB was also interested in trying to predict violent recidivism, the researcher isolated only those instances of recidivism which involved actual or implied or threatened violence, in an attempt to "predict" these instances. A very broad criterion was thus selected, which included not only direct violence (homicide, assault, sexual assault, kidnapping, forcible confinement), but also all robberies, which do not necessarily involve violence. This broad criterion was selected in order to increase the "failure rate" and thus the possibility of achieving an accurate prediction: even at that, the failure rate over a three-year period (which would extend past the warrant expiry date of many of the offenders) was only 13 percent.

A numerical scoring system was developed, which (in the construction sample of 1,238 cases) resulted in the following prediction categories:

CATEGORY 1. (471 cases)
had a .05 failure rate (24 failures out of 471)

CATEGORY 2. (396 cases)
had a .10 failure rate (40 failures out of 396)

CATEGORY 3. (231 cases)
had a .20 failure rate (46 failures out of 231)

CATEGORY 4. (140 cases)
had a .33 failure rate (46 failures out of 140)

The first thing to note is that the most "dangerous" group which the system was able to isolate had a violent recidivism rate of less than 50 percent (33 percent, in fact: two successes out of every three in Category 4).

Thus, if we return to our discussion of Chapter II on incapacitation decisions and the two types of "errors" which can be made, detaining everyone in Category 4 will prevent 46 failures, (correct decisions) but will result in approximately twice as many "type two errors" (identifying as violent recidivists 94 other persons who will not actually commit violence when released). Perhaps more importantly, if our decision-maker were to release everyone in Categories 1 through 3, he would be making 110 "type one errors": in the remaining three categories, 110 persons who would not have been pinpointed will commit a violent act when released. Thus, a decision rule to release everyone in the first three categories and detain everyone in the fourth category would only "catch" about a third of all the future violent recidivists (46 out of a total 155). At the same time, 94 persons would have been detained mistakenly from Category 4: an approximate 200% "overprediction".

Applying the same calculations to a more cautious or conservative decision rule would "catch" more of the future violent recidivists, but would mistakenly identify more persons as future violent recidivists. That is, detaining all 371 persons in Categories 3 and 4 would "catch" 92 out of the total 155 future violent recidivists (or about three-fifths of them), but would mistakenly identify 279 other persons: an approximate 300% "overprediction".

Of course, it can be argued that "type one errors" are far more serious than "type two errors": it is worse to permit a violent crime to happen (at least while the offender is under sentence) than to hold 200% or even 300% too many convicted offenders in penitentiary. The 200 or 300% "overprediction" of violence and robbery in the above system would, in fact, be seen as quite acceptable to many critics, as a price to pay for correctly identifying a third or three-fifths of the future violent recidivists in the population.

The Working Group feels that, even with its rather broad criterion (including robbery) and its rather lengthy follow-up period (three years, or past warrant expiry date for many federal offenders), this violence prediction system is worthy of greater attention than it was received to date in the Ministry. We were struck, as has the Ministry Committee on MS, by the paucity of systematic efforts in the Ministry to study violence and develop more consistent, objectifiable systems for predicting possible future violent offences. We recommend that the above statistical prediction system be reviewed and re-validated on more recent data. It should also, following that process, be calculated for each federal offender at the time of admission, should be made available to CSC and NPB decision-makers on every case file, and should be placed, along

with statistical scores for general recidivism, on the Ministry data system (see below, under our seventh "system-wide concern").

CONFLICTS WITH SENTENCING

The second major system-wide concern we encountered was regarding the coordination of the release processes with the sentencing processes on which they are essentially based. We have already observed some of the problems which can occur in the interface between courts and release: difficulties in obtaining bail for persons suspended from a conditional release, for example.

However, problems of sentencing/release coordination go far deeper than these relatively minor problems. The major difficulties are that, by and large, sentencing judges are not well informed about release, that different judges behave differently in their sentencing vis-à-vis release programs, and that some judges in some instances deliberately set their sentences in such a way as to thwart the possibility of release before a certain date. (The latter difficulty would not be so much of a problem if the former difficulty did not exist, but different judges have individual approaches to dealing with the existence of release, based on different, and often highly imperfect, understandings of how release works.)

Probably all judges know that full parole eligibility normally occurs at the one-third mark in the sentence and that the last third of the sentence is, in the federal system, subject to remission. Beyond these basics, however, a considerable knowledge gap exists in the understanding of many judges. Many do not properly understand the differences between the federal and provincial systems of release, and when imposing a federal term sometimes do so in the mistaken belief that the offender will be immediately eligible for a liberal early release program, as he is in many provincial systems. Many judges are unaware that the federal system (unlike those of the provinces) requires all offenders to be supervised in the community for the remitted portion of the sentence (mandatory supervision: MS). Some judges, like the public, do not fully understand the difference between parole and MS. Some judges assume that anyone released before warrant expiry (federally or provincially) must be on "parole". Some judges believe that full remission is earned by almost all inmates while others have different estimates concerning remission. Few judges can correctly estimate the current parole rate or the possibility that a given defendant will receive parole. Some judges profess a belief - far beyond that now expressed by correctional authorities - in the rehabilitative value of

prison treatment programs, and may therefore sentence offenders on the mistaken assumption that a certain type of treatment (typically psychiatric or trade training) will be provided. Few judges understand properly the difference between temporary absence, day parole, full parole and parole by exception. Judges do not always ensure that they know what portion of his remanet an offender facing a new sentence on a new change will serve in prison after revocation.

In fairness, of course it must be said that some judicial confusion is a product of the complexity, confusion, low visibility, and conflicting objectives created by corrections itself. But we believe that, to some extent, the confusion has often proved functional to judges. Though there are some highly vocal exceptions (Bewley, 1977), it would appear that most judges strongly support the existence of both parole and remission. In fact, and understandably, several take the formal position that what happens after their pronouncement of sentence is not their concern, but falls within the purview of those correctional authorities who have the expertise to make the necessary decision.* A frequent judicial means of phrasing this official view is that "we cannot predict how the offender will work out in prison". This, rather, is for correctional officials to observe and, if appropriate, make release decisions upon.

There maybe other, less formal, reasons that judges support temporary absence, parole and remission. Perhaps, principally, these processes relieve judges of the burden of deciding precisely how long offenders should stay in prison, though their sentences will constrain the upper and lower limits of how much time is to be served. Rather, correctional authorities are given, with a majority of judges' support, the responsibility of determining the release date - and of accepting any inevitable criticism for failures committed by offenders while still under warrant. In addition, the present system relieves judges of the burden of making precise judgments about punishment, and allows them to pronounce a sentence which "sounds tougher" than it actually is, and than they really intend it to be.

Despite their support for conditional release, however, some judges set prison sentences in such a way as to ensure (so far as they understand it) that the offender will not be conditionally released until a minimum period of imprisonment

---

* This was the consensus view given us during our consultation with the provincial Chief Justices in Ottawa in November 1980.

has been served.* In more candid moments, some judges will admit to in effect tripling the sentence in order to provide for a fixed period of "denunicatory" imprisonment (prior to full parole eligibility), for a remission period, and for a "parole" or "rehabilitation" period. Hogarth (1971), in his study of Ontario magistrates, found that 59.2% of the judges were willing to acknowledge taking into account the possibility of mitigating action by the parole board. Mandel (1975) in fact makes an interesting case for the view that the introduction of parole in Canada has resulted in an overall increase in sentence length and in time served in prison.

This "tripling" effect is not, in itself, particularly troubling: judges ought to be aware and in control of what constraints their sentence will place on the upper and lower limits of imprisonment and release discretion. However, as has been suggested, some judges do not understand these constraints well, and they create anomalies in release. Further, not all judges allow for release in the same ways, and this can create disparities. Finally, of course, though it is at present fairly accurate to assume that all federal offenders will earn close to the maximum one-third remission, it is not warranted to assume that all federal offenders will be paroled, and hence the routine "tripling" of the minimum period may create inequities. The further result is that some offenders serve more time (or sometimes less time) in prison than the sentencing judge intends.

It must be acknowledged, on the other side, that correctional authorities have not always behaved in ways which would reduce conflicts with the judiciary or which would contribute to better understanding and coordination. Perhaps the most obvious example is the official contention that parole and remission do not alter the sentence of the court. All this means, in practical terms, is that they do not alter the date of warrant expiry. But all concerned understand (though some understand it imperfectly) that both parole and remission have a marked impact on the nature of the sentence: how much of it will be served in prison, and how much in the community, and under what conditions. The complexity of eligibility rules has also contributed to confusion among judges about what a sentence "means". Further, some judges may feel that release has been used, and may still be used, to violate the spirit or intent of the sentence.

---

* Again, however, not all judges understand how their sentences will affect release eligibility; the Working Group heard a particularly alarming story of an Ontario magistrate, on a visit to the Prison for Women, assuring a prisoner that despite her recent 25-year-to-life sentence, ways and means could be found for her to be released shortly by corrections officials.

Additionally, despite increasingly modest claims for rehabilitative effectiveness (Federal Corrections Agency Task Force, 1977), penitentiary officials have not systematically kept judges informed of the limited capacities of those programs (mostly psychiatric treatment and industrial training) which judges place most faith in and often assume will be readily available to the defendant. The introduction of "earned" remission in 1977 and the accompanying statements about how it would operate in a manner which truly distinguished among poor, average and exceptional performances has not contributed to a clear understanding of remission by sentencing judges. Finally, NPB has not, and currently cannot, better inform judges of the more specific criteria in use and how these will affect individual cases, such that judges would have a sound understanding of which defendants would be more and less likely to receive parole.

CSC and NPB must not only make concerted efforts to better inform judges of the formal mechanisms of release programs (and the eligibility constraints imposed by law and procedure upon them), but must also provide them with details as to the actual operation of the various release and imprisonment programs. We would suggest that an annual publication be prepared and mailed to all criminal court judges, explaining not only the formal workings of the system, but summarizing (in far more detail than is available, for example, in current Annual Reports of the Ministry) the numbers of eligible persons who did and did not receive an early release in the year (including rates of remission loss), the average amount of time served prior to release and the average percentage of the sentence served, the length of the release (particularly for TA's and day paroles), some of the characteristics of those released and not released, and the outcomes of the most recent available "cohorts" of releases. (This type of publication requires a better data feedback capability then is presently enjoyed by the Ministry. Later in this chapter we describe the data system needed.)

Also to be included in this publication would be the more specific criteria for release and revocation which we earlier recommended be developed by NPB and CSC. Finally, a brief factual description should be included of the types of programs available in every federal penitentiary, together with a statement of the number of inmates who can be accommodated in these programs. This should very definitely not be a "public relations" exercise, but a precise statement of what are very real and very tight limits upon the resources available for such programs as psychiatric and psychological assistance (typically for example one pyschologist available for every 100 to 200 inmates) and industrial employment programs (typically

able to employ less than fifteen percent of all inmates working at a job within penitentiary).

Written publications of the type described could form the basis for improved communication and coordination, but ought to be supplemented by seminars or conferences attended by judges and parole officials on a regular basis. Though attempts to organize these kinds of seminars have been made with limited success in the past, efforts should continue to try to arrange meetings.

Finally, there is one source of conflict and anomalous decisions which is of major concern both in itself and for its implications for penitentiaries and parole, namely sentence disparity. Well documented by Hogarth (1971), and the National Task Force on the Administration of Justice (1977-78) there is enormous unexplained variation in sentences given to similar offenders from region to region, city to city, and individual judge to individual judge. Sentence disparity is a tangible reality in places like Saskatchewan Penitentiary, where offenders who come principally from the three Prairie provinces arrive with very different sentence patterns.

To some extent, as we have seen, parole has the effect of evening out some disparities, particularly in longer sentences, and above we support measures which would enable it to do a better job at this (such as an improved data system to help identify anomalous sentences, and an expanded power of parole by exception).* But there are obvious and very strict limits on what can be done by a post-sentence release authority about a sentencing problem. We would therefore urge that the Canadian judiciary recognize and take action to reduce unexplained and unwarranted inequities in sentences, including the initial decision whether or not to imprison the defendant. While the Working Group has neither the mandate nor ability to recommend the best method for controlling sentences, we are convinced that methods such as requiring judges to give reasons for decisions, listing the aggravating and mitigating factors which can be taken into account, and introducing procedural refinements will not be of much help. Appellate courts, while they play in Canada a more active role in guiding sentences than in many other countries, do not provide the kind of specific direction we consider necessary, and different appellate courts behave in different ways from province to province. We do recommend that, as part of the federal government's Criminal Law Review exercise, serious study be made of numerical sentencing guidelines projects (Gottfredson

---

* Ironically, the existence of parole and remission may, by removing from judges the burden of determining the exact duration of imprisonment, contribute to judges' failure to come to grips with sentence disparity.

et al., 1979) and presumptive sentencing in California and other U.S. States, though these innovations appear to be too new as yet to be well understood for their effects on sentence disparity (See Chapter V).

ELIGIBILITY DATES

The discussion under this topic is, of course, closely tied to the above discussion of conflicts with sentencing. One of the reasons eligibility dates are of concern to correctional authorities is that they are, for the most part, fixed (through Regulation) by the determination of the sentence. A nine-year sentence will mean full parole eligibility at three years; a three-year sentence will mean full parole eligibility at one year. Thus, sentence disparity translates directly into disparity in release eligibility. Short sentences translate into rapid mandatory release dates. Long sentences translate into long minimum stays in penitentiary. Some offences, such as narcotics importing, even carry a legislative provision removing judicial discretion to set the sentence below a certain number of years.

Requiring minimum periods to be served prior to release eligibility is principally intended to ensure that a certain denunciatory (or deterrent) period is served by all inmates, and allows the correctional system to reassure the public that sentenced offenders cannot be let out before a certain date (though both the public and, to a lesser extent, the judiciary still have a highly imperfect perception of eligibility dates). Minimum periods prior to release eligibility are often supported by parole and political authorities, both in order to allow them to give these assurances to the public, and to provide them with a barometer, or standard of punishment or judicial intent, after which they are free to make release decisions based on more traditionally "correctional" criteria, such as risk and treatment.

There are numerous disadvantages to or arguments against minimum periods, however. First, like any fixed mandatory provision, they are often a source of frustration to penitentiary and parole authorities. They are, by definition, both arbitrary and inflexible, and do not permit decision-makers to make those distinctions among unique individuals and unique circumstances which are the hallmark of "discretionary justice". Opponents of minimum periods argue that no such legislatively-fixed provision is appropriate in a system (such as most North American justice systems) which places such a high priority on responding to the unimaginable variety in human behaviour and circumstance. The strength of the belief in discretionary justice, in fact, is what apparently causes

such phemomena as prosecutors refusing to lay charges which carry stiff minimum penalties, juries refusing to convict on charges which they know would result in the death penalty, and penitentiary authorities resorting to extended gradual release for inmates who do not "belong" in prison. The parole by exception power, before it was cut back to its present state, was undoubtedly intended to serve as a legal safety valve for the kinds of cases in which fixed minimum periods simply seemed too harsh.

Second, minimum periods prior to release eligibility periods are, we have seen, imperfectly understood by sentencing judges, especially with the recent blurring of the distinctions among temporary absences, day paroles and full paroles. Many judges believe that offenders are eligible for close to full release much earlier than is the case, and they accordingly fix their sentence (and thus the real eligibility date) higher than what they really intend, and higher than a judge who understood the provisions better would do in the same case. Opponents of minimum periods argue that these kinds of disparities and unintended consequences would be removed through removal of minimum periods, since though the maximum sentence would still serve as some kind of indicator of judicial intent, the parole board would not be constrained to observe a minimum period of imprisonment before being able to consider release.

Third, minimum periods create confusion among offenders and case preparation staff as to when to apply for releases which do not carry an automatic review date. This can be especially confusing, and can create institutional tension, in instances where the eligibility date has been changed non-retroactively, and two different inmates convicted of the same offence at different times and receiving the same sentence length may have different eligibility dates.

Finally, minimum periods are not always seen by parole boards as the above-mentioned "standard" of punishment. That is, though it is not stated NPB policy, parole board members may, in some individual cases try to estimate what the judge "meant" by a fifteen-year sentence: did he "mean" the inmate should serve five years (full parole eligibility date), or did he "mean" that the inmate should serve ten years (mandatory release date), or did he mean that NPB should choose any term in between that it saw fit? Parole boards are sometimes so leery of appearing to countermand judicial intent that they may indulge in this kind of second-guessing, thus injecting yet another level of disparity into the equation. (NPB may in these cases attempt to contact the sentencing judge to inquire as to his intentions, or to obtain a transcript of the judge's remarks at the time of sentencing.)

Beyond initial arguments about the propriety of eligibility dates, per se, there are, of course, disputes about the levels at which these dates are set. Our basic (and rather typically North American) sentence structure of dividing the sentence into thirds - rather than for example setting the parole eligibility date at one-quarter or one-half the sentence, or the mandatory release date at nine-tenths of the sentence - lends symmetry to our system, but is indisputably arbitary. Requiring that inmates serve at least six months prior to eligibility for an unescorted TA is likewise an arbitary function (though not to say a non-functional one).

The Working Group was unable to agree categorically on either the level or the overall validity of eligibility dates. On the one hand, they do clearly create problems which either must be lived with, or circumvented in ways which are mostly cumbersome and inappropriate, such as executive clemency or parole by exception. On the other hand, we do have sympathy for the "balance of powers" argument, which seeks to place part of the decision power with judges (in setting the maximum term and thus the minimum period of imprisonment to be served), part with the penitentiary authorities (in the administration of remission), and part with the parole authorities (in the discretion over the middle one-third of the sentence).

It is clear, however, that there are problems of clarity and confusion caused by minium periods. We feel better communication with the judiciary in this area is essential, and recommend that in future, every effort should be made to avoid adding any further complexity to eligibility rules.

SPECIAL OFFENDER GROUPS

A number of concerns have been brought to our attention regarding identifiable groups of offenders who have, or appear to have, a particular problem or set of problems with the release process. We were not able to explore these problems in depth, but we note the following concerns and issues for follow-up by future policy groups.

Female offenders are in a unique position federally because there is only one federal penitentiary for women in Canada, the Prison for Women in Kingston. This means that, unless she can obtain a transfer under the federal-provincial Exchange of Service Agreements, the federal female inmate will serve her sentence in an area which can be thousands of kilometers from her home. Additionally, she will serve her sentence in maximum security regardless of her circumstances. The number and quality of prison programs available for her have also traditionally been less than those afforded to men,

though recent years may have witnessed some improvement in program availability. However, the distance from home, the security status involved, and the difference in the types of programs available combine to make individual program planning and release planning more difficult and less meaningful for women. Temporary absences to home are a virtual financial impossibility for some women, and given present rules about the non-exceptional inclusion of travel time in TA time limits, may be a logistical problem as well*.

In their submission to the Study, the Canadian Association of Elizabeth Fry Societies makes a number of recommendations for improving the lot of the female offender vis-à-vis release. Of these, we think three are of particular merit and should be given more study. First, more liberal use should be made of parole by exception (and, we might suggest, of early day paroles) to enable women to be moved closer to their home communities under federal correctional supervision; this "reverse discrimination" may be justified on the humaneness grounds that government policy about jails for women creates an additional deprivation (separation from home and family) not suffered in such high proportions and so automatically by men. Second, funds should be made available to finance conditional releases, particularly TA's, for pre-release planning in areas distant from Kingston. Third, funds should be made available for the Ministry to hire (either directly or through a private agency) a special caseworker who would be assigned full-time to participate in the case management team, to liaise with private aftercare and community service agencies who may be dealing with the female offender before or after release, and generally to ensure more meaningful release and pre-release planning for women. This last suggestion is intended to reflect the apparent fact that the present complement of classification officers is insufficient to deal adequately with the special problems and needs presented by the inmates at the Prison for Women. It is self-evident, finally, that vocational, educational and other programs for women should be brought to a standard which at least matches that available to a comparable male population.

