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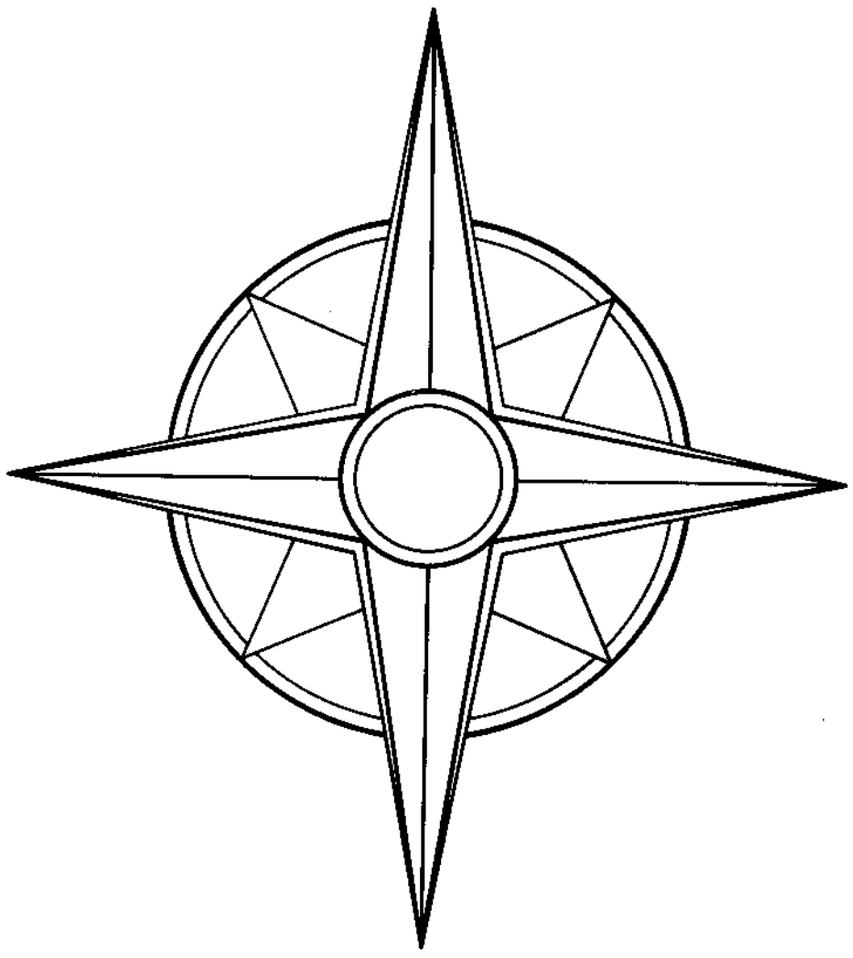

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DIRECTIONS FOR REFORM

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A MESSAGE FROM THE SOLICITOR GENERAL OF CANADA

In recent years, the Canadian correctional system has made great strides in forming a close and cooperative relationship with the community it serves. Today, correctional programs are more open, more accountable and more clearly embedded in the social fabric. We now recognize that offenders not only come from our communities; they must return to our communities as well — they are our brothers, sisters, husbands, fathers and neighbours.

Closer ties to the community have, of course, meant greater public sensitivity to correctional issues and demands for greater accountability. Canadians want, and have a right, to know why and how we do what we do. And we who work in the system know that the informed involvement and support of the community is critical to the success of our work. We must continue to respond to and meet these challenges if public confidence is to be maintained.

It is clear that there is much work before us. This consultation package is an important step. It outlines proposals for reform that, together, provide a statement of action the Government is prepared to take to bring the criminal justice system into the '90s. It is also an opportunity for the public, professionals and other interested parties to make their views known and considered before action is taken.

I encourage every interested Canadian to take part in this reform process by contacting the Minister of Justice and/or myself, our officials or other elected representatives. Your involvement is absolutely vital to the development of a system that has public safety as its primary goal, is effective and humane in its treatment of offenders, and is worthy of public trust and support.

Pierre H. Cadieux
Solicitor General of Canada

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PART I. INTRODUCTION

The *Framework Paper* in this consultation package identified a number of goals for criminal justice reform which cut across the boundaries between sentencing, sentence administration and conditional release. This paper addresses those goals by proposing policy and legislative change in the field of correctional operations and conditional release.

The federal correctional system is responsible for administering sentences of incarceration of two years or more. This includes both running federal penitentiaries and the program of conditional release. Canadians often do not understand how sentences of imprisonment are administered, and many believe that public safety is not given adequate weight in correctional decision-making. They also are often concerned that the correctional system is not doing enough to rehabilitate offenders while they are serving their sentences.

The fundamental goal of corrections and conditional release reform is to improve public safety, correctional effectiveness, and public confidence. A clear set of rules, as well as effective practices, governing both the institutional and release portions of a sentence will allow inmates and correctional staff, as well as the public, to better understand what a sentence entails, and what they can hold the correctional system accountable for.

Corrections, like the other components of the criminal justice system, has been criticized for operating in relative isolation. The proposals discussed in this paper address the need for greater integration in a number of ways. One important feature would be improved integration and effective sentence administration through ensuring the proper collection, use and dissemination of information from the time the sentence is imposed, reflecting and supporting the steps the Correctional Service has already taken to ensure effective communication with the National Parole Board, local police and the court system.

The fundamental purpose of the correctional system is to contribute to the maintenance of a just, peaceful and safe society through the safe custody and control of offenders and their reintegration into the community as law-abiding citizens. This purpose is clearly articulated in a proposed legislated statement of Purpose and Principles for corrections. Just as important, this purpose is reflected throughout the legislative provisions that are put forward.