Native offenders have a lower full parole release rate and a higher revocation rate than the population as a whole (Demers, 1978). This is not an indicator of racism in corrections, but in many cases reflects a lack of release plans considered appropriate by releasing authorities. Native offenders sometimes consider this judgment of their release

---

* NPB may, in "exceptional" circumstances, add an additional 48 hours to a TA permit to allow for long-distnce travel. Elsewhere, we have recommended that travel time not be included in the time limits set for TA's (see Chapter III).

plans to be an insistence by authorities that Natives try to adapt their plans and post-release lifestyle to a standard appropriate for white offenders, but not necessarily for Natives.

The Working Group was not in a position to examine this problem in the detail it deserves. We recommend that the Solicitor General's recently constituted study group on Native offenders and the criminal justice system give special attention to the release question during their initial six-month survey of the problems faced by Natives.

Life-sentence inmates present unique problems for the penitentiary and release systems. Those convicted of first-degree murder automatically receive a 25-year minimum term prior to parole eligibility, though after 15 years they may apply to the court to have this term reduced. Second-degree murderers face a 10 to 25-year minimum term, with a similar option to seek a judicial review after 15 years. Generally speaking, other lifers are eligible after serving seven years in penitentiary. Unescorted temporary absences and day paroles are not available to lifers prior to three years before full parole eligibility. Remission does not affect lifers in any way which has real meaning.

To many of the penitentiary officials we talked to, this situation represents a prison management problem which is beginning to be felt and which will be increasingly felt in future. Since lifers have such long periods of "dead time" to serve without hope of relief and without direct incentives to good behaviour, many penitentiary officials believe that they create, and will increasingly create, direct and indirect disciplinary problems. Most murderers are young men and women when they enter penitentiary, and contemplating the age they will be and the years they will have "missed" by the time they are eligible for release can be an extremely difficult reality to adjust to. While no evidence is yet available to demonstrate that these inmates become involved in more disciplinary problems than do other inmates, some officials at Dorchester, for example, blamed lifers for an indirect influence on problems recently experienced there.

Lifers experience particular problems in making release plans because of the extended minimum periods they have to serve. Lengthy imprisonment causes some degree of "institutionalization" which makes it difficult for the inmate to conceptualize his future in terms of release plans. The years he has served have also typically severed most of his contacts with the community and impaired his ability to make realistic release plans. It is difficult to know when to begin

release planning, and the gradual release process itself may be a long, tortuous procedure.

In 1969, Ouimet remarked on the excessive length which a ten-year minimum prior to parole eligibility represented. The Working Group is of the view that long-term inmates may represent a significant problem for penitentiaries (including for populations in the mid-term and long-term future), and that long minimum periods seriously impair the chances of realistic planning of and success on parole. More importantly perhaps, these lengthy minimum periods violate our own sense of humaneness. Though Ouimet deplored minimum terms of ten years or more, and we are inclined to agree, we feel that it is not realistic at this time to propose that, for example, all life sentences carry a seven-year minimum. We accordingly recommend that all minimum terms be subject to judicial review and possible reduction after ten years in prison, under the procedures established for the present provision for review of cases of first- and second-degree murder after 15 years (Criminal Code, Section 762).

ACCESS TO INFORMATION

Some, though not all, of the field staff we consulted said that they were experiencing problems as a result of those provisions of the Canadian Human Rights Act (1977) which permit citizens to have access to information kept about them in federal information banks. The problems reported were of two complementary types: either offenders were gaining access to information which was placing justice officials or third parties in potential danger; or officials, for fear of offenders' gaining access to certain information, were not placing that information on files, some of which could be critical to important decision-making, especially by NPB. A third and related worry is that police, provincial officials, and other persons will refuse to transmit to federal officials important information which they fear may be disclosed.*

Section 54 of the Human Rights Act outlines a series of allowable exemptions to disclosure requirements. These include exemptions for "national security", investigations of crime, impediments to the functioning of a quasi-judicial board, possible physical or other harm to any person, and information obtained on an express or implied promise of confidentiality. Nevertheless, some field staff do report problems in protecting

* Police officials in Edmonton, for example, partially in consideration of this issue, refused to share certain information with CSC and NPB staff for a time. The addition of a police-parole liaison officer has alleviated this problem, however.

certain information from disclosure and have expressed concern about this matter. Many NPB members also report concern over this question. Some police have complained of the fact that their reports do not enjoy a "blanket" exemption (only documents which contain police opinion or advice are exempted).

However, generally speaking, there has been little noticeable decrease in information supplied by police to the Ministry since implementation of the Act in early 1978. If field staff identify information on a file as having been obtained on a promise of confidentiality, or indicate that its disclosure could harm an individual, a request for an exemption is virtually always made and successfully obtained. Part of the problem in the past appears to have been that field staff have not always elaborated their requests for exemptions with specific and supportable information. However, the new guidelines for exemptions recently developed within the Ministry, together with a possible need for refresher training for field staff, may serve to alleviate many of the problems reported. The Ministry will be closely monitoring this program in future.

SERVICES TO AND RELATIONS WITH PROVINCIAL AUTHORITIES

NPB has responsibility not only for making decisions about persons in federal penitentiaries, but in some provinces also exercises the paroling authority for provincial prisoners.* In fact, prior to 1977, NPB handled all provincial paroles except in B.C. and Ontario, where provincial boards had jurisdiction over the indeterminate portion of definite-indeterminate sentences. Since the introduction of enabling legislation in 1977 (Parole Act 5.1), three provinces have chosen to create provincial boards with jurisdiction over all provincial prisoners: B.C., Ontario and Quebec.

The reasons for the creation of these provincial authorities have been various, but are largely related to a desire and a perceived need for the province to have complete control over decisions made about the prisoners in its jails. A provincial board is thought to increase the chances of a coordinated, coherent correctional system within the province. Additionally, NPB has been unable, because of its workload, to give adequate consideration to provincial inmates serving very brief terms: in many instances the prisoner's mandatory release date will be reached at virtually the same time as case

* The parole power is actually, by virtue of the Parole Act, entirely a federal power, which may be delegated to provincial authorities through Section 5.1.

preparation for parole has been completed.* Resource limitations have also not enabled NPB to grant hearings to provincial prisoners, as it does to federal inmates, and this has caused human rights and equity concerns. Resource problems have in addition caused a lengthier turnover time than some provincial authorities are prepared to accommodate, given pressures to get prisoners out as soon as possible. Overcrowding in some provincial jails, combined with a current parole rate which is historically rather low, has also caused these provinces to feel that a provincial board could be more responsive to their needs. Since many provincial systems are heavily oriented towards community-based corrections, having a provincial release authority can enable them to make more internally consistent decisions about who should and should not be participating in community programs.

Those provinces which have not yet opted for their own parole authority have been influenced in that decision by a number of factors. In some of the smaller provinces, funding of an indigenous board may be a problem, including the anticipated consequent increases in related staff. Additionally, the negative publicity attendant on the inevitable parole failures is not an aspect of control which is entirely welcomed, and some authorities may fear a negative impact on their entire community-based correctional system from these kinds of failures.

Nevertheless, there is still the possibility of greater provincial entry into the parole decision-making and supervision areas. There have been some discussions around the creation of an Atlantic regional board, the costs of which would be shared by all the provinces involved. The possibility has also been raised of a "joint" federal-provincial parole board for decisions made about inmates residing in Alberta.

These types of negotiations will doubtless continue while concerns remain about the service available through NPB and CSC for parole decision-making and supervision. A federal-provincial association of persons involved in parole, the Canadian Association of Paroling Authorities, has been formed recently to provide a forum for discussion of topics of mutual interest and concern. NPB is also currently studying proposals to have NPB notify appropriate provincial prisoners of their eligibility dates, to institute automatic parole review rather than review only upon application by a provincial prisoner, greater attention to short-sentence prisoners, an accelerated decision and case preparation

* Though in some instances, those prisoners serving short terms (under 6 months, for example) are not automatically considered for parole under the new provincial authority either.

process, the conduct of hearings for provincial prisoners on whom NPB makes decisions, increased local participation in parole decisions, involvement of provincial staff in case preparation for parole decisions, and supervision of provincial parolees by provincial authorities.

CAPA is a promising vehicle for increased cooperation and discussion among parole authorities of their mutual concerns, and its progress should be considered by the Ministry as a priority concern. A particular concern should be coordination of standards, procedures and programs for temporary absence and day parole in the federal and provincial jurisdictions, and the question of federal offenders on mandatory supervision being supervised, through exchange of service agreements, by provincial authorities. Additionally, an ongoing project of NPB to study proposals for improving services to the provinces should continue to be given strong support.

DATA FEEDBACK SYSTEM

One of the principal concerns not only of the persons we consulted, but of the Working Group itself, is the complete lack of a viable, useful data feedback system which would enable decision-makers to have detailed, up-to-date information on the numbers and types of persons being granted and refused the various release forms each month. By this we do not necessarily mean to criticize the Ministry's management information systems, which have never been designed or intended to provide the kind of extremely current feedback which we feel is essential. Instead, we recommend that all parole board members and regional executive officers, wardens, classification officers, parole officers and regional CSC Offender Programs managers be automatically provided with a standard-format description of the decisions made about conditional releases in their own and all other regions every month.* Most of the information needed for this monthly feedback, with the exception of statistical risk prediction scores, is already available in the Ministry data sources, but the data system is not geared or formatted for the feedback needed.

This feedback publication should include the following information on all releases granted and refused, indicating the number of cases falling within various groupings of this information:

---

* NPB is already exploring the possibilities of setting up computer terminals at regional and national headquarters to permit some kinds of feedback. Whatever the regional activities, the feedback we describe here should be a minimum requirement coordinated through national headquarters.

- release type
- sentence length
- time served in penitentiary
- proportion of sentence served
- statistical estimation of risk and of violent risk
- type of admission
- major offence
- releasing institution and security status
- age
- number of previous imprisonments
- number of previous convictions for indictable offences
- marital status
- special conditions (specify)

Additionally, for TA's, the following information should be supplied:

- escort status
- group or single
- purpose of release (in greater detail than "rehabilitative/medical/humanitarian")
- length of release
- part of approved series/not part of series
- releasing authority

For day paroles, the following information should also be required:

- length of approved release, and actual length of release as implemented
- receiving institution (if any)
- reporting requirements
- purpose of release (in detail)

This regular, up-to-date feedback will help decision-makers to "see" their policies and the differences between their policies and those of other regions and other penitentiaries, enabling more control (if desired) or manipulation of policies in a systematic fashion.

Additionally, on a quarterly basis, all concerned officials should receive information on the outcomes of releases granted either in that quarter (in the case of TA's) or in the equivalent quarter of the previous year, to permit a one-year follow-up of each quarterly "cohort". This outcome information should show the results for the total group, as well as for each category of case information used in the monthly publication (e.g., outcomes for persons released on break and enter). The outcomes should be grouped as follows:

- still under supervision
- suspended, not revoked
- suspended, suspension cancelled
- revoked for technical reasons (specify)
- revoked with new criminal charge (specify charge)
- other

CHAPTER V
MAJOR DIRECTIONS FOR RELEASE

Part of our mandate to examine release "from first principles" was to study various major directions which release might conceivably take which would redefine the objectives of release (or reorder the priorities attached to them), which could make us more effective at achieving our objectives, or which would in some way represent a new philosophy.

We have seen in the preceding chapters that the release processes need to come to grips with various questions of objectives. Some of release's most important objectives or functions are not explicitly or formally recognized, and thus probably not very systematically or effectively achieved. Other objectives which are stated as the key "formal" objectives are at issue because they either present great difficulty in implementation, or because we do not have the specific knowledge of how to achieve them with any measurable degree of success. Finally, of course, there is disagreement from various quarters about whether release ought to be pursuing the objectives or having the effects which are observed.

In this chapter, we will discuss a few "models" for sentencing and release systems which will exemplify certain distinct approaches to objectives. They will serve to represent certain "ideal" or "extreme" views of what release is intended, or primarily intended, to do. Some of these "models", for example, emphasize goals of incapacitation and punishment above other goals. Some of them would allow for great flexibility in the choice of some kinds of goals, but are directed primarily at other kinds of goals such as restraint or natural justice. Finally, some of these models can encompass diverse and even conflicting views of objectives, depending on the form they take and the individuals espousing them.

It is important to note that, though the "status quo" is not discussed below as a "model", we are not thereby implying that is not a viable alternative. Rather, the purpose of this Chapter is to examine major innovative proposals and what can be drawn from them.

The "models" we will discuss are:

- "Flat sentencing". All forms of early release (prior to warrant expiry) are abolished. This model reflects concern primarily for objectives of equity, proportionality between offence and punishment, accountability, and clarity and certainty of

punishment. Among its proponents there are, however, strong disagreements about the degree of punishment (and by necessity, incapacitation) to be exacted.

- Single release authority. By contrast to the first model, early releases from prison are retained, and are under the authority of a single correctional body separate from the penitentiary authority (remission is abolished). This model emphasizes goals of incapacitation risk reduction coordination of decision-making, and simplification.

- Institutional authority. Under this model, all early release decisions are made by penitentiary authorities. It emphasizes goals of incapacitation, risk reduction, coordination of decision-making, and control and management of offenders.

- Appellate models. These models would preserve various forms of release, which would or could be administered initially by penitentiary authorities, but would be subject to review by an independent body concerned with coordinating policy, reducing disparity, and preserving the appearance and reality of fairness. The available "appellate" models differ from our present system in ways both large and small.

- Minimalist models. These models would allow for and encourage release as early as possible, and would employ the minimal form of intervention possible in the circumstances. They are premised on objectives of restraint, cost-effectiveness, risk reduction, and the human rights principle of minimal interference in citizens' lives.

- Guidelines. These models preserve administrative discretion as to release, but create explicit, objectifiable decision rules for guiding the exercise of that discretion. They can reflect various types of approaches, but are based primarily on goals of equity, accountability, and clarity.

FLAT SENTENCING

The recent popularity of "flat sentencing" - the abolition of early release, or at least of parole - has been a product of numerous developments and numerous viewpoints from both conservative and liberal philosophies in criminal justice. (Law Reform Commission, 1976; Mandel, 1975; Bewley, 1978.) Recent research (Gottfredsen et al., 1975; Cosgrove et al.,

1978) has been interpreted to mean that though the parole decision-making process appears to be very complex, it can be "explained" (to the extent it is explainable) through a very few factors or dimensions (such as risk, or the seriousness of the crime). This "demystification" of parole has been accompanied by further indications that the factors which are most important to the parole decision process are factors which are known at the time of judicial sentencing. This has led some critics to argue that sentencing judges, who supposedly sentence offenders under conditions of greater visibility and protection for human rights, ought to take back the sentencing power from the parole boards.

Elimination of parole would, in the view of some advocates, bring greater certainty and equity to correctional terms, since the disparities evident in parole would be eliminated. These critics claim that parole judgments are marred by considerations which perhaps ought not to influence the time to be served: considerations of who the offender is (how good or bad he seems) rather than what the offender did on this occasion; considerations of his correctional treatment (which critics argue is a bankrupt ideal since there is no apparent evidence of rehabilitative effectiveness); and considerations of his future risk (which is not particularly well predicted, especially in the case of violence). Some flat sentencing proponents argue that it is fundamentally unfair to punish offenders on the basis of something they might do in future. Critics of parole also point to its susceptibility to fluctuations dependent on sensational parole failures reported in the media, on penitentiary pressures and concerns, and on the idiosyncrasies of individual decision-makers. Parole is thought to be inherently inhumane because of the uncertainty and anxiety it causes inmates. Finally, there are those who would like to see parole eliminated because they would like to see criminals serve longer in penitentiary; there are also those who would like to see parole eliminated at the same time as sentencing reforms are instituted in order to ensure that criminals serve shorter terms in penitentiary, and indeed that fewer people go to jail in the first instance.

The "flat sentencing" model is premised not just on criticisms of parole, but on belief in a system of equal punishments meted out for offences of equal severity. This "commensurate deserts" notion is thought by some to fulfill objectives not only of equity, accountability and fairness, but also of general deterrence. If "two years means two years", it may have through its certainty a greater impact on potential offenders. The authority (and hence the effectiveness) of the sentencing court would be enhanced by flat sentencing, claim its supporters. Finally, punishment of the particular offence

is thought by some to be the only relevant consideration in sentencing, a function for which only a judge is needed.

Twelve U.S. states* have now passed legislation eliminating the traditional parole authority in favour of flat sentencing. (Most have retained remission, however, on grounds of prison disciplinary considerations, and some have even increased its effect.) They have done so in widely varying ways. In Maine, for example, parole was eliminated during a criminal code review, and through maximum terms were reduced somewhat from their former levels, no real additional controls were placed on judicial discretion within these still lengthy permissible maximums. In California, an entirely different sentence structure which drastically curtailed judicial sentence discretion was set up (presumptive sentencing**) at the same time as parole was eliminated, and presumptive terms were set with deliberate consideration for the average amounts of time served in prison which had been the norm for various offence types in the state. In Indiana, the introduction of a new system of five "classes" of felony sentences resulted in both parole abolition and few additional controls on judicial sentencing discretion, since the presumptive and maximum sentence under each class of felony offences was set so high and the allowable range around each presumptive term was set so wide.

It is still largely too early to tell what the effects of these parole abolition experiences in the U.S. will be. The early evidence suggests that, in practice, "flat sentencing" reforms may have (or not have) the following effects:

- The "certainty" of flat sentencing (in the sense of a certain type of offence being likely to invoke a certain predictable sentence) may be more illusory than real, for various reasons. First, unless judicial discretion is circumscribed concurrently, then certainty of sentence is no more assured under

---

* These are: Alaska, California, Colorado, Illinois, Indiana, Maine, Minnesota, Missouri, New Mexico, New Jersey, North Carolina, Tennessee. In addition Arizona and Pennsylvania have passed determinate sentencing laws, but these retain traditional parole authority release.

** In presumptive sentencing, the legislative defines a range of punishment (e.g. "2, 3, or 4 years") within which the judges sets the sentence, which for the most cases would "presumptively" be the middle term (in our example, 3 years). Canadian and most other sentencing structures define in law only the maximum which can be imposed (not the "norm").

the "flat sentence" model than it is at present, which is to say very little. In fact, variation in the punishments served for similar offences may increase under this model because of the absence of the sentence equalization "by-products" of parole which as was seen of NPB (Chapter II), is a very significant effect. Second, even under flat sentencing reforms designed to curtail sentencing disparities, there are rarely any controls placed on prosecutorial authority to which much of the sentence discretion may "flow". And third, a great deal of discretion is typically left to the judge to choose a non-carceral alternative, to set consecutive or concurrent sentences, to add to or substract from the sentence for aggravating or mitigating circumstances, and so on, such that more judicial discretion than is immediately apparent still remains left in many flat sentence reforms.

- A second type of certainty, that experienced by the prisoner in knowing precisely how long he will serve, may be achieved by flat sentencing, though in some jurisdictions an increase in remission may bring the potential for continued uncertainty, and in other jurisdictions, some form of discretionary authority (though perhaps not called a parole board) may be preserved which can affect the time served in prison after sentence has been set, particularly through revocation during the supervision period that is often determined by remission.

- Especially if no additional controls have been placed on sentencing discretion, flat sentencing may (it is still too early to tell) cause increases in prison populations. Increased use of prison terms (more people sent to prison) may be an effect of flat sentencing in that it focuses so much attention on prison as a sentencing option. Increased time served in prison may be an effect if sentences increase or stay substantially the same, though compensatory increases in remission can ease the effect. To counteract this, some of the newer bills introduced in the U.S. to implement flat sentencing have in fact explicitly directed the body charged with setting new sentence ranges to consider prison populations and the former norm for time served in setting presumptive sentences*. Some flat sentencing laws, in an attempt

---

* Basing future sentences on past averages has also been criticized as a system which institutionalizes past practices which have been excessive.

to keep prison populations down, have also directed that a community-based sentence be presumptive, as in Illinois.

- A flat sentencing system may be more susceptible to sensational failures and public and political pressure than the system it replaces. More of the responsibility for sentencing rests with the judge, who is more visible and possibly more open to the pressure of bad press and the immediate demands of the situation. The original or originally drafted sentence lengths for flat sentencing bills are certainly susceptible to being increased during legislative debate, and after passage, through piecemeal amendments during times of "crisis".

- A flat sentencing system may have negative effects on the prison system. It can markedly increase the discretion exercised by prison authorities (through remission) and if inappropriately administered, could increase inmate anxiety and prison tensions. It could affect program participation and the williness of correctional authorities to maintain a range of programs and activities which is so important to management of penitentiaries, if not to rehabilitation. If the abolition of parole were seen to be an insufficient reform, finally, it could lead to abolition of remission as well - with the attendant effects on prison populations. However, there is as yet no evidence of these negative effects occurring on the prison system in the flat sentencing states the U.S.

Comments on flat sentencing

Flat sentencing has a "common sense" appeal because it is premised on principles of fairness (you should be punished for what you did, rather than who you are or what you may do), equity (people committing similar crimes should receive similar punishments), humaneness (it eliminates some forms of coercion, manipulation and dishonesty towards prisoners, and it is easier to be in prison knowing when your release date will be than wondering if you will be paroled). It also embodies the theory that general deterrence will be enhanced by the disappearance of at least one of the sources of subsequent mitigation of the sentence.

But we have seen, there are reasons to be cautious in expecting that flat sentencing will in fact result in a system of greater equity, fairness, humaneness, or certainty. Parole

abolition may also result in increased prison populations and increased time spent in prison. As our earlier discussions have indicated, the Working Group does not feel that an increase in imprisonment would be desirable, from the standpoint of cost-effectiveness, humaneness, or risk reduction. For the foreseeable future in Canada, moreover, there are only very slight possibilities that effective controls on judicial sentencing discretion can be devised and implemented, and while that remains the case, flat sentencing presents a danger of increases, rather than decreases, in inequities and harshness of punishment.

Nevertheless, we feel certain that this model will continue to be attractive to many, because of its potential benefits and its simplicity. Below we present some of the information which would be needed and cautions which would need attention for this model to be actively considered in Canada.

- A better understanding is necessary of the effects which various changes in sentence lengths and resultant time served in prison would have on penitentiary populations and inmate behaviour. In particular, commissions or other bodies established to propose new penalty schemes should have available statistical advice on current penalties and informed judgments about possible effects on judicial sentence behaviour which could occur as a result of a new sentencing scheme.

- Some of the U.S. states which created sentencing commissions (e.g. Minnesota) to develop new penalty schemes specified that these schemes were to reflect principles of restraint as well as the realities of current institutional capacity and normative punishment levels. Sentencing commissions which are set up by, but independent of, the legislature may be somewhat less susceptible to pressures to propose high presumptive and maximum terms and severe additional punishments which can be imposed under aggravating circumstances.

- Thought should be given to placing concomitant controls on prosecutorial discretion. The elimination of one discretionary body (the parole board) enhances the power and influence left to the other discretionary authorities, the judge and prosecutor. Under a scheme where judicial discretion is also narrowed, the prosecutor's decisions as to how to charge the defendant

and what additional punishments* to invoke will become even more significant. This may simply result in much of the system's disparity remaining, but residing with the prosecutor instead of the judge or parole board. Prosecutors may not be the best group, organizationally, professionally and philosophically, to hold so much of the sentencing discretion. At the very least, attention should be paid to developing guidelines for the exercise of prosecutorial discretion (as in Washington State), to restricting the range of effect which this discretion may have, and to efforts to try to eliminate plea bargaining (as in the State of Alaska).

- It is very difficult to find the proper balances and levels in placing controls or guidelines on decisions about how to charge offenders, about whether to use a custodial or non-custodial sentence, about what length of prison sentence to choose, and whether or not to invoke additional punishments for out-of-the-ordinary offences or offenders. While mandatory, fixed sentences (i.e., the total elimination of judicial sentence discretion) are undesirable and in effect unachievable,** it is unlikely that much control of sentencing would result from preserving the existing levels of permissible sentences and relying upon voluntary self-control by judges. The range of discretion available to judges and prosecutors should therefore be narrowed (to reduce disparity), but not to a point where it encourages the system to find other ways of making the distinctions among individuals which decision-makers consider, and will under any system consider, to be both fair and essential to the smooth operations of the pleading and sentencing processes.

---

* Under many presumptive sentencing schemes, there is some specification of the aggravating and mitigating circumstances which should be taken into account in setting the "presumption"; the threat of invoking these aggravating and mitigating factors into additional punishments (such as a possible additional six months for carrying a weapon during the crime) is part of the bargaining power often given to the prosecutor under the schemes.

** Mandatory penalties cannot allow, in our view, for all the reasonable distinctions even in severity of offence which one might wish to make. They also tend to be subverted in practice by the low-visibility exercise of discretion elsewhere in the system.

SINGLE RELEASE AUTHORITY

At the other extreme from the "flat sentencing" model is the notion of having a single discretionary authority to make a wide variety of release decisions after the initial pronouncement of sentence.* In its extreme form, this model would give the release authority power to release at any point during the sentence (no minimum times would have to be served prior to parole elibility) and nothing would require release prior to the expiry of the warrant. In Canada, no recent major reports have recommended such an extreme system, though the National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services (NJC) have recommended (1980) that NPB be given full control of the last portion of the sentence (from parole eligibility until warrant expiry; remission would be abolished and with it, mandatory supervision). A similar suggestion was made by the Criminal Lawyers' Association in Toronto, which also recommended that to encourage release of most offenders by the two-thirds (former MS) date, the onus should shift at the two-thirds date to NPB to demonstrate why the inmate should not be released. Any inmate could be kept until warrant expiry, however.

In its extreme form, the single release authority model is associated primarily with ideals of incapacitation, and often also with risk reduction: incapacitation because it increases or is intended by some of its advocates to increase the length of time for which risky offenders can be detained, and risk reduction, because it is concerned with allowing the parole board maximum discretion to make decisions based on clinical judgment of an inmate's readiness, including by means of "testing" him on gradual release or ensuring that he completes a "decompression" cycle or some other prison program before he is fully released. The single release authority model does not have to be premised on a strong treatment ideal, but it does place a high premium on wider discretion to make rational, coordinated release decisions without "artificial" constraints (such as eligibility dates and MS dates). The precise orientation or policy of the releasing authority, however, can vary markedly from simple risk assessment (incapacitation), to emphasis on gradual release (as for the Law Reform Commission's "separation" sentence cases), or even to a commensurate deserts philosophy. Before California's introduction of flat sentencing, in fact, its parole board based its release guidelines on a relative scale of offence severity, with minor variations for prior record: both these

---

* Under this model, we will discuss only those simple release authorities constituted like a traditional parole board: organizationally separate from the prison authority, but within a corrections department.

factors, were seen purely in terms of just retribution for the nature of the offence, with prior offenders simply "deserving" to serve more time.

In Canada at present, however, the "single release authority" model seems to be proposed from three different perspectives. The first is a concern about the ineffectiveness of MS, which is inextricably coupled to the second concern, about "automatic" release of risky offenders prior to warrant expiry date through remission. Some police are particularly prone to seeing MS as ineffective in controlling recidivism, because they are often in close contact with the more visible cases of failure on MS. They also share some of the frustrations experienced by parole officers over "revolving door" cases who are taken off the street for unacceptable behaviour, but who reappear from penitentiary shortly afterwards. Frustration with MS is often translated into the proposal that all non-paroled offenders should stay in penitentiary until warrant expiry. For NPB, it is frustrating to be continually blamed for having "paroled" MS cases, and to be unable to prevent the "automatic" release of some potentially violent persons prior to warrant expiry. According to advocates of this model, NPB should be given wider discretion to make risk assessments and incapacitative decisions throughout the sentence - or at least for the last two-thirds of it.

The third, and perhaps less pressing, concern which lends weight to the single releasing authority model is concern for coordination under a single authority of all decisions which lead up to or result in a "release". Such an authority can develop systematic release plans, facilitate opportunities for participation in partial release, and make decisions based on release-relevant concerns. The gradual release model has taken on increased significance since Hugessen (1973) and the growth of day parole and temporary absences as a "test" for full parole or a preparation for MS. Rational release decisions should not be constrained (goes the argument) by considerations of denunciation (as in parole eligibility dates) or by the application of a virtually "automatic" system of time credits for "just keeping your nose clean".

Various objections have been raised to the single release authority model. Perhaps most importantly, there is more reluctance today than, for example, five or 10 years ago to vest any single agency with control over all or even most of the sentence, within limits set by warrant expiry. Mistrust expressed by the Chief Justice about NPB's "unfettered power ... without precedent among administrative agencies empowered to deal with a person's liberty" (Mitchell v. Regina, (1976) 25 Cr. 570) would probably become more of a concern under the

single release authority model, simply because the release authority would have more power to use or abuse. Recent and incoming procedural protections may allay some of this concern, however.

The lack of empirical proofs of some of the rationales underlying parole's discretionary decision-making has also caused some drawing back from this model. Parole as an aid to the "reform and rehabilitation" of the offender is, as we have seen, as yet an unproven effect. The limited efficiency of current clinical and statistical prediction of recidivism, calls into question the practicability of risk selection as an objective. The "testing" of offenders through gradual release is open to question as a means of either reducing risk or improving risk prediction, though some research (e.g. in Massachusetts) has pointed to some evidence of a risk reduction effect.

Practical considerations also raise queries about the single release authority. If judicial sentences do not decrease enough to compensate for the abolition of remission, penitentiary populations may rise, a concern to which NPB is officially and actually rather unresponsive. Critics claim that the additional time served by non-paroled inmates would represent greater punishment and incapacitation, but would be of little ultimate benefit, and would have demonstrable costs in human and financial terms, and perhaps also in terms of risk reduction. NPB would almost certainly incapacitate (not parole) a large number of persons on grounds of their dangerousness, who would not later commit an act of violence: violence is so infrequent when compared to the total number of offenders under consideration that overprediction and over-incapacitation on grounds of presumed dangerousness is almost, as has been seen, a mathematical certainty. Critics argue that it is unjust, counterproductive, and too costly to detain until warrant expiry all non-paroled offenders in order to prevent the serious crimes which will be committed by the few. From this viewpoint, mandatory release at two-thirds is a good "safety valve" for the conservative decisions of the parole board.

Another objection raised to this model is that offenders released at warrant expiry, presumbly the "worst" offenders, would not be subject to supervision after release. The Working Group supports the availability of post-release assistance to all offenders, though not necessarily on a compulsory basis. However, the "single release authority" model does not necessarily mean an end to the supervision of prisoners released after warrant expiry: this model can include the provision of a "separate supervision term" after release, which is unrelated to the initial "imprisonment term". Various arrangements are possible whereby a released prisoner who

re-offends while under this supervision term may be returned to prison to serve either the remainder of the period in prison, or to serve some period of it up to a maximum limit. Curiously, the "separate supervision term" concept has been applied so far only in the flat sentencing states*, but there is no reason that it could not be applied in models which retain discretionary parole release.

Comments on the single release authority model

As in the previous model, a great deal more will need to be known about the probable effects on sentencing and time served of the model. In addition, the effects on inmate anxiety, penitentiary population, community supervision, and prison discipline (by the abolition of remission) would have to be considered.

Most importantly, however, if parole board authority is to be increased there is arguably a more pressing need for more structuring of, or controls on, their discretion. Philosophically, there would be a need for the release authority to specify its orientation more precisely than at present. Given current concerns about disparity, lack of "mission" and unclear objectives in parole, it does not seem reasonable to increase NPB authority before a review of objectives and specification of decision criteria has been carried out. For example, if parole were to define its role simply as ensuring equal punishment for inmates who committed similar crimes, government would be in a better position to evaluate whether it would make sense to retain minimum eligibility limits and "automatic" early release dates.

RELEASE BY PENITENTIARY AUTHORITY

The arguments for placing all releases in the hands of the penitentiary service are essentially similar to those for placing all releases in the hands of the parole authority. This model would, like the other, allow for coordination of all decision-making by a single authority, without "artificial" constraints from eligibility dates or mandatory early release dates. Often, though not necessarily, implied in the model is the expectation or hope that decisions made will affect the inmate's ultimate risk of re-offending after release. To these arguments are added those that the penitentiary service knows the inmate best and can judge what is best for him at what time. Currently, there is some feeling that if CSC were

* In Colorado, for example, flat presumptive sentences are accompanied by separate supervision periods of 1 year served by all state prisoners after release, and revocations lead to a 6 month return to prison.

responsible for all releases, there would be more releases, and more "cascading" as a result of greater concern for efficient use of resources within CSC.

The "extreme" of this model has not been proposed in Canadian official reports for years, though Hugessen reflected it by recommending "local" review boards on which wardens were represented. Sympathy for this model was found among some of the CSC staff we consulted, however. This model usually takes less extreme forms, such as proposals that NPB commit itself early "in principle" to a release plan for the inmate which is prepared by CSC case management staff as part of the inmate's "individual program plan" (IPP). Another proposal is that remission play a more important role in the release process by becoming "truly earned" and deductible not only from the maximum but also from the parole eligibility date, or in some other way determining when NPB will consider the inmate for release.

Criticisms of this model are the same as those of the single parole authority model, except that fears of placing too much authority in the hands of one body may actually be greater under this model. The possibilities for improper use of release power, or use of release power on the basis of the wrong factors, are considered in this model greater in this model, because of the pressures of the penitentiary environment to constantly control inmates through rewards and punishments. Pressure from inmates on authorities to grant releases is also greater under this model, since the authorities are in closer contact with inmates. The primarily "penitentiary" orientation of authorities under this model is also thought by its critics to be less desirable because of the possibility of too much weight being given to penitentiary adjustment and not enough to community concerns. Adjustment to penitentiary is not generally considered a good predictor of post-release success or failure.

Comments on release by penitentiary authority

The lack of recent support for this model (outside CSC itself) reflects fear about placing the release power in the hands of authorities who already have almost full control over virtually all other aspects of an inmate's life, and by authorities whose prime orientation and constant struggle is to find ways to keep the "lid on" and otherwise encourage appropriate behaviour on the part of both staff and inmates.

In the inmates' rights area generally, and in the release area particularly, the long-term trend has been away from control by individual penitentiary authorities and towards

review by independent authorities such as the Correctional Investigator, the Federal Court, and NPB. This reflects the prevalent view that effective remedies are needed from penitentiary authority decisions. When the person's release to the free world is at stake, concern for review by independent authorities becomes even more important. This is at the base of the current "balance of powers" model, or sharing of release power among the judiciary, parole and penitentiary authorities. It can be expected to continue for the foreseeable future, and until more is known about effective remedies from penitentiary decisions, shifts of release power to penitentiary authorities should not be done wholesale. The next model we examine is in fact concerned entirely with creating the final release authority as a more effective check on penitentiary discretion.

APPELLATE MODELS

Various models for release have proposed that the ultimate releasing authority should assume far more of a role in setting clear policy and ensuring effective review of decisions or recommendations made at the first level by institutional staff. The Law Reform Commission model would allow appeal to the original sentencing court at any time during a "denunciation" sentence in order to effect a change in the length or manner of service of the sentence. For separation sentences, however, the LRC creates a "Sentence Supervision Board" (SSB) which oversees decisions made at the outset by penitentiary staff about releasing inmates on various gradual early releases which are intended to test readiness for full release. Their rationale is that an "independent and impartial" body like a Sentence Supervision Board, whose independence would be further reinforced by being "subject to the general control and supervision of the superior courts", is needed to ensure that deserving inmates are not "lost" in the opportunity system, that criteria, standards and procedures are followed in individual cases, and that an effective appeal mechanism is made available.

Critics of this model (which in many ways bears similarities to the current system) claim that it is essentially indistinguishable, or would be in practice, from the current system, which does not presently serve as an adequate check on penitentiary decisions. The Sentence Supervision Board is not described in great detail by the LRC, but what details are given of the scheme do not distinguish it in significant organizational or professional respects from the current NPB. The LRC does call for the Sentence Supervision Board to produce "express criteria for decision-making", but gives little indication of what these criteria might be other

than that they would encompass a series of presumptive decisions about "testing" and "decompressing" the offender on gradual release. Critics claim that if these criteria are not in fact expressly and objectifiably articulated, there will be no effective policy guidance and no meaningful review of release decisions by the SSB. These same objections touch on another criticism, which is that, in the absence of express criteria, disparity will actually increase because release "policy" will be made by dozens of different case management staff across the country, and review of negative decisions will not be an effective check on this multiple disparity source. The high concordance rates between NPB and case preparation staff show that an NPB/SSB may not operate with much independence from case preparation staff. Finally, the effectiveness of the SSB would be determined, to some extent, by inmate willingness to appeal decisions which they are dissatisfied with. It can often be extremely difficult for an inmate to pursue an appeal through CSC staff who made the original negative decision which is under review. Reliance on inmate appeals is a rather tenuous basis for effective, "independent" review.

To some extent, the second major "appellate" model addresses some of these concerns about independence and effective review. With variations, we were given numerous suggestions to change the parole board into a body (or individual) which operates in a judicial manner. According to some of our consultation participants, the board should be a separate body within the federal court, staffed by persons trained in law and operating in a judicial manner. For others, the power to amend sentences or modify the manner of their service should be shared on a rotating basis by all sentencing judges in a given area, as a periodic duty which would supposedly enhance all judges' understanding of sentence discretion and the post-sentencing process. A final appellate model is the juge de l'application des peines, a "sentence administration judge" in France who makes decisions about early release from other judges' initial sentences.

The chief attraction of the more legalistic "appellate" models is, of course, that they are legalistic: they would presumably operate to provide greater procedural protections for inmates, would allow open discussion of the factors to be considered, and would allow formal argumentation of the inmate's (and possibly also the state's) case for release or continued detention. Advocates of these notions are principally concerned about the low visibility of parole, the lack of specification of rules of evidence or criteria for decision-making, and the lack of legal training among board members which might serve to encourage uniform, fair

decisions. It remains to be seen, however, whether these models would in fact provide a greater protection for inmates or would result in "better" decisions, however defined. Some critics would also argue that releasing authorities need to be better informed about the realities of corrections than judges, even judges who are appointed as "corrections/sentence administration" judges, could be expected to be.

It is worth describing the juge de l'application des peines in some greater detail, if only to highlight some of the problems which were encountered with this particular method in France. There is one or more juge de l'application des peines for each district, and by the law of 1958-59, these judges were created in order to effect the participation of judges in the protection of offender rights, and to bring about the individualization of treatment during an era of faith in the rehabilitative ideal. The JAP was created to effect releases of all kinds (TA's, day paroles, full paroles) as well as to affect the conditions and obligations of sentence. There quickly developed strong conflicts between the JAP (who had the decision power) and the prison administration (who had control over resources and the execution of the decisions). A requirements to visit the prisons once a month, together with the enormous number and range of decisions to be made, soon placed a strain on the capacities of the JAP to effect his mandate. Perhaps as a result of these conflicts, in 1972 the JAP was brought more into the stream of corrections by the creation of a Commission de l'application des peines (CAP), a body composed of officials from the local penitentiary who advised the JAP.

Accusations of various types surrounded the JAP, especially following the modifications of 1972, including that releases had become a means of maintaining good order and discipline, rather than promoting rehabilitation. However, tension between the JAP and the prison authorities increased to such an extent that in 1978, the law was amended to introduce minimum periods prior to release eligibility, and to require the agreement of the CAP to all temporary absences on terms over three years. These reforms were in part occasioned by adverse reaction to the over-liberal granting of TA's and remission by the JAP. The 1978 amendments have been severely criticized by the judiciary as a move towards making the JAP an administrative, not a judicial authority, away from the role of protecting offender rights, and in the direction of placing the JAP under the effective authority of the correctional bureaucracy. (Outheillet-Lamonthézie, 1974; Aydalot, 1973; Plawski, 1979; Note, 1976).

The French experience seems to suggest that there will be enormous resource difficulties for a JAP set up along these lines, such that the JAP may soon come, de facto if not de jure, under the domination of the correctional officials who are advising him. Whether the JAP could be protected from these influences through organizational or professional orientation remains to be seen. Certainly, however, there is some reason for caution in drawing conclusions about the JAP as a means of protecting the appearance or reality of "justice".