All new legislation must of course be consistent with the *Canadian Charter of Rights and Freedoms*, which ensures that the fundamental rights and freedoms of all persons, including prisoners, are respected, subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

This means that where a Charter right or freedom must be restricted in order to achieve a legitimate correctional objective (for example, to ensure the safety of staff

working in an institution, or to ensure the safety of all the prisoners in an institution), the restriction must be clearly placed in law if it is to be valid.

Clearly, the rights and freedoms of those who have been convicted of a crime and sentenced to imprisonment will and should be restricted as a result of the sentence. It is imperative that correctional legislation provide correctional authorities with the power they need to safely and effectively manage the sentence.

Protection of the public is at all times paramount. The rules governing correctional operations must protect individual rights but they must also give explicit authority to correctional staff to impose necessary controls, and specify to inmates what is expected of them in complying with the terms of their sentence.

Part of the public's confusion about corrections results from an apparent imbalance between the punishment ordered by the Court and correctional programs, particularly conditional release, which may appear to lighten that punishment.

It is proposed, therefore, to allow judges to indicate whether parole eligibility should occur at one-third or one-half of the sentence for violent offenders or serious drug offenders. In that way, where circumstances warrant, the punishment (or denunciation) portion of the sentence may be increased by the Court. Similarly, day parole eligibility will be more restricted and a new provision will allow the National Parole Board to detain serious drug offenders until warrant expiry, should it be considered necessary.

The foregoing measures will serve to provide more stringent control for those offenders who pose the greatest risk to the community and who are of greatest concern to it. However, it is clear that there is public support for effective programs of rehabilitation in the community, provided that an offender's release to such programs does not increase the risk to the public. Moreover, there is growing evidence that effective rehabilitation programs do exist. For many non-violent, low-risk offenders, community programs make most sense to offset the debilitating effects of imprisonment, to avoid the breakdown of social controls and community ties, and to free up more custodial resources to be concentrated on higher risk offenders who need them the most. Consequently, measures are proposed to facilitate the release of low-risk offenders as early as is reasonable and safe.

Conditional release decision-making is, of course, as important as custodial and community programs. A number of proposals are presented to make the conditional release decision process more open, fair and effective.

Taken together, the proposals in this paper are designed to improve the effectiveness of both the controls placed on offenders during the sentence and the programs of assistance offered to them. Ultimately, when applied to the appropriate groups of offenders, both approaches offer better public protection and a more effective correctional system.

PART II. CONDITIONAL RELEASE

The conditional release system in Canada has been the subject of intense scrutiny and occasionally harsh criticism virtually since its creation. Some of this criticism has been unfair — it is often said that everyone notices the failures of the release system, and no one notices its many successes. It is clear, however, that government must be alert to public concerns. No government institution can operate effectively without the confidence and support of the public it serves.

The public is most concerned about violence. At the same time, public support for alternatives to incarceration for non-violent offenders is high. It is both the fear and the reality of violence that is the most troubling to Canadians. Drug abuse too is a serious concern, and a threat to the well-being of many Canadians, young and old.

In the past few years, a number of violent and shocking crimes committed by conditionally released federal offenders have severely shaken public confidence in the corrections system. No amount of assurance that these incidents are the exception, not the rule, can fully answer the public's legitimate call for more effective measures and better protection.

The public needs to know that violent offenders will be dealt with in a manner that assures that public safety is the paramount consideration. With non-violent offenders, opportunities for reintegration into the community, under appropriate supervision and control, are of prime importance. It is this distinction between potentially dangerous offenders and those who pose little or no threat of violence to society that has informed our efforts in shaping conditional release policy for the future.

Canadians must be sure that public safety is the paramount consideration in any conditional release decision. Canadians need to be assured that federal offenders who have committed a serious act of violence will serve an appropriate proportion of their sentence in penitentiary before being eligible for parole. They need to know that any offender who has received a lengthy penitentiary term will not be released back into society after serving such a small proportion of the sentence that it is out of keeping with the seriousness of the offence.

A. REFORMS FOR CLARITY OF PURPOSE AND PRINCIPLES

While we ensure that the paramount goal of the conditional release system is to protect the public, government must also ensure that the system meets other key goals. These key goals were outlined in the government's *Framework Paper* for criminal justice reform.

The purpose and principles of the conditional release system must also be clear and easily understood by all. The system must be open and accountable to the public at large, to victims, to the offenders about whom it makes decisions, to prison and

aftercare workers, and to the other components of the criminal justice system. It must, to the extent possible, be predictable. Its decisions must be fair and equitable, treating like cases alike but distinguishing among offenders according to the relevant risks and needs that they present. It must contribute to the successful reintegration of offenders into society, since all but a small minority of offenders will ultimately return to the community. It must strive to distinguish between the offender who is a serious threat to the lives or safety of others, and the offender who is not. Finally, conditional release must be well integrated with the other components of the criminal justice system, particularly the sentencing process. Together, all of these elements should contribute to strengthening public confidence in the system.

In 1986 the National Parole Board developed a statement of mission and values which clarifies its philosophy and role within the criminal justice system:

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

The House of Commons Standing Committee on Justice and Solicitor General expressed support for the Board's commitment to protection of society.

In response to the 1988 Report of the Standing Committee, *Taking Responsibility*, and to public demands, the Board has developed a strategic framework for the achievement of its mission. The framework emphasizes three themes:

a) protection of the public in release decisions that give paramountcy to risk to society and that promote rehabilitation and facilitate reintegration;

b) partnership through effective communication and information exchange within the criminal justice system and with the community; and

c) openness, professionalism and accountability to ensure the highest quality decision-making and enhance public confidence.

STATEMENT OF OVERALL PURPOSE AND PRINCIPLES

To ensure that these general principles are embedded in the conditional release process, it is proposed that a clear statement of purpose and principles for parole be placed into law and thus serve to guide the consistent development and application of decision-making policies.

The proposed statement of purpose and principles would, if accepted, be applicable to all parole authorities in Canada.