Comments on appellate models

Appellate models depend heavily on the kind of interest in and resource committment to "express criteria" and strong safeguards advocated by the Law Reform Commission. No effective review or "watchdogging" of the administration of release by case management authorities appears to be possible without a clear basis for initial decisions, appeal and review. Further exploration of appellate models must futher take into account the need for "independence" without naiveté about corrections, or independence may soon become illusory (or be eliminated in order to promote better coordination).

MINIMALIST MODELS

Minimalist models need not be premised on any particular philosophy of release other than that it should represent the least intervention possible consonant with public protection. Minimalist approaches are based on cost-effectiveness and restraint notions, but also on notions of risk reduction, since there is thought to be a connection between the cheapest and most humane measures, and those measures which are most effective (or least harmful) to the readaptation of the offender to society.

Minimal intervention begins before decisions about release, of course, and can extend to attempts to prevent offenders from entering prison in the first place. For the federal release system, a minimalist model would involve presumptive release of all offenders at the earliest possible date, supervision for as short a period as possible under minimal restrictions (if not under a voluntary supervision scheme), and return to penitentiary only for new criminal offences. In terms of the current system, this would probably mean release of most offenders at parole eligibility (or sooner), parole supervision not to endure past the mandatory release date, and the abolition of MS for offenders not paroled. One example of a modified minimalist model was created for NPB in 1977, involving presumptive release for the all offenders who score well on a statistical score for

predicing violent (as opposed to any criminal or technical) recidivism. The remainder of offenders would be "tested" and "decompressed" through gradual, partial releases later in the sentence (Nuffield, 1979).

Minimalist models argue that in the absence of specific evidence about "what works", it is best (and the best use of shrinking resources) to make the least intervention which can still serve important criminal justice aims such as preservation of the denunciatory portion of the sentence. Minimalists argue that the current luxury of relatively abundant resources will be short-lived, and it will become necessary to allocate resources to those offenders who truly need or want them. Some research suggests that the greater the penetration of an individual into criminal justice control systems, the less his chances of succeeding eventually. Minimal interventions are thus thought by some to "work" at least as well as more extensive or vigorous programs in corrections. Finally, minimalist systems are typically cheaper and more humane.

The Working Group is sympathetic to the minimalist view, but recognizes that it may not be the most politically realistic approach at this time, though it may suit anticipated budgetary restraints in the 1980's. In particular, it is far more difficult from the standpoint of public acceptance for a government to remove or relax controls once they have been imposed, than it is to increase or maintain controls: this is probably one of the major "realistic" factors behind the continuation of MS. One minimalist view is clearly worth pursuing, however, and that is the search for better means of identifying which offenders are most worthy of being controlled, in order to allow us to exercise minimal control over the remainder (Ouimet, 1969).

GUIDELINE MODELS

Guideline models for release arose in the 1960's and 1970's as a result of empirical research on decision-making and criminal recidivism, and as part of a human rights concern for greater accountability, visibility, objectivity and equity in criminal justice decision-making.

Possibily the first formal guideline application in criminal justice was to pretrial release decisions in New York City (Vera Institute, 1962). Courts were facing increasing workload pressures which made the increasing number of decisions to be made as to whom to release prior to trial a major problem. Because the major consideration in pretrial release is concern over appearance for trial, evaluation of how to assess the likelihood of appearance was undertaken.

Researchers examining the problem found that using a simple numerical checklist, it was possible to make accurate assessments of how likely various defendants would be to appear for trial if released on their own recognizance. These assessments could be initially made and verified by staff of the court (subject to approval by the judge), thus freeing judges' time for other matters. Perhaps more significantly, evaluations showed that the introduction of the numerical assessment system allowed more persons to be released prior to trial (and without cash bail or sureties) while actually bringing about a reduction in the percentage of persons who failed to appear later for trial. The reason for this phenomenon was that the numerical system was apparently more accurate than were judges at predicting who would fail to appear.

As parole was increasingly the subject of empirical research, applications of the Vera system to parole began to appear. Research on parole decision-making (e.g. Gottfredson et al., 1973) seemed to contradict the belief and assertion made by parole boards that the parole decision is made on the basis of an extremely wide variety of factors, and that each case is considered in a unique fashion on its individual merits. Rather, researchers found that a "hidden policy", of which even parole boards were unaware, existed which could "explain" a great deal of the variance in individual cases decisions. Among parole boards (such as the federal U.S. Parole Commission and in Minnesota) which had wide discretion and were not in many instances constrained by long minimum periods to be served prior to parole eligibility, parole decisions were found to be largely accounted for by only two basic factors: the severity of the offence for which the prisoner was serving time, and the likelihood that the prisoner would commit another crime if released (risk of recidivism). Among parole boards (such as North Carolina) which were constrained by minimum periods to be served prior to release eligibility, parole decisions were found to be almost entirely a product of the risk of recidivism, and in some instances, but less significantly, the institutional conduct of the prisoner.

From this apparent finding that the complexity of parole decisions is more apparent than real, some U.S. states proceeded to formalize the "hidden policies" discovered through research in order to increase visibility and accountability, and to decrease the chances of the "hidden policy" being applied in somewhat differing ways to different prisoners. Accordingly, in those jurisdictions where the severity of the offence was not "taken care of" through the "barometer" of the minimum eligibility date, a standard scale of offence severity was developed, into which each prisoner's current offence could be categorized. Similarly, and in view of the finding that

numerical or statistical systems for prediction of risk are more accurate than professional clinical judgment (e.g. Meehl, 1954; Gottfredson, 1973; Heinz et al., 1976), several U.S. jurisdictions "translated" concern about risk into the use of a statistical scoring system. The formalizing of the risk and crime-seriousness dimensions into standarized scales was intended to ensure the best possible overall prediction and to decrease the chances of individual board members' applying these dimensions in different ways to different cases (unless special circumstances suggested the need to step outside the guidelines). These dimensions then became translated into "presumptive" lengths of time to be served by individual prisoners in non-exceptional circumstances.

"Guidelines" models are thus premised on notions of clarifying and objectifying policy, conscious decisions not to allow other factors to intrude unless there is good reason to do so, and attempting to apply policy as equitably as possible to individual cases. Guidelines are also premised on the notion that it is more humane to inform prisoners in a fairly precise fashion of what they will be "judged" on and how much time they can expect to serve unless their case presents an exception from the general rule.

Criticism of "guidelines" models is of several types. In the first instance, many parole boards and corrections personnel question whether parole decisions are in fact as "simple" as research suggests that they are. Since research cannot "explain" all the variance in parole decisions, these critics argue that other complex and individual factors make up the balance of the variance in parole decisions - not, as the researchers suggest, that the unexplained variance in decisions is simply disparity caused by vague formal and informal policies and differences in approaches taken by different parole board members or panels. Second, critics may object to only a few basic dimensions being used as the foundation for parole decisions, arguing that greater flexibility is needed to consider any number of things, including underworld connections, special humaneness considerations such as family crises, or the presence of other outstanding warrants in other jurisdictions. (Supporters of "guidelines" models argue that these factors can simply be used, as necessary, as reasons to step outside guidelines in individual cases. Factors which are really intended to address questions of risk, however, would not be seen as allowable exemptions from guidelines: attempting to inject "clinical" factors, such as family ties, to improve statistical risk assessments would only reduce their efficiency, according to the guidelines model.)

It is also argued that "guidelines" are less, not more, humane than traditional case-by-case approaches because they try to fit most cases into a Procrustean structure which does not allow for sufficient discretion to take into account unique behaviours and circumstances. The use of a numerical system is also seen as somehow "inhuman" and inappropriate to traditional approaches of discretionary justice. It is claimed that prisoners would prefer a human face on justice, rather than having to "fight the computer". As was seen earlier, however, some research suggests that prisoners prefer to know their probable release date as soon as possible, and to the extent that guidelines systems are consistent with decision predictability and traditional approaches are not, the latter system may from the prisoner's perspective be less humane.

It is also argued, against guidelines systems, that they tend to formalize or "freeze" existing policies rather than seeking improved approaches. They may also prevent future innovation for the same reason. (Guidelines supporters argue, per contra, that it is also impossible to improve and innovate unless once can "see" current policy, which the empirical approach at least allows the decisions-makers to do.) Guidelines critics argue, finally, that disparity is not greatly reduced by these systems in certain practical applications, since the decision-maker's power to step outside his guidelines for defensible reasons still allows him discretion which can be rather broad. It is extremely difficult to assess whether this may be true, since follow-up evaluations of the kind needed are not always available.

Comments on guidelines models

The Working Group has recommended earlier (Chapter III) that an extensive study be made of the factors which enter into NPB decisions, both to shed more light on the complexity or simplicity of "hidden policy" and to determine how much unwarranted disparity is present in NPB decisions.* To this extent, we recognize the validity of the empirical approach to the "demystification" of parole, and support greater visibility and objectivity in decision criteria. We were unable to agree, however, on whether the "Guidelines" approach should be carried to the more formal types of implementation observed in some jurisdictions.

In future study of this approach, it is important to recognize the critical nature of the amount of discretion which

---

* The Executive Committee of NPB in November 1980 endorsed the notion of such an in-depth study of the factors involved in parole decision-making, but were not prepared to endorse the development of a guideline system at that time.

is to be preserved in the guidelines, and the amount of "mandatoriness" which is to be used. If the amount of discretion preserved is extremely broad, the system will run the danger of not reducing disparity at all. If too many controls are placed on discretion, it can lead to inappropriate and inflexible decisions. This is a very difficult balance to strike, though it should be recognized that a certain amount of dissatisfaction among decision-makers over the breadth of discretion and the mandatory controls may or can be a sign that the guidelines are working properly.

Future study of this approach in Canada should also bear in mind the possibility of using an innovative policy for parole rather than of "freezing" any current "hidden policy" which may emerge. If decision-makers are not content with a system which considers only risk, for example, there is no requisite reason not to make a policy decision to include other factors (such as sentence equalization or "institutional behaviour"), which would still fit the guidelines approach so long as they were objectively and consistently applied. Our recommendation above (Chapter II) that the Ministry take a hard look at what objectives it wishes release to serve should be read in the light of this approach.

CHAPTER VI

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Release Study was an internal inquiry into all forms of conditional release, ordered by the Solicitor General in 1980. Its mandate was threefold: to examine the incidence of violent and other violations of conditional release, to examine the problems, issues and concerns with the current system, and to examine release from "first principles": what is it trying to accomplish, and how realistic are its objectives?

The Study first reviewed the objectives of release in the broad context of the purposes of imprisonment. It was found that release has many goals and functions, some of which are not recognized or even intended as "objectives", but whose effects are clearly present. The formal or "official" objectives of release, especially those stated in the three statutory criteria for parole, were found to be either too vague (selection of "undue risks") or based on assumptions which are open to serious question (ensuring that the inmate has received the "maximum benefit" from incarceration, and that parole will aid his "reform and rehabilitation"). The unintended functions and effects of release may be at least as important to the sentencing and correctional systems as the official goals, but their informal status does not permit them to be pursued in an effective or consistent fashion. Some of these unintended functions and effects include the reduction or control of penitentiary populations, the mitigation of punishment, the evening out of sentence disparity, the control and management of penitentiary inmates and programs, and cost savings. Many of the functioning which are important to one agency are not a priority with the other, and vice versa.

The initial finding and recommendation of the Working Group was therefore that the objectives of release need to be addressed in workshops held on a Ministry level* in order to try to achieve more agreement on what we are trying to accomplish, whether any of the traditional objectives should be rejected as unrealistic or inconsistent with modern correctional thinking, whether any of the unintended functions should be recognized and pursued more systematically, how any new objectives set might be articulated in a more specific operational fashion in order to reduce vagueness, and whether changes could be instituted to make the release system more effective at pursuing its goals. Connected to this initial finding and recommendation, the Working Group found an insufficient level of systematic self-

---

* By "on a Ministry level" we mean in an exercise involving all three major sectors of the Solicitor General involved in correctional (NPB, CSC and the Ministry Secretariat).

monitoring and self-evaluation throughout the imprisonment and release processes, a deficiency which seriously affects the system's ability to address questions of the realism of its objectives and the effectiveness with which they are achieved.

The Study next proceeded to an examination of more operational issues and problems, taking each release program in turn: temporary absence, day parole, full parole, earned remission and mandatory supervision. Some of the findings, of course, relate to the integration of two or more of these processes, and many of the recommendations are similar for various programs: we recommend, for example, the development of more specific, operational criteria for the administration of all release programs, and the availability of more current, detailed feedback to decision-makers on the decisions being made and their outcomes.

Temporary absence has been an extremely successful program of some 50,000 releases annually, of which fewer than one percent are declared unlawfully at large, detained by the police, or terminated for misbehaviour. There have been serious concerns among penitentiary personnel, however, about the recent decreases in the numbers of UTA's, apparently due largely to restrictions imposed in 1977 on the number of hours an inmate may be absent from penitentiary in a given quarter. To remedy this, and to allow for more flexible use of TA's to relieve institutional tension and to reward deserving inmates, we recommend that there be a three-day humanitarian UTA available, at the Warden's discretion, which need not be reserved for extraordinary circumstances such as a family death, but could be used for more broadly "humane" purposes. In addition, we recommend that the limit on rehabilitative UTA's be extended from 72 hours per quarter to 72 hours per month. Cases presently not "delegated" by NPB would, however, remain under NPB authority.

To reduce costs and to make more effective use of community resources, civilian volunteers should be permitted to serve as TA escorts or supervisors. Travel time should not be included in the duration limits imposed on TA's. Every effort should be made to reduce any unnecessary use of community assessments and supervision for TA's. Study should be made of the practicability (given resource limitations) of automatic reviews of inmates for UTA at the date of eligibility. UTA decisions delegated to CSC may be granted at that time, but all UTA denials (if appealed by the inmate), and all TA's administered by NPB, would require NPB involvement at that time.

Day parole was found to be a program which is growing but whose objectives are still unclear and under active debate by decisions-makers and practitioners. We found that there was a

strong current of opinion among Ministry staff and private agencies that day parole is over-used both as a "test" for full release and as a rehabilitative or supportive technique. This may account, in part, for its high success rate of about 80%. We recommend it be used only in cases of clear need or uncertainty about serious risk to the public, and not for the less serious or "risky" offenders. Day parole with a requirement of residence in a halfway facility should not normally be used, merely as a means of achieving release prior to full parole eligibility; an expanded power of parole by exception should be used in these types of cases. The fee paid to private agencies for use of their halfway facilities was found to be too low as it seriously affects their ability to provide adequate program, security and wages to their staff, and the fee should be re-negotiated by a Ministry committee. Block funding should be considered as a payment mechanism which would provide more program stability for such facilities. Negotiations should be undertaken with the provinces to remove obstacles to providing all released inmates and day parolees in CCC's and CRC's with health insurance coverage from the date of release. More sites should be designated as "penitentiaries" for the purpose of effecting the administrative release of day parole offenders onto full parole or MS. Better communication is needed to give inmates a more accurate picture of what is expected from CCC or CRC residence. There sould be more formal recognition of the need not to put heavy pressure on recently released inmates in halfway facilities for the first brief period of shock and difficult adjustment to normal society. A hearing prior to day parole termination should be mandatory unless the offender waives it. Study should be made of the practicability of automatic review of all inmates for day parole at the time of eligibility.

Full parole selection suffers from vague and questionable statutory criteria, and needs to be reviewed as part of the above-noted Ministry workshops on correctional objectives. Disparities in selection for full parole were found to be a major concern, and we recommend an extensive empirical study of full parole decisions, to determine how much variance can be explained through various legal, organizational, and individual case factors. Parole by exception should be made less "exceptional" through expansion of the current, virtually prohibitive, criteria. There should be more controls on the process for selection and training of new NPB members. Study should be made of the use of screening bodies for potential appointments, and of civil service merit hiring, to protect NPB from the appearance and reality of political appointment. The NPB Internal Review Committee should be strengthened by having a separate membership, and by being permitted to reverse appealed decisions on their substantive merits, to hold hearings, and to establish procedures for the written sharing of information and

reasoning on significant IRC decisions. Once the IRC proces has been strengthened, discussions should be undertaken with the Correctional Investigator to determine the practicability of his reviewing parole decisions after the exhaustion of internal reviews. Finally, there is some feeling across the country that the parole rate may be too low; MS cases succeed on supervision at a rate only about 10-15% lower than the success rates of paroled offenders. Overall, about 70% of parolees are not revoked during their supervision period.

Parole supervision has been subject to a great deal of criticism based on research which suggests that offender recidivism is determined much more by factors such as previous criminal involvement than by interventions by government officials. However, the Working Group found this research to be less than definitive, and finds that community supervision has fewer negative effects than imprisonment, and represents a cheaper and more humane program. However, a great deal more research is needed into the actual delivery of specific services to offenders by parole officers, and the effects of these services individually on different types of offenders. There has not been within CSC the needed commitment to community supervision in terms of the provision of resources, training, innovation and evaluation.

The Working Group found a great deal of practical experience and research which leads us to recommend that the "team" and "brokerage" models of parole supervision be more actively pursued and supported through start-up funds and training from national headquarters. The private aftercare agencies are not being used as effectively as they might be, namely in the provision of more diverse and specialized services to offenders than government agencies can provide. More exploration should be done of block funding to encourage and support innovative private agency programs. CSC parole officer man-year formulas should provide for time spent in community resource development. Greater use of volunteers in parole supervision should be encouraged through start-up projects supported at national headquarters. More consideration should be given to the option of relaxing minimum standards for supervision in lower-risk cases in order to permit more effective allocation of existing resources to more pressing cases.

The present conditions of parole are, in some cases, onerous, unrealistic, and unenforceable. The Working Group recommends that they be narrowed to require reporting to the parole office and remaining under the authority of the CSC, remaining in a designated area not bounded by unnatural geographical or municipal borders, obtaining permission to

purchase or carry a firearm, and notifying the parole officer of a change of address or employment status. All other requirements should be designated as "special conditions" by NPB. The practice of specifying restitution to the victim as a condition of parole should be reviewed to determine its legal status and fairness. Reasons given for the suspension of parole or MS should be supplied to the offender in writing and with as much detail as possible of the circumstances surrounding the suspension. Revocation should not be permitted on grounds of preventing a breach of conditions. Research is needed into the ground of actual suspensions and revocations, to address complaints that revocation is over-used in non-criminal circumstances.

Supervised persons often experience difficulties in obtaining bail or a bail hearing when they are under suspension for parole or MS breaches. Possible changes to the Criminal Code should be explored to deal with this, and negotiations shold be undertaken to allow provincial facilities and parole offices to be designated as "penitentiaries" for the purpose of revocations in "turnaround" cases. Post-suspension hearing to discuss possible revocation of parole or MS should always be held unless the offender waives the right. Hearings should occur as soon as possible, and normally within two months of notice of request for a hearing.

Finally, the Working Group noted that parole supervision staff morale is low, though we could make few specific recommendations to improve it. The problem seems to be tied to a loss of a sense of "mission" in community corrections, which is tied to the above-noted apparent lack of commitment to the community end of CSC. Other contributory factors appear to be a perceived emphasis on "quantity control", minimum standards, paperwork, and having to serve both CSC and NPB "masters". These problems should be carefully monitored to determine whether they can be remedied in future.

Earned remission was found to offer little promise as a "positive" motivator of exceptional or industrious inmate behaviour. However, it may serve to punish and deter negative behaviour, and may discourage voluntary inmate unemployment. We recommend that it be used as a punishment for unacceptable conduct, and not be used for evaluation of an inmate's "program participation". More specific criteria for its removal should be used to prevent apparent disparities and loss of remission should be reviewable, on appeal by the inmate, to NPB. The term "earned" should be eliminated. Though there was some feeling that remission has little effect on inmate behaviour, either "negative" or "positive", its retention as a control on penitentiary population size was found to be desirable, given

uncertainties about whether sufficient reductions in judicial sentences would accompany its abolition. Finally, criteria for the recrediting of remission should be relaxed to allow for the consideration of a principle of commensurate desserts after parole or MS revocation, since the amount of remission lost for parole or MS revocation is presently determined, not by the nature of the behaviour which caused the revocation, but by the amount of time served in penitentiary prior to release.