Drawing on the government policy paper *The Criminal Law in Canadian Society* (1982), and consistent with the purposes proposed for sentencing and corrections in the Framework Paper in this series, the following statement is proposed for parole:

The purpose of parole is to contribute to the maintenance of a just, peaceful and safe society by facilitating the reintegration of offenders through decisions on the timing and conditions of release.

The following principles are proposed to guide Board members in achieving the above purpose:

a) **Protection of the public is the paramount consideration in parole board decisions, and in all decisions parole board members should choose the least restrictive option necessary.**

This principle directs parole boards to base all their decisions on risk to the public. Public protection is paramount.

At the same time, this principle limits boards in the imposition of conditions and restrictions on offenders' liberty to those that are required on the basis of risk to society.

b) **Parole board members should consider all relevant information available, including the stated reasons and recommendations of the sentencing judge, information from the trial or sentencing, as well as information and assessments from correctional authorities and others.**

This principle requires members to consider the opinions and views of others in the criminal justice system, as well as the views of those with an interest in the case. To be effective, parole boards must be open to information from within the criminal justice system and from others, including victims, family members, etc., and must consider and weigh available information in its assessments of risk and in the determination of appropriate conditions.

c) **Parole board members should be provided with and guided by appropriate policies and should be provided with the training necessary to implement such policies.**

This principle places a responsibility on parole boards to ensure that they have an adequate policy framework to structure decision-making and that members receive appropriate professional training. As well, this principle requires members to be guided in their decisions by policies that have been promulgated by boards. Clear policies are a prerequisite to fairness as well as to consistency in decisions.

d) **Offenders should be provided with relevant information, reasons for decisions, and access to a statutorily based review of decisions, to ensure an understandable and fair process.**

This principle emphasizes fairness. It also articulates parole boards' accountability for clearly communicating their policies and procedures to offenders and for taking all necessary steps to ensure that offenders are aware of the decisions of the board and the reasons for those decisions.

e) **Parole boards should ensure effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication with the public about their policies, programs and resources.**

This principle makes the national and provincial boards accountable for public communications parallel to the communications requirements for offenders described in principle D). This principle reflects the need for openness on the part of the boards through appropriate communications with the public and groups and organizations with a special interest in conditional release. In addition, this principle reflects the need for greater integration between parole boards and other components of the criminal justice system, such as Crown prosecutors, police and courts.

The proposed statement of purpose and principles would provide a clear focus on the protection of society for conditional release authorities.

CRITERIA FOR CONDITIONAL RELEASE

The current *Parole Act* contains three criteria for consideration in determining the grant of parole:

a) in the case of a grant of parole other than day parole, the inmate has derived maximum benefit from imprisonment;

b) the reform and rehabilitation of the inmate will be aided by the grant of parole; and

c) the release of the inmate on parole would not constitute an undue risk to society.

Draft legislation prepared in 1988 proposed that the criteria for conditional release be revised, and that risk of re-offending be explicitly stated as the predominant criterion in any release decision.

Recognizing the paramount importance of public protection and the unique role of discretionary conditional release in facilitating reintegration and rehabilitation, the four Canadian parole authorities, in a submission to the Correctional Law Review, proposed the following criteria for release:

The release of the offender:

(a) does not constitute an undue risk that the offender will re-offend, prior to the expiration according to law of the sentence the offender is then serving, in such a way that it could cause serious prejudice to the public; and

(b) will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen or by allowing for the continuation of such reintegration, thereby furthering the purposes of justice.

This proposal is consistent with the proposed statement of purpose and principles and with the thrust of the recommendations of the Standing Committee. The Government views the inclusion of a specific risk-based criterion as critical in the reform of discretionary conditional release. The criterion would, if accepted, guide all parole authorities in Canada.

To further clarify the purpose of discretionary conditional release, it is proposed that the purpose of each of the forms of release be clearly articulated in legislation.

Day parole would be defined as a program of release, under the sole authority of parole boards, to prepare an offender for release on full parole or statutory release.

Unescorted Temporary Absences would be defined as programs of release, of limited duration, for medical, community service, socialization, personal development or humanitarian reasons. They would be under the authority of the National Parole Board for those serving a life or indeterminate sentence or a sentence for an offence found on the Schedule to the *Parole Act*. They would be under the authority of the Correctional Service for other offenders unless they have been referred for a detention review by the National Parole Board and it has not yet occurred.

Full parole would be defined as a conditional release, under the sole authority of parole boards, available to offenders after they have served the denunciatory period of their sentence. Such release would be granted if the offender would not present an undue risk of re-offending, prior to the expiration of sentence, where such release will contribute to the protection of society by facilitating the reintegration of the offender. Such releases will be granted with the conditions deemed necessary and reasonable to ensure the protection of society and to facilitate the reintegration of the offender.

Each of these programs of release would emphasize the criterion of risk of reoffending on release.

PAROLE BY EXCEPTION FOR DEPORTATION

The current *Parole Regulations* provide that offenders may be granted parole in advance of eligibility under the following circumstances:

- terminal illness;
- where physical or mental health is likely to suffer serious damage from continued incarceration;
- for those for whom the penalty constitutes an excessive hardship that was not reasonably foreseeable at the time of sentence;

— for offenders who have completed a program recommended by the sentencing court or have satisfied specific objectives of the sentence expressly stated by the court; or

— if subject to a deportation order under the *Immigration Act*, or an order to be surrendered under the *Extradition Act* or the *Fugitive Offenders Act* where the order requires the inmate be detained until deported or surrendered.

Offenders who are serving a life sentence as a minimum punishment, or who have had a sentence of death commuted to life imprisonment, or who have received an indeterminate sentence may not be considered for parole by exception.

The government proposes to remove from the authority of parole boards the responsibility to review cases for parole by exception for those offenders subject to deportation. The current system could be viewed as providing preferential treatment to offenders who are not Canadian citizens. Removal of this provision would prevent the use of early parole as an artificial procedure to free foreign nationals from custody by allowing the execution of an effective deportation order. Unlike extradition, deportation does not involve the offender being turned over to criminal justice authorities in another country, but rather may result in direct release, with no consideration of the sentence awarded in Canadian courts.

This change would eliminate the possibility of parole by exception for what could be viewed as administrative convenience rather than for extraordinary circumstances related to the individual offender. It would contribute to the equitable treatment of all offenders vis-à-vis the purpose and principles of release.

B. REFORMS TO CONDITIONAL RELEASE ELIGIBILITY

A key theme in the government's approach to criminal justice is the need for a closer relation between the sentence of the court and the time at which offenders will become eligible for conditional release. The period of denunciation intended by the court must be respected and reflected in our system of conditional release.

The Canadian Sentencing Commission (Archambault Commission), in its 1987 report, suggested that conditional release undermines the certainty, predictability and meaning of a sentence of imprisonment. While recommending significant decreases in the lengths of actual sentences, the Commission also called for the abolition of full parole except for life sentences. In addition, the Commission recommended that release as a result of good behaviour in the institution should occur at a later point in the sentence (after three-quarters of the sentence, not two-thirds as at present). A system of "day release" to a halfway house or other institution would be available after the two-thirds mark in the sentence.

The government agrees with the findings of the Parliamentary Standing Committee on Justice and Solicitor General: full parole should not be abolished. For the majority of offenders, the parole system works. The number of parole successes greatly outnumbers its failures. When protecting the public, a controlled transition

from penitentiary to the community is far preferable to releasing an offender outright, without assistance or controls.

Nonetheless, the Archambault Commission rightly pointed out that we need to be attentive to the relationship between a sentence of imprisonment and the authority for conditional release. It is neither sensible nor functional for the actual time that an offender serves in penitentiary prior to release to bear little resemblance to the sentence of the court. Nor should the sentencing and release systems operate in isolation from one another. This can lead to contradictory decisions, which serve to undermine the public credibility of both sentencing and conditional release.

The government's proposed Permanent Sentencing and Parole Commission, which is described in detail in the companion paper on *Directions for Reform in Sentencing*, would have, as part of its duties and structure, to consider questions related to the connection between sentencing and conditional release. Commission members, who would be drawn principally from the judicial and parole fields, would together consider ways in which a greater understanding of conditional release could be fostered among sentencing judges, and ways in which parole policies and decisions could better reflect the intentions of the sentencing Court. For example, the Commission would examine ways in which judges' reasons for sentence could more consistently and clearly be transmitted to parole authorities. It would also: consider ways in which effective exchange of information could be achieved among judges, prosecutors and releasing authorities about cases and classes of offenders; develop and advise upon sentencing and parole guidelines; and assess the impact of sentencing and parole guidelines. The ultimate objective would be to ensure that the total penalty would be fair and in proportion to the crime.

In August of 1988, the Solicitor General made proposals for tightening the conditional release system at the federal level. These were echoed in the Report, issued the same month, of the Parliamentary Standing Committee on Justice and Solicitor General (Daubney Committee). The options proposed in this paper have drawn on these proposals and on further consultations and analysis undertaken since that time. The current proposals reflect concerns for public protection, introduce special measures with regard to serious drug and violent offenders, provide for the effective use of scarce criminal justice resources, and address the need for greater integration between sentencing, corrections and conditional release processes. Although the result, for some offenders, would be an increase in the amount of time served in custody, for others the effect would be a more efficient process for achieving early release under conditions designed to achieve successful reintegration into the community.

The following proposed reforms to conditional release eligibility, which are presented for consultation, would apply to offenders who are sentenced to or transferred into the federal correctional system.

DAY PAROLE

Day parole is a form of conditional release that requires the offender to return to penitentiary from time to time, or after a specified period. In practice, the conditions of day parole normally require the offender to reside in a halfway house in the

community or a minimum-security penitentiary. Day parole is typically used as a program of gradual release, as a test of the offender's readiness for a more unstructured form of conditional release, or in order to prepare an offender for full parole or mandatory supervision. In addition, day parole is sometimes used to place groups of inmates in planned, specific, short-term work projects and the like. Normally, day parole is granted for a period of up to six months, and a subsequent review is undertaken if the offender is to continue on a further period of day parole. Some 4000 day paroles are granted annually to federal offenders (a number of these grants will be renewals of day parole for the same offender).

Earlier in this section, a proposal was made to focus the purpose of day parole more narrowly — in future, it is proposed that day parole would be used exclusively as a means of preparing the offender for full release to the community.

Day parole eligibility normally occurs at one-sixth of the sentence, or six months, whichever is the greater. For offenders serving lengthy terms of twelve years or more, day parole eligibility comes after a longer proportion of the sentence than for offenders serving sentences of under twelve years. On sentences of twelve years or more, day parole eligibility occurs two years prior to full parole eligibility. Thus, an offender serving fifteen years would be eligible for day parole after three years.

In practice, day parole is not often granted at such an early point in a lengthy sentence. This is because it is difficult for the correctional system to provide the appropriate accommodation, and difficult for the offender to be on day parole for long periods — he or she is normally out in the community during the day, but subject to the rules and restrictions of being an inmate at night. However, releases at a very early stage in the sentence can and do occur, and these can undermine both the sentence of the court and the public's confidence in the entire penal system. **Therefore, the government proposes that no day parole be granted to a federal offender before six months prior to the full parole eligibility date.**

As it should, the impact of this change will be more significant as the length of the sentence imposed by the court increases. Thus, for offenders serving terms of up to three years, there would be no change in the actual date of day parole eligibility. However, for offenders serving more than three years, the time required to be served in penitentiary prior to day parole eligibility would increase. For a sentence of nine years, eligibility would be at two and a half years rather than at one and a half years; for a sentence of fifteen years, eligibility would be at four and a half years rather than at three years.