Mandatory supervision is a highly controversial program, more controversial in fact than one would expect from a simple examination on its merits, but the diversity of different groups concerned about it (NPB, police, offenders, parole officers) have increased its visibility as an issue. The Working Group was of the view that it is desirable that all persons released from penitentiary have available some form of post-release assistance (as MS provides), but some felt that this should be available on a voluntary basis for non-paroled offenders. Research is needed to determine whether, as some claim, MS offenders are treated differently from parolees simply because they are MS offenders. In particular, the use of technical revocations (as opposed to new-conviction revocations) in MS cases (as indeed in parole cases) should be examined.

Other concerns were reviewed by the Study. The first and most significant of these is recidivism on release, especially violent recidivism. We found the failure rates on various forms of release to be exaggerated, especially for MS, and in some instances, such as TA, to be so low as to suggest that too conservative a selection process may be in place. We examined recidivism from full parole and MS in some detail, and found that fewer than a fifth of all cases return to penitentiary with a new conviction prior to warrant expiry (though some "technical" revocations may mask a new crime which is suspected but unproven). Of these new-crime revocations, 15% involved a clearly violent crime such as assault, homicide or kidnapping, and another 13% were for robbery, which may involve actual violence. This is not to detract from the seriousness and reprehensability of the violent recidivism which does occur, but popular notions of the frequency of violence appear to be out of proportion to its actual incidence.

The Working Group found little systematic attention devoted to either predicting violence or providing treatment for potentially violent offenders in penitentiary. This may be partially a product of the relative lack of scientific knowledge of how to predict rare events and how to intervene successfully in people's lives, let alone in potentially violent situations.

The second system-wide concern encountered was the lack of coordination and understanding between sentencing authorities and releasing authorities. Release is not particularly well understood by some judges, who may increase their sentence to "allow for" an anticipated early release which may not occur, or may occur much later than expected. Many judges also appear to have much more confidence in the effectiveness of imprisonment and of correctional programs than do correctional officials. We recommend an annual publication to judges, providing more operational information about the actual practice of release, and emphasizing the limited nature of prison treatment.

The Working Group also noted the particular difficulties experienced, or apparently experienced, by certain special offender groups such as Natives, life-sentence inmates and women. It was not possible to explore the Native question in detail, and we recommend that the Minister's special committee on Natives examine difficulties experienced by Natives in preparing release plans which will be acceptable and functional. Lifers can experience a very tortuous preparation and gradual release process, and the lengthy periods of "dead time" which they serve prior to eligibility can be both disfunctional and inhumane. In particular, we recommend that all lifers serving minimum periods of longer than 10 years be able to apply to a court for reduction of that period after the service of 10 years. Women, being normally able to serve a federal sentence only in the maximum-security Prison for Women, experience particular difficulties in planning, obtaining and paying travel expenses for release. We recommend that study be made of three possible changes. First, more liberal use could be made of parole be exception and day parole to move women closer to their home communities under correctional supervision. Second, government funds could be made available to finance releases to areas distant from PW. Third, there may be a need for a special caseworker at PW to help deal with the special release planning and coordination problems experienced by women.

We also reviewed the difficulties reported by some staff in protecting confidential information from disclosure under the Canadian Human Rights Act. New procedures put in place to guide the protection of information which could harm an individual or which would disclose case opinions made on an understanding of confidentiality appear to be adequate, but should be closely monitored by the Ministry. Services to provinces with no parole board of their own are also a concern, since some provinces have complained of lengthy delays in case preparation and of difficulties in NPB's exercise of paroling authority over provincial prisoners. Resolution of these possibly through federal-provincial discussions should be considered a Ministry

priority. Finally, the Working Group considers essential the creation of a management information system which will provide timely monthly feedback to key personnel on the persons being granted and denied various forms of release in their own and other regions.

Lastly, the Study reviewed the major available "models" for release which have been proposed in Canada and elsewhere for defining the proper philosophy which should guide release and the manner in which release should be administered. Many of these models contain elements or reflect approaches which may be meaningful and useful to release in Canada. As "macro" systems, however, which would involve a major re-ordering of release discretion, or its elimination in certain forms, these models may create system imbalances of major significance, about which little is as yet known.

Based on the limited available knowledge about these new models, the Working Group cannot recommend the adoption of any of them as an alternative to the status quo. The available "macro models" for reform should, however, continue to be studied and monitored, especially in the light of any re-ordering of priorities and objectives which may occur as a result of the Study's first recommendation.

APPENDIX A

STATISTICAL INFORMATION

The following data were obtained through the use of a combined data base developed for the Release Study, incorporating into a single offender-based file all the information available on release programs, in the Inmate Record System, National Parole Service Information System, and Temporary Absence data base. These tables were compiled by Release Study staff, not by the management information staff of CSC or NPB. The figures contained in this Appendix may differ from those which appear in other Ministry publications, but in most cases the differences are slight. We believe that the figures contained herein are at least as accurate as those found in other sources.

Though these programs were in operation much earlier, individual case data are available on temporary absence only from July 1976, and on day parole only from 1974.

A few tables are included from other data source surveys. If so, the source is noted.

TABLE A-1

AVERAGE (MEAN) AGGREGATE SENTENCE FOR PERSONS RELEASED FROM FEDERAL PENITENTIARY IN 1978 AND 1979, BY OFFENCE GROUP AND RELEASE TYPE

Admission Offence Group	Aggregate Sentence (months)								
	All Releases			Parole Releases			M.S. Releases		
	No. of Cases	Average Sentence	Standard Deviation	No. of Cases	Average Sentence	Standard Deviation	No. of Cases	Average Sentence	Standard Deviation
CRIMES AGAINST THE PERSON									
Murder	70	life	*	70	life	*	0	N/A	N/A
Manslaughter	323	71	46	182	81	52	141	59	33
Attempted murder	69	89	61	34	111	69	35	67	42
Rape and attempted rape	354	52	30	157	54	26	197	50	32
Sexual assault	103	34	19	16	45	23	87	31	18
Other assaults, wounding	359	34	22	80	42	20	279	32	23
Kidnapping, forcible confinement	76	54	44	31	76	58	45	38	20
Criminal negligence causing death	24	33	19	13	36	16	9	29	23
Other crimes against the person	267	37	24	103	42	22	164	33	24
ROBBERY	2,353	50	39	968	62	49	1,385	42	29
CRIMES AGAINST PROPERTY									
Break and enter	1,922	31	19	463	38	22	1,459	29	17
Theft, possession of stolen goods	844	28	18	177	37	19	667	25	17
Frauds	489	33	24	132	41	24	357	30	23
NARCOTICS									
Possession of narcotics	54	28	16	25	35	10	29	21	17
Trafficking and importing	1,048	52	33	702	55	34	346	45	30
MISCELLANEOUS									
Miscellaneous Criminal Code	316	35	23	99	47	26	217	30	20
Miscellaneous Federal and provincial statutes	11	50	35	3	66	62	8	44	23
Escape and unlawfully at large	72	20	15	5	38	14	67	19	14

* Life imprisonment is mandatory for murder.

TABLE A-2

NUMBER OF ETA'S AND UTA'S GRANTED EACH QUARTER,
JULY 1976 TO SEPTEMBER 1980, BY REGION

Year and Quarter	Atlantic	Quebec	Ontario	Prairies	Pacific	Total
1976-3	951	2,248	3,459	1,742	3,342	11,742
1976-4	911	2,136	2,417	2,037	3,180	10,681
1977-1	928	2,167	5,317	2,453	3,412	14,277
1977-2	729	2,528	2,734	2,588	3,761	12,340
1977-3	917	2,522	4,066	2,560	3,715	13,780
1977-4	949	2,989	3,145	2,254	3,800	13,137
1978-1	1,065	2,802	3,070	2,226	3,087	12,250
1978-2	1,143	3,048	2,886	2,013	3,937	13,027
1978-3	1,115	3,179	2,539	1,872	3,655	12,360
1978-4	1,015	3,921	2,995	1,665	3,273	12,869
1979-1	1,163	3,225	2,712	1,869	3,206	12,175
1979-2	1,457	3,221	2,818	1,598	3,979	13,073
1979-3	1,425	3,551	2,580	1,870	4,660	14,086
1979-4	1,372	3,577	2,773	1,553	4,341	13,616
1980-1	1,477	3,559	2,866	1,636	4,390	13,929
1980-2	1,753	3,410	2,456	1,695	4,644	13,958
1980-3	1,026	2,367	1,812	1,233	3,131	9,569
Total	19,399	50,473	50,651	32,868	63,533	216,924
% of Grand Total	8.9	23.3	23.4	15.1	29.3	GRAND TOTAL

TABLE A-4

PURPOSE OF ETA'S AND TA'S
GRANTED FROM JULY 1976 TO SEPTEMBER 1980

Purpose of TA	Number of TA's	Percentage of TA's
REHABILITATIVE		
Sports	38,099	17.6
Social Project	21,130	9.7
Visit family	18,084	8.3
Transition to Community	15,617	7.2
Work Release	13,038	6.0
Visit wife	7,689	3.5
Visit friend	6,761	3.1
Education	1,858	1.1
Job seeking	1,225	0.6
Other	40,037	18.5
SUB-TOTAL		75.6
MEDICAL		
Medical	42,299	19.5
Dental	4,067	1.9
Psychiatric	1,079	0.5
SUB-TOTAL		21.9
ADMINISTRATIVE		
PRE-RELEASE	3,267	1.5
HUMANITARIAN		
Family death	1,134	0.5
Family illness	705	0.3
Family marriage	135	0.1
Other	700	0.3
SUB-TOTAL		1.2

TABLE A-5

TOTAL NUMBER OF UNESCORTED AND ESCORTED TEMPORARY ABSENCES FROM JULY 1976 TO SEPTEMBER 1989, BY YEAR AND QUARTER AND BY GROUP STATUS

Year and Quarter	Number (and Percentage) of TA's Granted	
	Group	Single
1976-3	5,296 (45.1)	6,446 (54.9)
1976-4	4,520 (42.3)	6,161 (57.7)
1977-1	6,653 (46.6)	7,624 (53.4)
1977-2	5,362 (43.4)	6,978 (56.6)
1977-3	6,428 (46.6)	7,352 (53.4)
1977-4	6,249 (47.6)	6,888 (52.4)
1978-1	6,238 (50.9)	6,012 (49.1)
1978-2	7,371 (56.6)	5,656 (43.4)
1978-3	6,687 (54.1)	5,673 (45.9)
1978-4	6,788 (52.7)	6,081 (47.3)
1979-1	6,901 (56.7)	5,274 (43.3)
1979-2	7,197 (55.1)	5,876 (44.9)
1979-3	8,182 (58.1)	5,904 (41.9)
1979-4	7,597 (55.8)	6,019 (44.2)
1980-1	8,071 (57.9)	5,858 (42.1)
1980-2	11,211 (80.3)	2,747 (19.7)
1980-3	9,569 -	N/A -
TOTAL	120,354 (55.5)	96,570 (44.5)

TABLE A-6

NUMBER OF GROUP AND SINGLE TA'S GRANTED, JULY 1976 TO SEPTEMBER 1980, BY PENITENTIARY

Penitentiary	Number of TA's Granted		
	Group	Single	Total
Maximums:			
B.C. Penitentiary[1]	21	424	445
Kent[2]	89	101	190
Edmonton[3]	206	2	208
Saskatchewan Penitentiary	41	537	578
Millhaven	265	972	1,273
Prison for Women	2,647	4,850	7,497
Laval	148	1,372	1,520
Archambault	334	1,189	1,523
Centre de développement Correctionel	139	1,541	1,680
Dorchester	309	2,075	2,384
Mediums:			
William Head	2,711	3,022	5,733
Matsqui	2,073	2,282	4,355
Mountain	16,426	3,558	19,984
Mission[4]	443	1,129	1,572
Stony Mountain	1,036	3,505	4,541
Drumheller	2,740	5,965	8,705
Bowden	2,759	3,484	6,243
Collins Bay	819	2,559	3,378
Joyceville	1,945	3,202	5,147
Warkworth	2,316	3,599	5,915
Leclerc	2,678	3,765	6,443
Cowansville	946	3,851	4,797
Federal Training Centre	3,133	4,278	7,411
La Macaza[5]	1,371	1,023	2,394
Springhill	5,999	3,087	9,086

TABLE A-6 (cont'd)

Minimums			
Pandora Centre	0	0	0
Robson Centre	0	5	5
Agassiz[6]	5,559	1,201	6,750
Elbow Lake	11,532	1,429	12,961
Ferndale	8,216	1,927	10,143
Osborne Centre	0	1	1
Rockwood	2,595	3,748	6,343
Saskatchewan Farm Annex	1,068	1,345	2,413
Drumheller Trailer	34	1,631	1,665
Altadore Centre	0	3	3
Scarboro Cent	0	3	3
Grierson Centre	405	1,685	2,090
Oskana Centre	0	0	0
Montgomery Centre	0	463	463
Bath	1,332	1,124	2,456
Frontenac	840	1,943	2,783
Landry Crossing	2,110	644	2,754
Beaver Creek	10,575	2,718	13,293
Pittsburgh	1,883	1,832	3,715
Beniot XV[7]	0	1	1
Martineau Centre[8]	0	0	0
St. Hubert Centre	0	0	0
Ogilvy Centre	0	0	0
Sherbrooke Centre[9]	0	0	0
Montée St. Francois	9,132	4,738	13,870
St. Anne des Plaines	6,507	2,758	9,265
Westmorland	5,061	1,668	6,729
Shulie Lake	774	41	815
Dungarvon[10]	264	120	384
Carlton Centre	0	0	0
Parrtown Centre	0	0	0
REGIONAL PSYCHIATRIC CENTRES			
RPC Pacific	113	524	637
RPC Prairies	37	37	74
RPC Ontario	8	453	461
REGIONAL RECEPTION CENTRES			
RPC Ontario	267	1,282	1,549
RPC Quebec	314	1,163	1,477

TABLE A-6 (cont'd)

1 Closed 10/77
2 Opened 8/79
3 Opened 10/78
4 Opened 1/78
5 Opened 8/77
6 Closed 10/78
7 Opened 10/77
8 Opened 1/78
9 Opened 1/79
10 Closed 5/77

TABLE A-7

NUMBER AND PERCENTAGE OF GROUP AND UNESCORTED TA'S GRANTED, JULY 1976 TO SEPTEMBER 1980, BY REGION AND SECURITY STATUS

Region and Security Status	Total Number of TA's Granted	Group TA's		Unescorted TA's	
		Number Granted	Percentage of Total	Number Granted	Percentage of Total
Maximum:					
Atlantic	2,384	309	13.0	378	15.9
Quebec	6,290	935	14.9	519	8.3
Ontario	10,744	3,187	29.7	1,693	15.8
Prairie	860	284	33.0	311	36.2
Pacific	2,019	353	17.5	76	3.8
Total	22,297	5,068	22.7	2,977	13.4
Medium:					
Atlantic	9,086	5,999	66.0	1,417	15.6
Quebec	21,045	8,128	38.6	6,931	32.9
Ontario	14,442	5,080	35.2	3,595	24.9
Prairie	19,490	6,535	33.5	6,671	34.2
Pacific	31,644	21,653	68.4	4,644	14.7
Total	95,707	47,395	49.5	23,258	24.3
Minimum:					
Atlantic	7,928	6,099	76.9	1,132	14.3
Quebec	23,136	15,639	67.6	6,315	27.3
Ontario	25,464	16,740	65.7	6,933	25.5
Prairie	12,518	4,102	32.8	6,705	53.6
Pacific	29,869	25,307	84.7	3,350	11.2
Total	98,915	67,887	68.6	24,435	24.7

TABLE A-8

NUMBER OF INMATES RELEASED ON TA EACH QUARTER, JULY 1976 TO SEPTEMBER 1980

Year and Quarter	Number of Inmates Released on TA
1976-3	3,232
1976-4	3,109
1977-1	3,538
1977-2	3,444
1977-3	3,619
1977-4	3,413
1978-1	3,348
1978-2	3,561
1978-3	3,561
1978-4	3,609
1979-1	3,366
1979-2	3,592
1979-3	3,448
1979-4	3,425
1980-1	3,477
1980-2	3,598
1980-3	2,877

TABLE A-9

FREQUENCY OF TEMPORARY ABSENCES GRANTED
PER YEAR TO INMATES RECEIVING A TA,*
JULY 1976 TO SEPTEMBER 1980, BY YEAR

Year	Number of Inmates Receiving TA's							
	1 TA	2 TA's	3 TA's	4 TA's	5-9 TA's	10-19 TA's	20+ TA's	TOTAL
July-Dec. 1976	2,509	964	545	335	674	341	169	5,537
1977	3,678	1,652	953	708	1,413	700	548	9,652
1978	4,145	1,790	1,067	680	1,338	690	484	10,194
1979	3,908	1,678	1,023	633	1,316	713	547	9,818
Jan.-Sept. 1980	3,164	1,318	746	469	1,010	500	362	7,569
TOTAL	17,404	7,402	4,334	2,285	5,751	2,944	2,110	42,770
% of GRAND TOTAL	40.7	17.3	10.1	6.6	13.4	7.0	4.9	100.0

* Table does not reflect the numbers of inmates who did not receive any TA in the year. In any given year, about 13,000 persons are in or admitted to penitentiary.

TABLE A-10A

OUTCOME OF ESCORTED TEMPORARY ABSENCES
GRANTED* FROM JULY 1976 TO SEPTEMBER
1980, BY YEAR****

YEAR	Return On Time	Return With Extension	Return Late	Declared Unlawfully At Large	Detained by Police	Termination **	Pre-Release ***
July-Dec. 1976	12,815	386	160	5	15	1	1
1977	28,145	1,477	747	26	10	0	10
1978	30,714	2,610	1,408	55	1	0	3
1979	33,126	2,287	2,624	62	0	1	2
Jan.-Sept. 1980	23,763	1,675	1,624	37	0	0	3
TOTAL	128,586	8,445	1,624	185	26	2	19
% of GRAND TOTAL	89.4	5.9	4.6	0.1	0.0	0.0	0.0

* Does not include 22,424 TA's granted but cancelled prior to execution.

** A "termination" would be made for unacceptable behaviour while on TA, other than failure to return on time.

*** These are "administrative" pre-release TA's which end on the day of granting of a day parole, full parole, or MS.

**** The columns do not add up properly because of some missing dates in the TA system.

TABLE A-10B

OUTCOME OF UNESCORTED TEMPORARY ABSENCES GRANTED* FROM JULY 1976 TO SEPTEMBER 1980, BY YEAR**

YEAR	Return On Time	Return With Extension	Return Late	Declared Unlawfully At Large	Detained by Police	Termination **	Pre-Release ***
July-Dec. 1976	7,665	438	405	51	0	0	89
1977	15,144	985	1,051	153	13	13	577
1978	7,121	212	718	122	13	13	733
1979	5,603	177	674	115	11	11	726
Jan.-Sept. 1980	3,814	104	443	70	7	7	487
TOTAL	39,401	1,916	3,292	512	44	44	2,613
% of GRAND TOTAL	82.4	4.0	6.9	1.1	0.1	0.1	5.5

* Does not include 2,858 TA's granted but cancelled prior to execution.

** A "termination" would be made for unacceptable behaviour while on TA, other than failure to return on time.

*** These are "administrative" pre-release TA's which end on the day of granting of a day parole, full parole, or MS.

**** The columns do not add up properly because of some missing dates in the TA system.

TABLE A-11

TA FAILURE* RATE, JULY 1976 TO SEPTEMBER 1980, BY REGION AND SECURITY STATUS

Region and Security Status	Total Number of TA's Granted	TA Failures*	
		Number	Percentage of Total
Maximum:			
Atlantic	2,384	10	0.4
Quebec	6,290	5	0.1
Ontario	10,744	24	0.2
Prairie	860	3	0.3
Pacific	2,019	4	0.2
Total	22,297	46	0.2
Medium:			
Atlantic	9,086	38	0.4
Quebec	21,045	144	0.7
Ontario	14,442	135	0.9
Prairie	19,490	146	0.7
Pacific	31,644	65	0.2
Total	95,707	528	0.6
Minimum:			
Atlantic	7,928	24	0.3
Quebec	23,136	47	0.2
Ontario	25,464	88	0.3
Prairie	12,518	32	0.3
Pacific	29,869	32	0.1
Total	98,915	223	0.2

* A TA "failure" is defined as an early termination, being detained by the police, or being declared unlawfully at large.