It is also proposed that the National Parole Board no longer be required to review every offender's case when he or she first becomes eligible for day parole. With the first review of full parole eligibility occurring only six months later, this would place a heavy and unnecessary burden on Board and Correctional Service resources. At the present time a high proportion of offenders waive their right to this review believing, for various reasons, that they are not ready to be considered. These offenders will still be considered for full parole six months later. **Offenders who feel that their circumstances warrant consideration for day parole will remain eligible to apply for a review as soon as they are eligible.**

These changes would bring the law more into line with the usual practice for most cases. It would prevent day parole releases at very early points in the sentence for offenders who are obviously considered by the courts to have committed serious offences, by virtue of the lengthy sentences they receive. As a result, it would reinforce the authority of the sentencing court, preserve the intent and meaning of the sentence, and, it is hoped, help restore public trust and credibility in the process.

TEMPORARY ABSENCES

After offenders have been sentenced to incarceration, and before they have been granted parole by the National Parole Board, there are a number of sound reasons for permitting them to return to the community from penitentiary for brief periods. Such reasons include: attendance at court; humanitarian purposes such as death or serious illness in the family; medical treatment; and correctional programs or interventions that are not available within penitentiaries.

All offenders are now eligible when they enter penitentiary for escorted absences for medical and humanitarian reasons, the authority for which is delegated to wardens. In such cases, an escort must be provided by correctional staff. Offenders who have demonstrated that they could be in the community without an escort can be granted temporary absences without escort for medical or humanitarian reasons once they are eligible. This type of absence is under the authority of the National Parole Board where offenders are serving more than five years, while wardens are delegated such authority by the Board for those serving less than five years.

It is proposed that the authority for escorted temporary absences and their purposes should remain unchanged. It is reasonable that such decisions, which usually must be made on relatively short notice and sometimes on an emergency basis, be the responsibility of wardens. It is also proposed that the point in the sentence when offenders are first eligible for escorted and unescorted temporary absences should remain unchanged. In general, the time at which inmates are eligible for unescorted temporary absences would continue to be no earlier than at one-sixth of the sentence or six months after admission to penitentiary, whichever period is longer. For those serving life sentences for murder, eligibility does not occur until three years before full parole eligibility. In the latter cases, the NPB will continue to approve all escorted temporary absences for humanitarian and rehabilitative reasons, as provided in the *Criminal Code*.

Although there will always be administrative, medical and humanitarian reasons for temporary absences, there are also reasons related to the correctional treatment of an offender that do not fall into the above categories. While correctional treatment could be quite broad in nature, it will be emphasized in law that all such temporary absences take place only where there is a legitimate and demonstrable link with correctional objectives, as opposed to preparation for release. **It is therefore proposed that legislation should set out the purposes of unescorted temporary absences to include their use for medical, humanitarian, community service or personal development reasons.**

To emphasize the correctional nature of temporary absence programs, clarification of authorities is required. **Under this proposal, the Commissioner of Corrections would have legislated authority for all unescorted temporary absences except for those offenders serving life sentences, those serving indeterminate sentences, those whose offence is on the Schedule to the *Parole Act*, or any offender who has been referred to the National Parole Board for a detention review during the period prior to the review taking place.** These latter types of cases would be decided by the National Parole Board.

Having established the purpose of and authorities for temporary absences, the decision-making process should be guided, as a first priority, by the risk an offender would pose in the community. Consistent with the notion that temporary absences should serve a correctional purpose, the timing and purpose of the specific absence should be in line with the offender's program plan, and there should be a structured plan for the specific absence.

The federal government is proposing some changes in the considerations for unescorted temporary absences. Such absences are often part of a series of absences involving a specific plan related to the offender's correctional needs, and the typical length of a temporary absence is 48 to 72 hours per month. Longer periods are usually only granted in cases where extended medical treatment outside the penitentiary is required. **The federal government proposes that eligibility to apply for certain types of unescorted temporary absences vary according to the security classification of inmates.** This is in large part based on the degree of risk the inmate is deemed to pose to others in the institutional environment and to the community, were he or she to be at large.

Because risk is assessed according to the inmate's characteristics and progress in the correctional plan, it is important to ensure that access to the community for that inmate is based on his or her risk (security classification) and not on the security classification of the institution where the inmate is accommodated.

The government proposes to create a new type of temporary absence. This could be used for community service projects, which could consist of voluntary services in the community outside the institution, and for personal development programs, which could include educational programs or temporary community employment. Such programs could require the offender's presence in the community for periods no longer than 15 days at any one time, which is the current upper limit for temporary absences set out in the *Parole Act*. Inmates classified at medium security would be eligible to apply for absences for personal development or community service, to a maximum length of 15 days, no more than three times per year. Inmates classified at minimum security could apply for four absences per year for these purposes, again for no more than 15 days at a time.

Given the level of risk that, by definition, is attached to any inmate who is deemed to require accommodation in a maximum security penitentiary, it is logical that inmates who are classified at maximum security would not be eligible for such temporary absences.

FULL PAROLE

At present, full parole may be granted after the offender has served one-third of the sentence or seven years, whichever is less. Full parole does not require nightly return to a halfway house or institution, or return after a specified period. It may, if the offender is behaving successfully in the community, continue until the expiry of the sentence.

Of the federal offenders considered for full parole in any given year, the number and proportion granted varies from year to year, although the parole rate has tended to remain very stable since the early 1970s. The proportion of all full releases that occur *via* full parole has fallen from an average of 38.3% for the five-year period ending in 1983-84 to an average of 35.6% for the five-year period that followed. The reasons for this change are not clear but may be related to any number of factors, including changes to offender populations, changes in process, and concern over a few highly visible failures among federal offenders in the community.