TABLE A-12

NUMBER OF DAY PAROLES* GRANTED,
1967 TO FIRST QUARTER OF 1980

Year of Granting	Number of Day Paroles Granted
1967	19
1968	11
1969	47
1970	123
1971	336
1972	394
1973	1,127
1974	1,750
1975	1,449
1976	1,716
1977	1,988
1978	2,713
1979	2,624
Jan-March 1980	596

* Includes "temporary paroles" in 1973 1974 and 1975.

TABLE A-13

NUMBER (AND PERCENTAGE) OF M.S. RELEASES
WHO HAD PARTICIPATED IN DAY PAROLE PROGRAM,
BY YEAR, 1974-1979

Year of M.S. Release	Number (and Percentage) Participating				
	Day Parole Granted & Cancelled	Successful Day Parole	Day Parole Failure	No Day Parole	Total M.S. Releases
1974	32 (1.3)	330 (13.5)	13 (0.5)	2,075 (84.7)	2,450
1975	59 (2.4)	538 (22.2)	23 (0.9)	1,803 (74.4)	2,423
1976	61 (2.4)	597 (23.4)	9 (0.3)	1,880 (73.8)	2,547
1977	57 (2.0)	642 (23.1)	5 (0.2)	2,077 (74.7)	2,781
1978	51 (1.8)	609 (21.4)	127 (4.4)	2,054 (72.3)	2,841
1979	49 (1.9)	514 (20.1)	253 (9.9)	1,741 (68.1)	2,557
TOTAL	309 (2.0)	3,230 (20.7)	430 (2.8)	11,630 (74.5)	15,599

TABLE A-14

NUMBER (AND PERCENTAGE) OF FULL PAROLE RELEASES WHO HAD PARTICIPATED IN DAY PAROLE PROGRAM, BY YEAR, 1974-1979

Year of Full Parole Release	Number (and Percentage) Participating				
	Day Parole Granted & Cancelled	Successful Day Parole	Day Parole Failure	No Day Parole	Total Full Parole Releases
1974	20 (1.4)	371 (27.3)	1 (0.0)	967 (71.1)	1,359
1975	5 (0.3)	570 (45.1)	0 (0.0)	689 (54.5)	1,264
1976	11 (1.0)	466 (44.1)	2 (0.0)	578 (54.7)	1,057
1977	18 (1.2)	694 (46.9)	0 (0.0)	796 (51.9)	1,481
1978	8 (0.5)	865 (55.2)	7 (0.4)	687 (43.8)	1,567
1979	15 (0.8)	1,033 (59.9)	36 (2.1)	640 (37.1)	1,724
TOTAL	77 (0.9)	3,999 (47.3)	46 (0.5)	4,330 (51.2)	8,452

TABLE A-15

PROBABILITY OF RECEIVING PARTIAL* AND FULL RELEASE TYPES, FOR PERSONS ADMITTED TO PENITENTIARY AFTER JULY 1976 AND RELEASED FROM JANUARY, 1978 TO JUNE 1980

Partial Release Participation**	Proportion of All Cases	No. of Cases	Percentage of Cases Receivi Full Parole
Cases granted ETA, UTA and DP	.26	2,579	56
Cases granted no ETA, UTA or DP	.17	1,751	18
Cases successful at ETA, UTA and DP	.22	2,196	64
Cases failing at ETA, UTA and DP	.00	0	N/A
Successful ETA (and no other release types)	.15	1,468	26
Successful UTA (and no other release types)	.07	687	21
Successful DP (and no other release types)	.04	389	60
Failure on ETA (and no other release types)	***	12	8
Failure on UTA (and no other release types)	***	11	0
Failure on DP (and no other release types)	.01	58	16
Successful ETA and UTA (no DP)	.18	1,786	33
Successful ETA and DP (no UTA)	.07	749	61
Successful UTA and DP (no ETA)	.03	321	61
No TA granted	.22	2,198	25
ETA success	.67	6,808	43
No ETA	.32	3,264	28
ETA failure	***	40	10
UTA success	.53	5,364	44
No UTA	.44	4,454	32
UTA failure	.02	205	12
DP success	.37	3,729	62
No DP	.58	5,853	25
DP failure	.05	531	11
All cases		10,112	37

* The column titled "Proportion of all Cases" gives the probability of participating in each pattern of partial releases.

** Abbreviations in the Table refer to escorted temporary absence (ETA), unescorte temporary absence (UTA), and day parole (DP).

*** Numbers in this cell are too small to permit meaningful calculation.

TABLE A-16

OUTCOME (TO JUNE 1980) OF DAY PAROLES GRANTED
FROM JANUARY 1967 TO MARCH 1980[2]

Type of Termination	No. of Cases	% of Cases
Forfeited for new conviction[2]	562	3.8
Revoked without new conviction	681	4.7
Terminated by NPB[3]	1,139	7.8
DP expired while suspended	2	0.0
Regular expiry of DP program[4]	910	6.2
Early termination (DP program ending before expiry of approved period)[5]	1,319	9.0
Termination through release onto full parole or MS	753	5.2
Other terminations[6]	263	1.8
No record of termination[7]	8,963	61.3
Died during DP	26	0.2
TOTAL	14,618	100.0

1 It should be noted that the number of cases in this table does not add up to the number of day paroles "granted" in Table 12 because of data base inadequacies. This Table does not include 614 day paroles granted but then cancelled prior to execution. For summary purposes, the first four categories in this Table, plus the "other terminations" category, have been counted as day parole "failures", yeilding an overall failure rate of 18.1%. See notes, below.

2 "Forfeiture" of parole is a term formerly used to denote what was an automatic parole revocation upon grounds of new criminal conviction.

3 This cateogry denotes an early termination of day parole for reasons related to unacceptable behaviour on the part of the offender, such as failure to conform to the rules of a CCC.

4 This category denotes a termination of day parole through the expiration of the approved period (typically four months), without any renewal of the program, continuation, or release onto full parole or MS.

5 This category denotes an early termination of day parole as a result of the purpose for which it was granted ending prior to the expiration of the approved period. For example, a day parole granted to allow the inmate to pick apples might be terminated early if the apples ran out before the four-month approved period.

6 Though NPB surveys suggest that some of the persons in this category may simply be early terminations (as above). However, we have counted all these entries as "failures" in our overall totals.

7 These cases have all been counted as "successes" because they presumably indicate that the day parole was continued, is still active, or expired at the end of the program. We are assuming, in other words, that any negative outcome of the day parole to date would have been recorded.

CONTINUED

2 OF 3

TABLE A-17

OUTCOME (TO JUNE 1980*) OF ALL FULL PAROLE AND M.S. RELEASES FOR PERSONS ADMITTED TO PENITENTIARY AFTER JULY 1976 AND FULL RELEASED FROM JANUARY 1978 TO JUNE 1980, BY PARTICIPATION IN PRIOR PARTIAL RELEASES

Partial Release Participation**	No. of Cases	Percentage Granted Full Parole	Percentage Successes* on Full Parole	Percentage Successes* on M.S.
Group as a whole	10,112	37	87	72
Cases granted ETA, UTA and DP	2,579	56	90	78
Cases granted no ETA, UTA or DP	1,751	18	85	68
Cases successful at ETA, UTA and DP	2,196	64	90	80
Cases failing at ETA, UTA and DP	0	N/A	N/A	N/A
Successful ETA (no other release types)	1,468	26	83	69
Successful UTA (no other release types)	687	21	88	73
Successful DP (no other release types)	389	60	83	64
Failure on ETA (no other release types)	12	8	-***	-***
Failure on UTA (no other release types)	11	0	-***	-***
Failure on DP (no other release types)	58	16	-***	65
Successful ETA and UTA (no DP)	1,786	33	87	75
Successful ETA and DP (no UTA)	749	61	87	74
Successful UTA and DP (no ETA)	321	61	89	76
No TA granted	2,198	25	83	67
ETA success	6,808	43	88	74
No ETA	3,264	28	85	70
ETA failure	40	10	-***	-***
UTA success	5,364	44	89	76
No UTA	4,454	32	85	68
UTA failure	205	12	76	73
DP success	3,729	62	89	76
No DP	5,853	25	85	71
DP failure	531	11	79	73

* Full paroles and MS cases registered as "successes" (i.e. persons not revoked) may still be under supervision and ultimately result in a revocation, so success rates in this Table are skewed high. The Table should be read for internal comparisons, not as absolutes.

** Abbreviations in the Table refer to escorted temporary absence (ETA), unescorted temporary absence (UTA), and day parole (DP).

*** Numbers in this cell are too small to permit meaningful calculation.

TABLE A-18

NUMBER OF FULL PAROLE, MANDATORY SUPERVISION AND DIRECT DISCHARGE RELEASES, 1970-1979, BY YEAR OF RELEASE*

Fiscal Year of Release	Number (and percentage) of Full Parole Releases	Number (and percentage) of M.S. and Direct Discharge Releases	Total Full Releases**
1969-70	2,054 (49)	1,896 (48)	3,950
1970-71	2,764 (61)	1,554 (36)	4,318
1971-72	2,366 (58)	1,512 (39)	3,878
1972-73	1,738 (47)	1,669 (49)	3,407
1973-74	1,247 (33)	2,316 (65)	3,563
1974-75	1,615 (33)	2,633 (62)	4,248
1975-76	1,315 (29)	2,553 (66)	3,868
1976-77	1,512 (25)	2,689 (64)	4,201
1977-78	1,747 (31)	2,850 (62)	4,597
1978-79	1,920 (33)	3,002 (61)	4,922

* Source: CSC Weekly Population Movements

** Includes releases through court order, death, provincial transfers, and other miscellaneous means, which accout for some 3-11% of all releases in the years shown. For this reason, percentages for full parole and MS/direct discharge releases do not add to 100.

TABLE A-19

TIME SERVED BEFORE FULL PAROLE, PERSONS RELEASED FROM JANUARY 1970 TO JUNE 1980

Time Served in Penitentiary	Number of Cases	Percentage of Cases
1 year	5510	30.1
< 2 years	7748	42.4
2 < 4 years	3382	18.5
4 < 6 years	862	4.7
6 < 8 years	376	2.1
8 < 10 years	175	1.0
10 < 15 years	173	0.9
15 < 20 years	29	0.2
20 < 30 years	20	0.1
Total	18275	100.0

* Percentages do not include released lifers.

TABLE A-20

PERCENTAGE OF AGGREGATE SENTENCE SERVED BEFORE FULL PAROLE, PERSONS RELEASED FROM JANUARY 1970 TO JUNE 1980

Percentage of Sentence Served	Number of Cases	Percentage of Cases*
< 20%	270	1.5
20 < 30%	621	3.5
30 < 40%	8695	49.2
40 < 50%	3824	21.7
50 < 60%	2677	15.2
60 < 70%	1326	7.5
70 < 80%	138	0.8
80 < 90%	62	0.4
90 < 100%	44	0.2
Lifers released	529	-
Total	18186	100.0

* Percentages do not include released lifers.

TABLE A-21

AVERAGE (MEAN) TIME SERVED BY PERSONS RELEASED FROM FEDERAL PENITENTIARY IN 1978 AND 1979, BY OFFENCE GROUP AND RELEASE TYPE

Admission Offence Group	Time Served (months)								
	All Releases			Parole Releases			M.S. Releases		
	No. of Cases	Average Time Served	Standard Deviation	No. of Cases	Average Time Served	Standard Deviation	No. of Cases	Average Time Served	Standard Deviation
CRIMES AGAINST THE PERSON									
Murder	70	131	66	70	131	66	0	N/A	N/A
Manslaughter	323	36	23	182	33	22	141	40	25
Attempted murder	69	49	31	34	51	33	35	46	30
Rape and attempted rape	354	30	20	157	24	15	197	34	23
Sexual assault	103	22	14	16	26	17	87	21	14
Other assaults, wounding	359	21	16	80	18	11	279	22	17
Kidnapping, forcible confinement	76	28	18	31	30	21	45	26	16
Criminal negligence causing death	24	18	15	13	16	8	9	21	23
Other crimes against the person	267	21	16	103	18	12	164	22	17
ROBBERY	2,353	28	22	968	28	22	1,385	29	21
CRIMES AGAINST PROPERTY									
Break and enter	1,922	19	13	463	18	12	1,459	20	13
Theft, possession of stolen goods	844	17	14	177	18	16	667	17	14
Frauds	489	20	17	132	20	16	357	20	18
NARCOTICS									
Possession of narcotics	54	13	9	25	14	4	29	13	12
Trafficking and importing	1,048	25	17	702	22	15	346	30	21
MISCELLANEOUS									
Miscellaneous Criminal Code	316	20	15	99	21	16	217	20	15
Miscellaneous Federal and provincial statutes	11	29	15	3	33	17	8	28	15
Escape and unlawfully at large	72	14	12	5	18	6	67	14	13

TABLE A-22

OUTCOME (TO JUNE 1980*) OF FULL PAROLE AND MS RELEASES, JANUARY 1974 TO DECEMBER 1979, BY SECURITY STATUS OF RELEASING PENITENTIARY

Security Status	Full Parole**		M.S.**	
	Number of Releases	Percentage of Successes	Number of Releases	Percentage of Successes
Minimum	3,265	80.2	2,855	63.2
Medium	3,953	72.6	7,332	55.0
Maximum	901	67.2	5,301	48.6
Total	8,450	75.2	15,627	54.3

* Cases registered as "successes" may still be under supervision and ultimately result in a revocation, so success rates in this Table are skewed somewhat high.

** Total numbers are greater than sum because of missing institutional codes in some records.

TABLE A-23

PAROLE RATE* AND FULL PAROLE AND MS OUTCOMES (TO JUNE 1980), PERSONS RELEASED FROM JANUARY 1974 TO DECEMBER 1979, BY REGION**

Region	Parole Rate	Percentage of Full Parole Successes	Percentage of MS Successes
Atlantic	44.8	72.7	54.8
Quebec	51.3	80.3	62.3
Ontario	37.8	74.2	62.2
Prairie	32.2	73.3	51.5
Pacific	34.8	75.2	52.1
Total	40.5	75.2	54.3

* Defined as the percentage of all full releases which were by full parole (not MS or direct discharge).

** Cases registered as "successes" may still be under supervision and ultimately result in a revocation, so success rates in this Table are skewed somewhat high.

TABLE A-24

OUTCOME (TO JUNE 1980) OF FULL PAROLE RELEASES FROM 1970 TO 1979

	Number (and Percentage) of Full Parole Releases					
Year of Release	Total Releases on Full Parole	Revoked Without New Offence	Revoked With New Offence	Offence After Successful Completion*	Successful Completion, and no Subsequent Readmissions	Still Under Supervision
1970	2,519	348 (13.8)	751 (29.8)	151 (6.0)	1,221 (48.5)	48 (2.0)
1971	2,339	297 (12.7)	674 (28.5)	125 (5.4)	1,222 (52.2)	37 (1.6)
1972	1,756	209 (11.9)	442 (25.2)	97 (5.5)	988 (56.2)	20 (1.1)
1973	1,191	116 (9.7)	219 (18.4)	65 (5.5)	751 (63.0)	40 (3.3)
1974	1,359	125 (9.2)	224 (16.5)	39 (3.0)	906 (66.6)	65 (4.8)
1975	1,264	141 (11.1)	181 (14.3)	39 (3.2)	790 (62.5)	113 (8.9)
1976**	1,057	88 (8.3)	127 (12.0)	20 (2.0)	646 (61.1)	176 (16.6)
1977**	1,481	125 (8.6)	146 (9.8)	21 (1.4)	837 (56.5)	352 (23.7)
1978**	1,567	142 (9.1)	139 (8.9)	6 (0.4)	649 (41.4)	631 (40.3)
1979**	1,724	104 (6.1)	100 (5.8)	1 (0.0)	175 (10.1)	1,344 (77.9)

* These cases successfully completed their parole supervision period, but were subsequently readmitted to penitentiary for a new offence after the completion of the parole period.

** It should be noted that many of the persons released in these years are still under supervision as of June 1980, and revocation rates for these release years must therefore not be taken as definitive.

TABLE A-25

OUTCOME (TO JUNE 1980) OF M.S. RELEASES
FROM 1970 TO 1979

	Number (and Percentage) of M.S. Releases					
Year of Release	Total Releases on M.S.	Revoked Without New Offence	Revoked With New Offence	Offence After Successful Completion*	Successful Completion, and no Subsequent Readmissions	Still Under Supervision
1970	3	0 (0.0)	1 (33.3)	1 (33.3)	1 (33.3)	0 (0.0)
1971	80	8 (10.0)	25 (31.3)	10 (12.5)	37 (46.2)	0 (0.2)
1972	871	103 (11.8)	227 (26.1)	131 (15.0)	410 (47.0)	0 (0.0)
1973	1,780	234 (13.1)	445 (25.0)	248 (13.9)	852 (47.8)	1 (0.1)
1974	2,382	251 (10.5)	616 (28.9)	297 (12.5)	1,209 (50.7)	9 (0.3)
1975	2,431	329 (13.5)	623 (25.6)	278 (11.4)	1,199 (49.3)	2 (0.1)
1976	2,555	520 (20.4)	594 (23.2)	218 (8.5)	1,219 (47.7)	4 (0.1)
1977	2,822	578 (20.5)	547 (19.4)	278 (9.9)	1,408 (49.8)	11 (0.3)
1978	2,913	551 (18.9)	454 (15.6)	271 (9.3)	1,513 (51.9)	124 (4.2)
1979**	2,524	465 (18.4)	369 (14.6)	59 (2.3)	985 (39.0)	646 (25.6)

* These cases successfully completed their mandatory supervision period, but were subsequently readmitted to penitentiary for a new offence after the completion of the MS period.

** It should be noted that many of the persons released in this year are sill under supervision as of June 1980, and revocation rates for this release year must therefore not be taken as definitive.

TABLE A-26

OFFENCES COMMITTED UNDER FULL PAROLE BY PERSONS RELEASED FROM JANUARY 1975 TO DECEMBER 1979 AND READMITTED TO FEDERAL PENITENTIARY WITH NEW CONVICITON FROM JANUARY 1975 TO JUNE 1980

Admission Offence Group	Number of Full Parole Cases Revoked	Percentage of Total Offences
CRIMES AGAINST THE PERSON		
Murder	9	1.3%
Manslaughter	9	1.3%
Attempted murder	0	0.0%
Rape and attempted rape	10	1.4%
Sexual assault	4	0.6%
Other assaults, wounding	17	2.4%
Kidnapping, forcible confinement	6	0.9%
Criminal negligence causing death	2	0.3%
Other crimes against the person	10	1.4%
Sub-Total	67	9.5%
ROBBERY	127	18.0%
Sub-Total	127	18.0%
CRIMES AGAINST PROPERTY		
Break and enter	192	27.2%
Tneft, possession of stolen goods	148	21.0%
Frauds	53	7.5%
Sub-Total	393	55.7%
NARCOTICS		
Possession of narcotics	7	1.0%
Trafficking and importing	42	6.0%
Sub-Total	49	7.0%
MISCELLANEOUS		
Miscellaneous Criminal Code	58	8.2%
Miscellaneous Federal and provincial statutes	2	0.3%
Escape and unlawfully at large	9	1.3%
Sub-Total	69	9.8%
TOTAL	705	100.0%

TABLE A-27

OFFENCES COMMITTED UNDER MANDATORY SUPERVISION BY PERSONS RELEASED FROM JANUARY 1975 TO DECEMBER 1979 AND READMITTED TO FEDERAL PENITENTIARY WITH NEW CONVICTION FROM JANUARY 1975 TO JUNE 1980

Admission Offence Group	Number of M.S. Cases Revoked	Percentage of Total Offences
CRIMES AGAINST THE PERSON		
Murder	31	1.2%
Manslaughter	21	0.8%
Attempted murder	11	0.4%
Rape and attempted rape	25	1.0%
Sexual assault	23	0.9%
Other assaults, wounding	153	5.9%
Kidnapping, forcible confinement	15	0.6%
Criminal negligence causing death	0	0.0%
Other crimes against the person	45	1.7%
Sub-Total	324	12.5%
ROBBERY	394	15.2%
Sub-Total	394	15.2%
CRIMES AGAINST PROPERTY		
Break and enter	737	28.4%
Theft, possession of stolen goods	615	23.7%
Frauds	214	8.2%
Sub-Total	1,566	60.3%
NARCOTICS		
Possession of narcotics	26	1.0
Trafficking and importing	72	2.8
Sub-Total	98	3.8%
MISCELLANEOUS		
Miscellaneous Criminal Code	179	6.9%
Miscellaneous Federal and provincial statutes	4	0.2%
Escape and unlawfully at large	33	1.3
Sub-Total	216	8.3%
TOTAL	2,598	100.0%

TABLE A-28

AVERAGE PERCENTAGE OF INMATES WHO LOST REMISSION AND AVERAGE NUMBER OF DAYS OF REMISSION LOST IN FIRST QUARTER OF 1980, BY SECURITY STATUS*

Security Status**	Average Percentage of Inmates Who Lost Remission***			Average Number of Remission Days Lost Per 100 Inmates***		
	Overall	On Conduct	On Program Participation	Overall	On Conduct	On Program Participation
Minimum	8.0	7.2	7.0	132.8	44.5	64.8
Medium	9.8	6.5	6.0	39.0	18.6	20.4
Maximum	11.4	5.6	8.9	67.1	18.5	48.1
All Penitentiaries	9.6	6.5	7.1	77.3	27.2	42.1

* Source: CSC Remission Survey, 1980.