Public opinion surveys suggest that there is little public support for the abolition of parole. Canadians recognize that eventually offenders must be returned to the community; parole provides a means of control and assistance during the critical transition period from imprisonment to society. However, many members of the public offer the view that violent and non-violent offenders should be treated differently by the parole system.

The *Parole Regulations* now contain a section that is intended to reflect the greater denunciation that society wishes to impose on offenders who have committed very serious crimes. For those offenders who meet the section's criteria, one-half rather than one-third of the sentence must be served before the offender may be considered for full parole. However, because of the complex criteria governing the application of this provision, it is not used in many cases.

Clearly, this section was intended to express society's legitimate interest in imposing a lengthier denunciatory period upon offenders who have committed serious violent acts. However, it is seldom used and, arguably, denunciation is more properly the province of the court. **The government proposes that sentencing judges be given the authority to determine the full parole eligibility date for violent and serious drug offenders sentenced to penitentiary, either at one-third (as currently fixed by law for all offenders), or at one-half the sentence.**

Violent offences which could trigger this judicial decision would be those which currently appear on the Schedule to the *Parole Act*. They include robbery, manslaughter, arson, and all types of assault, including sexual assault. (Murder contains its own special provisions in the *Criminal Code* for periods of ineligibility prior to full parole review.) Serious drug offences would also be subject to this decision and would need to be listed in law. Criteria governing the decision to impose a one-half parole ineligibility period would also be laid out in the *Criminal Code*. These could include such factors as those identified by the Archambault Commission as "aggravating factors" in sentence determination, such as the use of a weapon or excessive force, previous violent offences, previous custodial sentences, or some special vulnerability of the victim.

This option is preferable to the current system. It promotes greater integration between the sentencing and parole system in several ways. The current provision, which requires the corrections and conditional release system to determine when an inmate qualifies for a one-half parole eligibility date, is not well known to sentencing judges. Consequently, it may lead to unpredictability and disparity in cases where a judge is unaware that an offender will not be eligible for full parole until one-half the sentence, rather than one-third. Conversely, a judge who expects that an offender will in fact receive a one-half parole eligibility date may find that an unexpected result occurs.

The weight of current case law presently holds that judges should not take into account the possibility of conditional release in determining the sentence. Research suggests, however, that a significant number of judges do in fact consider the existence of parole and remission in fixing sentence lengths. Indeed, there is an element of unreality in a system which forbids such consideration. Judges should in fact be fully aware, to the extent possible, of the "meaning" of their sentences, in terms of the proportion of time which the offender must, or is likely to, serve in custody, and the proportion of time he or she is likely to serve under supervision in the community.

By allowing judges to specifically consider and set the parole eligibility date at one-third or one-half for violent and drug offenders in the federal correctional system, the gap between sentencing and parole would be bridged in this important aspect. The judge's decision would be made in open court, and would be a matter of public record. The judge would know as a matter of certainty when the offender can first be considered for full parole. This should in turn reduce any disparities caused by judicial uncertainty concerning the parole eligibility date. Allowing judges to make this determination would ensure it is based on all of the facts known at the time of sentencing and on the court's assessment of the appropriate degree of denunciation. This is more clearly the province of courts rather than parole boards, whose mandate is to assess risk and rehabilitation probabilities.

The establishment of the parole eligibility date in open court would also provide the court with a concrete means to transmit to paroling authorities its conclusions about the impact of the crime on the victim. In turn, this would result in more public understanding of and confidence in the sentencing and corrections system.

This option also serves to promote greater judicial understanding of the operation and existence of parole. It provides the opportunity, and indeed the obligation, for greater discussion and dialogue about conditional release among prosecutorial, judicial, and paroling authorities. It is believed that the option would lead to increased communications between sentencing and release authorities.

EARNED REMISSION AND DETENTION

By law, inmates within the federal and provincial correctional systems can earn "remission" of their sentence for good behaviour and program participation. This remission of sentence, originally introduced in 1868, can be up to one-third of the

sentence. In the provincial systems, the offender is released once his or her time served plus remission credits equal the length of the sentence. The offender is then subject to no further controls during the remitted part of his or her sentence.

By contrast, in the federal system, offenders who are released through remission are on "mandatory supervision" until the date their sentence expires. While on mandatory supervision, they are subject to standard conditions (such as reporting to a parole officer), as well as to additional conditions that may be imposed on them in view of the specifics of the case. Offenders may have their release revoked and be returned to penitentiary for breaching any condition, or to prevent a breach of conditions. Mandatory supervision was introduced into the federal system in 1970 primarily out of concern for public protection. Remission-released offenders — by definition those federal offenders judged to be the greatest risks, since they have been denied parole — should not, it was reasoned, be released to the community without a transitional period of supervision, assistance and control to help them readjust to society and remain law-abiding.

During periods of well-publicized failures by offenders on mandatory supervision, remission has been criticized because it requires the inmate to be released from imprisonment before the expiry of sentence. As a result of this criticism, the National Parole Board was given the authority in 1986 to detain manifestly dangerous federal offenders in penitentiary until the expiry of their sentence, regardless of any remission earned. In the alternative to detention, the Board may require that the offender reside in a halfway house during the mandatory supervision period, or may require that, if revoked, the offender no longer be eligible to be released through remission on that sentence.

In order to be detained, an offender must normally meet three criteria. First, he or she must be convicted of an offence on the Schedule to the *Parole Act*. The Schedule, referred to earlier, lists crimes against the person, including robbery, assault, and manslaughter. Second, that offence must have caused the death of or serious harm to another person, defined as severe physical or psychological harm. Third, the offender must be considered by the Parole Board to be likely to commit, before the expiry of sentence, another offence involving death or serious harm. In cases where the first two criteria are not met, but the Commissioner of Corrections considers that the third criterion is met, he or she may refer the case to the Board for possible detention.