** Obtained by averaging the rates for all minimum, medium and maximum security penitentiaries and for all penitentiaries combined. Not included are the Regional Reception and Psychiatric Centres.

*** The "overall" figures in these headings do not necessarily represent the sum of the "conduct" and "program participation" columns because averages for each column have been calculated separately.

TABLE A-29

TOTAL NUMBER OF DAYS OF REMISSION LOST ON EACH SENTENCE BY PERSONS RELEASED FROM FEDERAL PENITENTIARY, 1970 JUNE 1980

Number of Remission Days Lost	Number of Persons Released	Percentage of Persons Released
None lost	30,468	68.3
1-10 days	6,608	14.8
11-20 days	1,788	4.0
21-30 days	966	2.2
31-40 days	863	1.9
41-50 days	507	1.1
51-70 days	644	1.4
71-100 days	748	1.7
101-200 days	1,153	2.6
Over 200 days	885	2.0
	44,630	100.0

TABLE A-30

PERCENTAGE OF INMATES WHO LOST REMISSION AND NUMBER OF DAYS OF REMISSION LOST IN FIRST QUARTER OF 1980, BY PENITENTIARY*

Penitentiary	Percentage of Inmates Who Lost Remission			Number of Remission Days Lost Per 100 Inmates		
	Overall	On Conduct	On Program Participation	Overall	On Conduct	On Program Participation
Minimum:						
Ferndale	14.8	16.7	13.0	187.0	51.8	135.2
Elbow Lake	22.2	22.2	22.2	320.0	104.4	215.6
B.C.C.C.	7.6	7.6	6.1	93.9	33.3	60.6
Shulie Lake	1.9	0.0	1.8	470.6	158.8	311.1
Saskatchewan Farm Annex	3.5	1.8	1.2	6.5	5.3	1.2
Rockwood	0.5	0.0	0.5	0.0	0.0	0.0
Frontenac	9.9	9.9	9.9	148.2	49.4	98.8
Pittsburg	15.3	15.3	13.9	219.4	76.4	143.0
Bath	10.4	9.1	9.1	128.6	46.8	81.8
Ste. Anne des Pleines	6.1	0.7	5.1	6.8	0.7	6.1
Montée St. Francois	0.8	0.8	0.2	1.8	1.6	0.2
Westmoreland	3.5	2.3	1.2	10.3	5.7	4.6
Mediums:						
Mountain	5.0	1.7	3.9	12.1	3.9	8.2
William Head	18.0	15.6	7.0	57.8	36.7	21.1
Bowden	8.8	6.1	4.8	29.3	19.1	10.2
La Macaza	18.3	12.4	10.7	59.8	37.3	22.5
Mission	15.9	15.3	5.7	65.9	46.6	19.3
Warkworth	3.8	0.9	3.8	20.7	4.5	16.2
Springhill	7.8	0.5	7.8	28.1	1.3	26.8
Matsqui	15.5	12.4	7.2	80.7	54.0	26.1
Drumheller	13.0	0.7	12.3	44.8	1.3	43.5
Stony Mountain	3.7	1.7	2.3	11.7	4.8	6.8
Joyceville	4.9	7.8	4.2	31.4	12.0	19.4
Cowansville	10.4	8.6	4.3	34.2	19.7	14.5
Federal Training Centre	11.0	6.7	9.0	52.8	19.4	14.5
Collins Bay	4.5	3.2	4.5	47.2	14.4	32.8
Leclerc	6.5	3.3	3.1	9.2	4.3	4.9

TABLE A- (cont'd)

Penitentiary	Percentage of Inmates Who Lost Remission			Number of Remission Days Lost Per 100 Inmates		
	Overall	On Conduct	On Program Participation	Overall	On Conduct	On Program Participation
Maximums:						
Kent	17.7	12.3	10.0	73.1	37.7	35.4
Edmonton	7.1	0.3	7.1	27.6	2.0	25.5
Saskatchewan Penitentiary	2.9	1.4	1.6	10.0	4.1	5.9
Laval	12.2	2.4	11.1	71.1	3.1	68.0
Archambault	22.3	10.3	15.0	111.6	23.6	88.0
Dorchester	9.3	5.0	6.6	41.5	10.4	31.0
Millhaven	10.4	6.5	8.9	66.2	23.4	38.8
Centre de Développement correctionel	4.3	2.6	4.3	24.8	7.7	17.1
Prison for Women	16.6	10.1	15.8	178.4	54.7	123.7
REGIONAL PSYCHIATRIC CENTRES						
RPC Pacific	14.0	14.0	4.0	66.0	46.0	20.0
RPC Prairies**	N/A	N/A	N/A	N/A	N/A	N/A
RPC Ontario**	N/A	N/A	N/A	N/A	N/A	N/A
RECEPTION CENTRES						
RPC Ontario	3.4	2.2	0.7	5.6	4.5	1.1
RPC Quebec	2.8	0.0	2.8	5.6	0.0	5.6

* Source: CSC Remission Survey, 1980.

** In these instances, it is not entirely clear whether the data indicate no loss of remission, a rate of close to zero, or missing data.

TABLE A-31

PERCENTAGE OF INMATES WHO LOST REMISSION AND NUMBER OF DAYS OF REMISSION LOST IN FIRST QUARTER OF 1980, BY REGION*

Region	Percentage of Imnates Who Lost Remission			Number of Remission Days Lost Per 100 Inmates		
	Overall	On Conduct	On Program Participation	Overall	On Conduct	On Program Participation
Pacific	14.7	12.2	7.3	76.9	41.9	35.0
Prairies	6.3	1.5	5.0	25.2	4.4	20.8
Ontario	6.3	5.1	5.6	55.0	18.6	36.4
Quebec	10.5	5.3	7.1	43.6	12.3	31.2
Atlantic	7.9	2.5	6.5	40.7	8.7	32.0
TOTAL	8.8	5.1	6.3	46.9	15.8	31.1

* Source: CSC Remission Survey, 1980.

APPENDIX B

BIBLIOGRAPHY

American Law Institute (1962) Model Penal Code. Chicago: American Law Institute.

Atack, W.A.J. (1978) "Intensive pre-release assistance in order to increase the number of paroles granted: a report based on the analysis of MS cases." Ottawa: CSC (unpublished).

Atack, W.A.J. and A. Bonhomme-Beaulieu (1979) "A comparative analysis of NPS recommendations and NPB decisions, 1974, 1975, 1976 and 1977." Ottawa: Correctional Service of Canada (unpublished).

Auditor General of Canada (1978) Report to Parliament. Ottawa: Supply and Services.

Axon, L. (1980) The supervision of offenders: a review of parole and similar types of supervision. Ottawa: Solicitor General (unpublished).

Aydalot, ? (1973) "Discours." Revue internationale de police criminelle, novembre 1973: 279-284.

Bewley, L. (1977) "Parole boards demean courts, breed insecurity". Globe and Mail, December 14, 1977: 7.

Blais, J.-J. (1978) "Fewer convicts is Blais' goal." Ottawa Journal, August 11, 1978.

Brody, S.R. (1976) The effectiveness of sentencing. London: Her Majesty's Stationery Office.

Canadian Association of Chiefs of Police (1977) "Resolutions adopted at the 72nd Annual Conference, August 26, 1977, Victoria, B.C." Canadian Police Chief, 66(4).

Correctional Service of Canada (undated) Case Management Policy and Procedures Manual. Ottawa: CSC (unpublished).

Demers, D. (1978) Discretion, disparity and the parole process. Ph.D. Thesis, University of Alberta (University Microfilms).

Dutheillet-Lamonthézie, B. (1974) "L'application des peines, une institution en péril?" Revue penitentiaire et de droit pénale, 98(4): 575-579.

Fauteux (1956) Committee appointed to inquire into the principles and procedures followed in the Remission Service of the Department of Justice of Canada. Report. Ottawa: Queen's Printer.

Federal Corrections Agency Task Force (1977) The role of federal corrections in Canada. Ottawa: Solicitor General.

Gettinger, S. (1976) "Prison population hits all-time high." Corrections Magazine, 3(3): 9-16.

Goldenberg (1974) Standing Senate Committee on Legal and Constitutional Affairs. Parole in Canada. Ottawa: Information Canada.

Gottfredson, Don et al (1973a) Parole decision-making study: in 10 volumes. Davis, California: National Council on Crime and Delinquency Research Centre.

Gottfredson, Don et al (1973b) Four thousand lifetimes: a study of time served and parole outcomes. Davis, California: National Council on Crime and Delinquency Research Centre.

Gottfredson, Don et al (1977) "Time served in prison and parole outcomes among parolee risk categories". Journal of Criminal Justice, 5(1): 1-12.

Gottfredson, Don et al (1978) Classification for parole decision policy. Washington: National Institute of Law Enforcement and Criminal Justice.

Gottfredson, Don et al (1979) Guidelines for parole and sentencing. Lexington: D.C. Heath and Company.

Hann, R. and J. Palmer (1980) Determinates of Canadian penitentiary and prison populations: Phase I Report. Ottawa: Solicitor General (unpublished).

Hogarth, J. (1972) Sentencing as a human process. Toronto: University of Toronto Press.

Hood, R. and R. Sparks (1970) Key issues in criminology. New York: McGraw-Hill.

Hugessen (1973) Task Force on Release of Inmates. Report. Ottawa: Information Canada.

Jaman, D. and R. Dickover (1969) "A study of parole outcome as a function of time served." Sacramento: California Department of Corrections Research Division.

Jubinville, R. (1980) "Policy and reality." Bulletin of the Canadian Association for the Prevention of Crime (10(1):1-3

Kaplan, R. (1980) "Notes for a speech by the Honourable Bob Kaplan, P.C., M.P., Solicitor General of Canada on Incarceration and Alternatives, to the Newfoundland Judges' Association Annual Meeting at Corner Brook, Newfoundland, October 14, 1980." Ottawa: Solicitor General.

Landreville, P. and P. Carrière (1976) Studies on Imprisonment: Release Measures in Canada. Ottawa: Law Reform Commission.

Latta, Yvonne (1981) "Ontario region review of cases under suspension." Kingston: NPB (unpublished).

Law Reform Commission (1976) Imprisonment and Release. Ottawa: Supply and Services.

Léveillé, Y. (1970) "A qui accorde-t-on la libération conditionnelle?" Canadian Journal of Criminology and Corrections, 12: 132-150.

MacGuigan (1977) Sub-committee on the Penitentiary System in Canada. Report to Parliament. Ottawa: Supply and Services.

Macnaughton-Smith, P. (1976) Permission to be slightly free. Ottawa: Law Reform Commission.

Mandel, M. (1975) "Rethinking parole" Osgoode Hall Law Journal, 13(2): 501-546.

Martinson, Robert (1974) "What works? Questions and answers about prison reform". The Public Interest, 35 (Spring): 22-54.

Massachusetts Department of Correction (1977) "An analysis of recidivism rates among residents released from Massachusetts Correctional Institutions during the year 1974." Boston: Massachusetts Department of Correction.

Memorandum (1977) From Chief, Analysis and Systems Operation, Correctional Service of Canada, to Coordinator of Evaluation, Solicitor General Secretariat. Ottawa.

Morris, N. (1975) The future of imprisonment. Chicago: University of Chicago Press.

Mueller, P. (1965) "Advanced release to parole." Sacramento: California Department of Corrections Research Division.

National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services (1980) Annual Report 1979-80. Ottawa: Solicitor General.

National Parole Board of Canada (1979a) "I'm glad you asked!" Ottawa: NPB.

National Parole Board of Canada (1979b) "A guide to conditional release for penitentiary inmates." Ottawa: NPB.

National Parole Board of Canada (1979c) "The National Parole Board." Ottawa: NPB.

National Parole Board of Canada (undated) Policy and Procedures Manual. Ottawa: NPB (unpublished).

National Parole Board of Canada. British Columbia Division (1981) "Statistics. Year end total for 1980". Unpublished.

National Task Force on the Administration of Justice (1980) Corrections Services in Canada, 1977-78. Ottawa: Solicitor General.

Note (1976) "L'évolution actuelle des fonctions du juge de l'application des peines en prison." Revue pénitentaires et de droit pénal, 100(1): 161-164.

Note (1978) "Inmate support for flat-time sentencing and related proposals." Criminal Justice Review, 3(1).

Nuffield, J. (1977; revised, 1979) Parole guidelines. Ottawa: Solicitor General (unpublished).

Ouimet (1969) Canadian Committee on Corrections. Report: Toward Unity: Criminal Justice and Corrections. Ottawa: Queen's Printer.

Palamedes, B. (1980) "A comparative analysis of parole officer recommendations and NPB decisions, 1978 and first half of 1979." Ottawa: CSC (unpublished).

Plawski, S. (1979) "La nouvelle loi pénitentiaire." Revue pénitentiaire et de droit pénal, 102(1): 31-36.

Sauvé (1977) Task Force on the Role of the Private Sector in Criminal Justice. Report: Community involvement in criminal justice. Ottawa: Supply and Services.

Solicitor General of Canada (1980) "Opening statement by the Honourable Bob Kaplan, P.C., M.P., Solicitor General of Canada, to the House of Commons Committee on Justice and Legal Affairs on the Main Estimates, June 18, 1980." Ottawa: Solicitor General.

Solicitor General's Committee on Mandatory Supervision (1980) Mandatory supervision: a draft report. Ottawa: Solicitor General (in press).

United Nations (1973) International Covenant on Civil and Political Rights. New York: The United Nations General Assembly.

Vera Institute of Justice (1962) Manhattan Bail Project. New York: Vera Institute.

von Hirsch, A. (1976) Doing justice: the choice of punishments. Report of the New York Citizens' Committee for the Study of Incarceration. New York: Hill and Wang.

von Hirsch, A. and K. Hanrahan (1978) Abolish parole? Washington: National Institute of Law Enforcement and Criminal Justice.

Walker, N. (1978) "Dangerous people." International Journal of Law and Psychiatry, 1: 37-50.

Weir, D. et al (1978) "An assessment of the current earned remission system at Warkworth Institution." Warkworth: CSC (unpublished).

Zimring, F. and G. Hawkins (1973) Deterrence: the legal threat in crime control. Chicago: University of Chicago Press.

APPENDIX C

SUMMARY OF CONSULTATION WITH CSC AND NPB FIELD STAFF AND OFFENDERS

PERSONS CONSULTED

During the months of July, August and September 1980, the Release Study Working Group consulted with NPB and CSC staff at national, regional and local levels as well as with inmates and persons out on various forms of release. We spoke to the heads of both agencies, to the Regional Director General of CSC and to Parole Board members and their respective senior managers in each region. We visited three penitentiaries (one of each major security status) and at least one public or privately run halfway residential facility in each region, and talked to management, security, classification and living unit (where such distinctions exist) staff and to offenders (usually the inmate Committee) in each. We also visited two district parole offices in each region, where possible one dealing heavily in case preparation, and one more in supervision, to talk to parole officers and managers. At national headquarters, we talked to staff from CSC's Offender Programs and Industries branches, and to some of NPB's policy, corporate planning, and internal review staff.

We spent an hour and a half to two hours with each group, and asked them questions from a schedule of 52 areas for discussion drawn up to guide the consultation. We found a great deal of agreement among certain groups in the various regions, though strong diversity of opinion on some issues (certainly on options), and diversity of opinion between particular groups.

The following very brief summary of what was said is broken down according to each of the release programs under study. Briefs received from groups and individuals outside the Ministry are available under separate cover.

TEMPORARY ABSENCE

Although feedback was received on both escorted and unescorted temporary absences, most of the concerns were addressed to the unescorted TA program.

The idea of a short periodic release is supported but CSC penitentiaries staff in particular complain that problems are encountered in the area of the granting authority, eligibilities and frequency as well as in the area of the functions and conditions of this process.

MAJOR ISSUES

The following were the major issues considered most significant to the TA program.

The Granting Authority - Opinions seem to be divided as to whether the Board should have the authority over the UTA program. Most respondents were dissatisfied with the present situation: lack of flexibility, delays, complexity and confusion, cumbersomeness of procedures, NPB inconsistency and over-sensitivity to failures, inability to guarantee UTA to the inmate; it is also felt that the institutional staff has a better knowledge of the inmate than the Board. However, other groups expressed their preference for one releasing authority as it prevents favoritism; delays are said to be caused by institutional staff.

UTA Frequency - The frequency of 72 hours per quarter creates almost a unanimous dissatisfaction; need was expressed for more UTA than the limit established by the Board; the lack of flexibility of this limit is criticized as it does not allow for differences between different institutions (maximum, medium and minimum). Whether the limited day parole program will solve these problems is a debated question, with CSC personnel most likely to think day parole will not be a solution, and NPB staff most likely to think it will or can be.

Eligibility for UTA - Problems raised with respect to the eligibility for UTA are in relation to eligibilities for different programs: the overlapping of UTA and day parole dates reduces the possibility of gradual testing recommendations; also, the ETA eligibility creates unrealistic expectations for UTA programs; eligibility is not a guarantee of grant and therefore is seen as a myth.

Functions of TA's - Both UTA and ETA programs are seen as important motivators and credibility builders which creates problems for inmates in maximum security institutions where there is practically no TA granted.

ETA Program - Although the program is a postive one, its application varies from one region to the other and one institution to the other; also its use depends on overtime budget and staff availability; inmates from remote areas are penalized in that respect. The definition of escort is also seen as unclear (security escort and resocialization escorts). It was also felt that regional authority should not be involved as they don't know the inmates.

Most of the comments identified came from institutional staff; major differences in opinions can be identified between the National Parole Board and CSC groups. For instance, most of NPB representatives prefer to have the jurisdiction over the TA program while CSC groups think they should have this authority. The Ontario Division of the Board does not see the need to modify the frequency allowed for the UTA program. Also, the Security staff see some problem with the TA program as a route for contraband. No marked differences can be identified among the regions in the opinions expressed.

Particular problems or issues. The following are some secondary issues discussed, some problems which are or seem to be particular to certain sites, and some less universally expressed opinions.

- Bath, a minimum-security penitentiary attached to a maximum, complains of receiving fewer TA's than other equivalent minimums.

- The amount of money an inmate has available will, in almost all instances, affect his ability to carry out a TA, but in some instances, travel distances, times and modes are an especially severe problem, e.g. Springhill, Prison for Women.

- Some parole officers felt that the conditions imposed on UTA's and the "purposes" for which they are formally granted can be unnecessary, burdersome, and productive of anxiety and undue pressure on the offender.

- Inmates claim that long-term inmates have less chance of getting a TA just because they are long-termers.

- Some parole officers felt that there is sometimes an excessive requirement made of performing a community assessment before and after a TA.

- In the Quebec region, parole officers claimed that TA's were frequently disrupted by unexpected transfers of inmates.

Suggestions offered. Suggestions made for improving the TA process included to reduce the number of rules, decision points and the complexity of different eligibility and granting provisions; to establish clear criteria for granting and refusing; to employ parole officers and volunteer civilians to escort inmates on ETA: to hold hearings for UTA; to use TA's more integrally as a reward in work programs, especially in minimum security; to allow more TA's from minimum security. On the major issue of who should be the granting authority for

TA's, most NPB personnel, and parole officers seemed to support the present arrangement, if not greater direct NPB involvement in TA granting. Most penitentiary staff and inmates favoured a return to Warden authority for TA, with the scope of TA power extended further. Some felt that NPB should grant all TA's and/or day paroles which are aimed at resocialization or gradual release, and that CSC should grant all TA's which are necessary to motivate and reward inmates and reduce institutional tension. Finally, most CSC staff and inmates agreed that UTA frequency limits should be extended and the UTA granting power and process should allow greater flexibility. Most NPB personnel consulted disagreed, on the grounds that day parole would fill the gap created by TA cutbacks, and that any substantial release program should be coordinated by a single authority.

DAY PAROLE

Day parole is generally perceived as a stepping-stone between TA's and parole or M.S. In fact, the various types of Day Parole (LDP, DP prior to M.S., various time frames such as four months to one year, and formulae of in and out periods such as "5 and 2" or "29 and 1") create an overall feeling that this process is being overused and that it has become the "panacea of 'testing'".

A number of consequent operational problems have arisen, some with respect to resources, and some with respect to process. The resource complaints concern the shortage of bed space in CCC's and CRC's and the scarcity of employment possibilities in particular areas, while the latter complaints concern the bureaucratic heaviness of the process in terms of the numberous deadlines and requirements in tasks and paperwork, problems related to revocation, and so on. Also noteworthy is a visible conflict between other release processes and institutional programs, such as TA.

Major Issues.

- Limited day parole (LDP). In most regions across the country, LDP is being used as a program out of minimum institutions. However, there has been widespread opposition to and ambivilence voiced about it by many institutional staff, most case preparation offices (except in Quebec), minimum inmates (Atlantic), some CSC regional staff, and NPB in Quebec. The most frequent negative comments were that LDP procedures are unclear and too complex, it doesn't really solve the Unescorted Temporary Absence (UTA) problem, it is unnecessary or redundant, time limits are not and

cannot be met, it is for institutions not inmates, UTA should be extended instead of creating a whole new program, and more resources are needed.

Not all comments, however were negative. Some staff stated that LDP was a good idea and should be given a chance, especailly for longer-term inmates. Most NPB regional offices (except Quebec) felt that LDP had some potential. In Ontario they even suggested that the program be expanded to medium institutions. NPB also felt that LDP gave them more influence over transfers in the prison system. Although there has been little impact of LDP on the system, many felt that the program would grow. Some NPB personnel and inmates suggested that CSC case preparation staff were not working as hard as they might to support LDP and make it effective.

- Day Parole Prior to Mandatory Supervision. NPB offices favoured day parole prior to MS and felt it could be increased. It was mentioned that this was the original intent of CCC's. However, it was pointed out that not all MS cases would accept a day parole just prior to their MS release date. In addition NPB offices indicated that the riks involved in releasing these MS cases early had to be considered. For example, it would be difficult to grant day parole to severely mentally disturbed individuals or apparently dangerous ones. Most institutional staff talked postively about this use of day parole as did many parole offices, some inmates and one CSC regional office.

One concern voiced, especially in areas where CSC space is at a premium, was that such day paroles could clog CCC's and failure rates would soon reverse the program. A few CCC residents suggested that NPB gave such day paroles because they "didn't have the guts to say no". They suggested that if the program were to be used at all, it should use the CCC's just as drop-in centres.

- Day Parole Over-Used - Too much Testing. Almost all parole supervisions offices (except Quebec); CCC's (except Ontario); western case preparation offices; CSC regional offices in the Pacific and Quebec; Atlantic medium and minimum penitentiaries; the Prairies and Quebec mediums; and two inmate groups (Atlantic minimum, Prairies medium) felt that day parole is over used. Comments like the following were expressed: the extended controls and resources of day parole are not needed by all those who receive it; if the NPB were

less conservative, they would grant full parole in many such cases; time day parolees are left on day parole too long; over control and extended control on DP can lead to failure in some cases; DP is granted closer and closer to full parole eligibility; NPB's tendency to graduate everything is not useful; there was not time for the graduation game where sentences are under 3 years. One NPB offices even suggested that day parole may, in fact, delay full parole. Over-use of day parole was blamed for space problems in CCC's and CRC's. One case preparation office and two inmate groups suggested that family support was sufficient in some cases to make CCC or CRC involvement redundant. One inmate group claimed that parole officers often discouraged full parole applications, arguing that it is easier to get day parole. In contrast, the Maximum staff in the Prairies felt there should be more day parole to CCC's; and the medium institution in the Atlantic stated that day parole had not compensated for the decrease in TA's since the NPB took over authority. Minimum staff in Ontario also felt that day parole testing was a good stepping-stone. Medium inmates in all regions agreed that day parole was a useful device.

- Shortage of CCC's, CRC's, Bed Space. In contrast to the claim that day parole is over used, many institutional staff, most NPB offices, several inmates groups, and at least one case preparation office felt that day parole could be used more if more facilities existed. This need seems to be especially felt in remote areas and less populated areas. The problem was raised more in the Atlantic and the Prairies. Even in some metropolitan centres there have been difficulties with long waiting lists. NPB also pointed out that they would be willing to grant more day paroles if they were recommended by CSC, although the new Case Management Process may help in this regard.

- Over-Bureaucratization. Most of the complaints in this area were registered by inmates. Inmates in minimums (who are affected the most by day parole) in 3 regions (Pacific, Prairies and Quebec) commented that the process was too long and over-mechanized and waiting periods were too extended. Inmates in the Ontario medium agreed. Many penitentiary case preparation staff also were inclined to the view that the work involved in day parole applications, especially in brief LDP timeframes, was a "hassle", especially since NPB's reaction could be unpredictable. Some case preparation staff felt inmates did not "think far enough ahead" for lengthy DP preparation times to be meaningful for them.

- Termination/revocation. Offenders complained of the use of revocation in trivial situations, the amount of remission lost for revocation, the need for a hearing upon all revocations or terminations of DP, and the inconsistent use of a revocation (which implies loss of remission) in preference to a DP "termination" (which does not). Some penitentiary staff agreed that there was some inconsistency on that procedure.

- Day Parole and Institutional Programs. Several CSC regional offices (Prairies, Ontario and Atlantic) mentioned the conflict between day parole and institutional programs and maintenance. In general, this problem revolved around the competition for "good" inmates. Some people commented that some day paroles should only be implemented on weekends when the inmate has time away from institutional work or training. Also mentioned was the contraband problem where there are not separate buildings for day parolees and other inmates. Minimum inmates in the Prairies agreed, suggesting separate facilities for day parolees. They also indicated that often day paroles were granted, but not activated. Presumably the explanation in most cases is the scarcity of CCC or CRC bed space; but conflicts with institutional programs was also blamed.

- CCC's and CRC's too Selective. This problem was mainly brought up by CSC staff in the Atlantic. There were concerns that some CCC's were turning down good risks (to work with more resourceless cases), while other CCC's would only accept a limited number of difficult cases. Minimum inmates in the Prairies felt that DP should be used for resourceless people.

  In contrast, the Atlantic CCC staff felt they should have even more say in the selection of residents. The same view was expressed by the inmate committee chairman in the CCC in the Prairies. The staff in the Prairies' CCC felt that "parent" institutional population pressure determined the number of cases sent to them. In the Pacific CCC it was suggested that NPB make an "in principle" day parole decision and then let CSC implement it in terms of CCC bed space/program availability.

- Unclear Criteria. Concern about the blurring of programs and authority was expressed by some NPB and parole case preparation staff. Some statements made were that the difference between LDP and unescorted temporary absence is small, day parole needs a single purpose and concept, day parole should be for specific

purposes and not just given because an inmate is a good risk, and day parole shold be based on the needs of offenders.

- Other problems. Other issues mentioned by some consultation participants were that a perceived increase in violent, recidivist and long-term inmates made pressure on release processes greater, and risks higher; that high unemployment in many areas made job planning for DP release difficult to plan realistically in advance; that distances from penitentiaries to LDP job sites made release infrequent; that halfway facility rules are too strict and not sufficiently communicated in advance to prospective residents (CCC staff often disagreed, citing the difficulties of running such facilities with few effective controls, and occasional NPB refusal to uphold a recommendation to revoke); that there were strong regional differences in the approach to day parole.

- Suggestions offered. Suggestions for LDP ranged from its abolition to its expansion. Greater use of DP prior to MS was a frequent recommendations. Many felt DP should not be so routinely used as a "test" prior to full parole. Procedures relating to violations (see above) needed reform, according to some. More CCC's and purchase of service in CRC's was also a frequent suggestion.

PAROLE SELECTION

Comments about the parole selection process centered mostly around the parole grant rates, the criteria for selection, the structure of the NPB as it influences the process (voting structure, internal review, etc.) the philosophy of the Board as well as the NPB appointments.

- Major issues. NPB and CSC institutional case preparation staff in three regions leaned towards the view that the parole rate could be a little higher; as for the low Pacific and high Atlantic regions, however most shared the view that differences in inmate populations in those regions adequately explained the parole rate differences there. Penitentiary staff in two regions also suggested more parole by exception. Complaints were also made in two regions about the unexplained fluctuations in the parole rate. Overuse of "gradual release" was blamed for some of the recent decreases in overall full parole rates.

- Criteria for parole. An important area of concern is what some saw as the vague, unclear and inappropriate criteria for parole. There were frequent comments that "there are as many criteria as Board members". Some felt that the parole selection process does not reflect a given rationale, and that disparity is created by differing Board members' interpretations, philosophy and biases. As a result, NPB decisions are seen as highly unpredictable and inconsistent, except in the Atlantic region. There, presumptive parole was seen to be the philosophy, effectively carried out, of the regional Board.

- Board Members' Appointments and Training. Concerns were expressed with respect to the appointments of the Board Members, which were widely perceived to be blatant rewards for political loyalty. It was felt that the appointments are not really made in relation to the job that has to be done; there seems to be no requirement in terms of qualifications; people appointed on the Board are not well prepared to take the decisions inherent to the Parole Board; it was also felt that the Board does not provide any training for the new members who are left to "learn by experience".

- Gradual release. Many case preparation staff felt that gradual release is over-used as a test or treatment program, and some NPB members felt that that might be the case. Case recommendations would in turn be affected by such a perceived policy. NPB conservatism and fear of negative reaction were blamed for the problem.

- Voting structure and internal review. The NPB voting structure was seen by some as too cumbersome and weighted in favour of the denial of release. Some felt multiple voting increased inconsistency. Internal review is seen as having little effect on decisions, and ensuring only that NPB members are more careful about their recording of the reasons for their decisions.

Suggestions offered. Recommendations for changing parole included the greater specification of criteria and policies; increasing the grant rate in three regions; more and better NPB member training; eliminating exchanges of NPB members, which are seen to cause disruptions in regional patterns; the use (or rejection) of numerical risk prediction aids; greater NPB involvement in IPP, transfers, discretion over the remitted portion of the sentence (these last suggestions were usually made by NPB personnel); and that NPB be abolished, in favour of decision-making entirely by CSC (this suggestion was usually made by CSC personnel).

PAROLE SUPERVISION

Major Issues

- Conditions of supervision. Many inmates, penitentiary staff, and some parole officers said that the conditions of community supervision required changes. Some of the conditions are largely unenforceable, others intrude too much in the private lives of offenders, and others are simply unrealistic in the limitations they impose on offenders. Especially criticized were requiring permission to marry or purchase articles on credit, and living within designated areas which are too small and may require the offender to obtain permission to leave one part of the city and enter another. Most of those who criticized conditions felt that "standard" conditions should be very few, and other needs could be met through greater use of "special" conditions.

- Administrative problems. An almost universal comment among parole officers was that bureaucratic procedures and paperwork has grown to outrageous proportions and was affecting the amount of time available for dealing with offenders. Some of the paperwork required was felt to serve primarily the ends of "covering yourself" in case a serious reoffence occurred; detailed quarterly reports on the supervision of each offender were particularly criticized as serving little utility and forcing officers to mouth standard formulas in these reports. Connected to these complaints by parole officers was the feeling that supervision had lost its "mission" in the sense that no direction was given as to the quality or nature of the services to be given, but rather that management was interested primarily in "quantity control" through the specification of the number of contacts to be made with offenders (minimum standards). Parole officers warned that the quality of supervision was and would continue to be affected by this trend as well as by the perceived submerging of community concerns and expertise in the new penitentiary career model and Individual Program Plan process (IPP). (Some parole supervisors and regional authorities disagreed with officer complaints about administrative burdens, however, claiming that the paper requirements, which were still reasonable, had changed little over the years; if anything, the deadlines for submission of paperwork were merely more strictly enforced.)

- Effectiveness of supervision. Most inmates reported that community supervision was unhelpful to them. Only the practical assistance, such as cash loans, which was sometimes made available on release was mentioned by some as a possible benefit. Some parole officers came close to agreeing, saying that administrative burdens, the lack of time for community resource development, and the limited employment opportunities in some areas made effective intervention very difficult. While most offenders complained of how easily revocation cold take place and on such trivial grounds, some parole officers complained that their suspensions were not carried over into revocations by NPB, especially in "revolving door" cases. Some NPB members complained of the very "minimal" nature of minimum supervision standards, and the delays in obtaining necessary reports. Many parole officers (except in the Atlantic region) complained of the difficulty in contacting NPB members directly to discuss a case.

Other problems. Some parole officers spoke of the need for more discretionary funds to purchase specialized services and goods (such as tools) for offenders. Some inmates and a few penitentiary staff said high staff turnover in Québec affected supervision. Some institutional staff called for a greater use of volunteers in supervision. A number of offenders found their parole officers to be too young and inexperienced, and a few noted that parole officers were inconsistent in their approaches and use of sanctions. Many supervision staff complained of the lip service paid to "brokerage" without the concomitant commitment in training and responsiveness to innovation. Finally, supervision staff were split on the issue of the merger of CPS and NPS. Some felt the merger had caused a downgrading of emphasis on the community perspective, and would bring unqualified, security-oriented persons into parole officer positions. On the other hand, many officers resented what was often perceived as their high-handed treatment by NPB members, and would prefer a separate parole service.

Suggestions offered. Offenders were inclined to suggest that parole officers work on providing practical assistance and jobs, that revocations only be permitted for criminal convictions, or that supervision be made voluntary with the offender or be abolished altogether. Parole officers wanted more resources, more flexibility in determining the appropriate intervention in each case, less paperwork, and greater NPB sensitivity to their needs and their recommendations to revoke. Many NPB members would like a more intensive level of supervision.

EARNED REMISSION

Discussion on remission centred on two main dimensions: first, its limited value as a positive incentive to active program participation; and second, (expressed mostly by inmates) its connection to mandatory supervision.

Major issue: Incentive value. Almost all penitentiary and parole staff and inmates said remission did not act "positively" to encourage above-average behaviour and program participation, especially for longer-term inmates and persons with good parole prospects. (Only at Archambault Penitentiary, in fact, was it claimed that remission distinguished properly among inmates with a poor, average or above-average overall adjustment.) Some of the persons consulted also felt remission had no effect at all on inmate conduct, though others felt it was a useful punishment and deterrent to misconduct, and failure to work. Among the reasons given for remission's perceived limitations as an incentive were that there were too few resources available and too many difficulties involved in rating each inmate properly on all dimensions; that staff, especially those who work closely with inmates, were reluctant to give poor ratings and thereby jeopardize future relations; that MS has diminished the benefits which accrue from remission; that other incentives, such as TA, pay and visits were of more immediate value; and that, for inmates admitted before July 1, 1978, the crediting of old "statutory" remission reduced the amount of benefit which can be earned under the new system.

Other issues. One NPB member noted another function of remission, which is to act as a safety valve for denials of parole, since many offenders do well on M.S. Some persons consulted felt that remission should be better integrated into other punishment and reward systems, rather than act in isolation or opposition to them. Many security and socialization staff said their contact with inmates was too irregular or infrequent to permit rational assessment. A few staff suggested that "cascading" would be aided by a higher rate of remission earning in penitentiaries of lower security status.

Suggestions offered. A wide range of recommendations was offered on remission, including that it be better integrated into other incentives systems, that it affect the parole eligibility date, that it be lost only for disciplinary infractions, that it be applied to the supervision period to shorten it, that it be increased in minimum security, and that it be abolished.

MANDATORY SUPERVISION

Major issues

- Continuation/abolition. Almost without exception, offenders favour the abolition of M.S. and a return to the pre-1970 system of direct discharge at the two-thirds date. This view is based on the perception that M.S. negates whatever is supposed to be "earned" through remission, that is unfair for that reason, that M.S. reduces the parole rate, that it creates the "opportunity to fail", that M.S. cases are treated more harshly than parolees, and that M.S. merely serves to contribute to penitentiary populations. Some offenders, however, felt that in principle, some assistance after release should be made available, but that it be optional. Most staff felt that M.S. should be retained to provide support and control after release, to reassure the public, and to provide information to police on potentially dangerous offenders about to be released.

- Conditions and revocations. Most offenders found it ironic to be refused parole and yet expected to conform to the same conditions as parolees. They felt that M.S. cases were more likely to be "harrassed", however, and returned to penitentiary for technical reasons. Staff typically stated that M.S. cases were not treated any differently, but merely according to their needs. Some noted that M.S. cases usually had fewer "special" conditions, however.

- "Revolving door syndrome". Many parole officers complained of the "turnaround" syndrome of revoked cases (more often MS cases) being rapidly re-released from penitentiary as a result of accumulated "old" earned remission. Parole officers claimed NPB would not revoke suspended "revolving door" cases, and NPB claimed parole officers would not suspend such cases, because of the paperwork, time, and small ultimate benefit.

- Release of "dangerous" offenders. NPB members were most likely to cite the early release of dangerous persons as the principal problem with MS (or, more properly, remission). In this situation, immediate suspension and revocation was seen as the only alternative. Many staff complained of the inability or unwillingness of the mental health system to take on these cases, a reluctance attributed to fear of civil suits, institutional problems, and the "untreatability" of such persons.

- Pre-release program. Parole officers almost universally endorsed a greater use of partial release, including with halfway facilities, for difficult M.S. cases, (staff of CCC's and CRC's tended to disagree). Greater provision of room and board, mone and other practical assistance for M.S. cases was also endorsed by staff and inmates alike. Some suggested a compulsory pre-release process to plan for such MS cases. Offenders in particular complained of "cold turkey" releases of inmates from maximum security to the street, and wondered why gradual release seemed to be available only to those who needed it least.

Suggestions offered. Virtually all offenders recommended abolition of M.S. and retention of remission; some CSC and NPB staff called for abolition of both M.S. and remission, allowing NPB to hold all offenders until warrant expiry. Some parole officers suggested that offenders be eligible for only one MS release, after revocation of which only parole could create a release prior to warrant expiry. Some suggested shortening the M.S.period to a standard, brief period, or shortening it through application of remission to community supervision. Some suggested a lessening of remission credits in the first instance, to further delay the M.S. date and shorten the M.S. period. Some called for a return to the "minimum parole" system in order to increase motivation and receptiveness among offenders denied full parole. Offenders suggested that no revocation of M.S. be possible on non-criminal grounds. Some parole officers suggested that there be greater flexibility in applying minimum standards to intractable M.S. cases, a few recommending that police reporting only be required of the most uncooperative cases.

END