Since the coming into force of these provisions, about one hundred federal offenders a year have been detained by the National Parole Board. About another seventy have been subject to a halfway house residency condition or given only a single chance to succeed on mandatory supervision.

The application of the detention authority is now limited to those federal offenders who are likely to pose a risk of violence. **The government proposes a further option that would create a similar authority to detain serious federal drug offenders until the end of their sentence.** Drug offenders, most of them convicted of trafficking or possession for the purpose of trafficking, currently make up about seven per cent of the penitentiary population, or some 600 individuals admitted to penitentiary annually. These offenders and the risk of their return to drug-related

activity are of increasing concern to Canadians. They should not be allowed to be released automatically under mandatory supervision if there is evidence they will continue their illegal activities.

Under this option, an offender would need to have been convicted of a serious drug offence in order to be held until warrant expiry. Simple possession of a controlled or restricted drug would not be included as a triggering offence. Offences which would qualify as triggering offences would include trafficking, laundering of the proceeds from drug offences, and possession of property obtained by trafficking in drugs.

In addition, the offender would have to be considered likely to commit another such offence while being supervised in the community. A list of factors in the *Parole Act* would guide the use of this authority, and might include such factors as previous convictions for drug offences, the type and amount of the drug involved in past offences, evidence of an organized distribution network, and so on.

This provision is intended to distinguish serious drug offences, as we do violent offences, from other offences. It would both express the greater denunciation which properly attends such offences, and reflect the serious consequences that are required when these crimes are repeated.

While serious drug offenders would become subject to detention until warrant expiry, the government also proposes to replace the current system of earned remission for federal offenders with a system of statutory release at the two-thirds point in the sentence.

Earned remission is a cumbersome administrative mechanism that is of very limited value in controlling or motivating inmates. It requires an investment of time and effort on the part of penitentiary staff that could be better used in working constructively with inmates in addressing their needs. Remission is unnecessary as a means of recording and drawing the parole authority's attention to an inmate's institutional behaviour. If the inmate has committed any act or omission in penitentiary that is relevant to risk assessment or to his or her progress in addressing problems while incarcerated, this will be considered in the decision to grant or deny conditional release.

There are large differences in the ways in which remission is administered from one penitentiary to the next, differences which cannot easily be explained by the nature of the institution or the population profile of the inmates housed there. This raises questions about the consistency and fairness with which remission is and can ideally be administered.

Finally, remission, more than any other single factor, complicates sentence calculation and contributes to errors in determining when offenders are eligible for release of all kinds. The confusion arising from the operation of remission plagues judges and parole authorities alike. This is particularly true for offenders convicted of and serving sentences for more than one offence, and can lead to unintended and unfortunate results.

Accordingly, the government proposes to replace the complicated system of remission, with a simple, understandable, and predictable mechanism. Unless paroled earlier or detained, a federal offender would be released at the two-thirds mark in the sentence. This would be called statutory release. As now, the offender would be subject to supervision and the possibility of revocation and return to penitentiary for a breach of conditions or to prevent a breach. Once revoked, an offender would be subject, as now, to re-release on mandatory supervision after serving two-thirds of the remainder of the sentence, except where less than sixty days remained in the sentence. Since the vast majority of offenders earn all or nearly all of their remission now, this change would not significantly change time served by offenders.

ACCELERATED REVIEW FOR RELEASE

Under the current system, the Correctional Service of Canada and the National Parole Board invest virtually the same amount of time, resources and energy in considering the possible release of a first-time, non-violent offender as they do in considering repeat violent offenders. For both groups of offenders, the correctional authorities identify problem areas and provide the appropriate treatment and programming, as well as the opportunity to develop complementary social, vocational and other skills. The same criteria in the *Parole Act* apply to all cases, and the same amount of assessment and documentation is required to make a decision, with the exception that violent offenders are more likely to be subject to extensive psychiatric assessment than are non-violent offenders.

Our ability to predict future violence among offenders, whatever their prior history, is limited. Nonetheless, the seriousness with which we are prepared to treat individuals who have been violent in the past — and the scrutiny that we must bring to bear on their cases — is, and should be, greater than that which we are prepared to show towards those who have not.

Canadians are more receptive to the use of alternatives to incarceration for non-violent offenders. Nonetheless, many property offenders are less likely to receive parole than are many violent offenders. This is in part because property offenders are more likely to violate the conditions of their parole, and in part because their sentences tend to be shorter than for violent offenders in the federal system. The vast majority of paroled property offenders are released considerably later than their first parole eligibility date at one-third of the sentence.

This does not represent an effective use of correctional resources. The greatest effort should be concentrated on those offenders who represent the greatest threat to public safety. **To this end, the government proposes that the preparation for release of those offenders serving their first federal term for a non-violent offence be accelerated on the presumption that the offender will be released at parole eligibility date, and that their release be effected by law on that date, unless the National Parole Board considers there are reasonable grounds to believe that a violent offence may be committed prior to warrant expiry.** More precisely, non-violent offenders are those offenders who have committed a crime that is not on the Schedule to the *Parole Act*. However, drug offenders would only be eligible for this

accelerated review for release if they had not received a one-half parole eligibility date from the sentencing judge (see page 13 above).

This option would provide for the formal recognition in law that non-violent and violent offenders should not be subject to the same conditional release process. It would continue to provide for full consideration by the Parole Board and by case assessment officials of the Correctional Service of all relevant information in the case. All factors in the offender's past criminal and social history that could bear on the offender's risk of committing a violent act in the future would be assessed. Once released, these offenders would be supervised in the community at a level consistent with their risk and needs. The conditions of release and the criteria for revocation and return to penitentiary would be the same as now — any new crime, any breach of conditions, or any apprehended breach of conditions could potentially lead to revocation.

The difference would be in the criterion for release (i.e., risk of committing a future violent act, as opposed to the broader criterion of "undue risk"), and in the planned and deliberate identification of a group of offenders for whom reintegration into society at the earliest opportunity, consistent with public safety, would be a paramount goal.

Currently, the parole rate for property offenders who would be eligible for accelerated review is about 55%. It is estimated that, with the proposed changes, the parole rate for these offenders would be only slightly higher — 60%. The parole rate for drug offenders is currently 85% and it is estimated that the proposed changes would not affect the grant rate for this group. The chief difference would be that, once considered to meet the test for early review, these offenders would be released precisely at the time of their first eligibility for full parole. This earlier release (after 33% of the sentence rather than an average of 45% as is now the case) and more streamlined case preparation procedures would free up resources to be concentrated on programs and lengthier incarceration for more serious, high-risk offenders.

POST RELEASE INTERVENTIONS

While consideration is being given to the changes in eligibility dates for day and full parole release, there is also a need to examine what changes are required in post-release interventions to ensure adequate protection of society when the offender violates the terms of his or her conditional release. These interventions, while providing for appropriate responses to different types of release violations, should not at the same time increase the use of incarceration in response to problems that are manageable in the community.

The proposed changes would make the criteria for suspension, termination and revocation of conditional release more explicit in policy or regulations; would define the time period during which a suspension must be reviewed by CSC (within 30 days) or the case would be referred to NPB for review and decision; and would increase the options open to the Board in responding to breaches or anticipated breaches of conditional release. The Board would have the option of cancelling suspension, reprimanding the offender, imposing additional conditions,

detaining for a further 30 day period, terminating parole, or revoking parole or statutory release. **It is also proposed that an offender whose parole has been revoked would be ineligible for statutory release until six months after the date the offender is recommitted.**

CONCLUSION

The government proposes for consultation a series of reforms to the present system of eligibilities and criteria for certain forms of conditional release for federal offenders. These reforms reflect a number of themes for the future of the sentencing and correctional systems, as well as the concerns which Canadians have expressed about the functioning of the current system.

Public opinion surveys show that Canadians are generally supportive of the programs of conditional release. However, they feel that improvements could be made to how these programs function. In particular, Canadians do not have strong faith in the system's policies and procedures governing the release of offenders serving sentences for violent crime.

The proposed reforms are intended to clarify the system and restore, to the extent possible, public confidence in the system. They draw a distinction, both in eligibility dates and release criteria, between offenders convicted of violent and serious drug offences on the one hand, and on the other, offenders convicted of non-violent offences. In so doing, they seek to achieve a more rational allocation of correctional resources, with greater attention paid to the serious offender and more emphasis placed on more efficient reintegration of the offender who presents a low risk.

The reforms seek a greater integration and balance between the considerations and decisions of the sentencing court and the discretion and decisions of releasing authorities. They are intended to provide that in the end, the result will be a total penalty which is fair and proportionate to the crime and the criminal.

The resulting system is intended to be more predictable and more accountable to all concerned — to the general public, to the victim, to the offender, and to those who work in all parts of the criminal justice system.

C. REFORMS TO PAROLE OPENNESS, ACCOUNTABILITY, AND PROFESSIONALISM

The following proposed reforms would apply only to the operations of the National Parole Board. References are made to provincial prisoners and correctional authorities only because the National Parole Board acts as the releasing authority for provincial prisoners in the territories and in seven provinces.

FREQUENCY OF REVIEWS

Currently the National Parole Board is required to provide reviews every two years for offenders once they have reached eligibility for parole. Given the commitment of the government to reintegration, rehabilitation, and thus reduced reliance on incarceration, **it is proposed that the Board be required to conduct annual reviews.** These reviews will assist in the timely release of offenders who have benefitted from treatment or program participation and pose no undue risk to society when subject to the appropriate conditions.

IMPROVED ACCESS TO THE PAROLE DECISION PROCESS

The government proposes to amend the *Parole Act* to empower the Board to permit the release of decision information in the public interest and to determine attendance at the parole hearing.

The government believes that the parole process must be, both in reality and in perception, fair, equitable to all concerned and consistent. The government agrees with the Standing Committee that the parole decision process should be more open. A published statement of purpose and principles and clear criteria for parole decisions would help in this regard. Further, the government proposes to increase access by the creation of a decision registry open to the public. This registry would provide the public with information on the decisions that had been made about the conditional release of individual offenders, and the reasons for those decisions.

ACCESS TO DECISIONS AND REASONS

To increase the openness of decision-making, the accountability of the Board and public understanding of discretionary conditional release, it is proposed that there be access to the decisions of the Board, subject only to the restrictions necessary to respect the privacy of third parties, including the victim, victim's family and the offender's family. **The government accepts the recommendations of the Canadian Bar Association that there be publicly available reasons for the decisions of the Board.**

The ability to monitor and review decisions and reasons and ensure that they are subject to scrutiny would contribute to the improvement of the quality and consistency of decision-making and assist in the development and refinement of decision policies.

The creation of a decision registry would provide an additional degree of public accountability. The decisions and reasons of the Board would be available for research purposes, stripped of individual identifiers. Case-specific information would be provided to those with an interest in the case, subject to the privacy rights of third parties, including the victim, victim's family and the offender's family. As well, information that if released could be harmful to the reintegration of the individual offender could, at the discretion of the Board, be withheld. While the Board has prepared written reasons for its decisions for some time, and has shared these

reasons with the offender and those involved in supervising the offender, legislative amendments would allow greater public access to the decisions and reasons of the Board.

HEARINGS

Currently, consistent with the *Privacy Act*, offenders have an effective veto in determining who can observe the hearing. The Standing Committee report, *Taking Responsibility*, strongly endorsed openness in the parole decision process. There is growing interest on the part of the public, including victims and victims' organizations, in attending parole hearings. Although the Government does not believe that public hearings are always necessary or consistent with the purpose and principles of parole, **it is committed to increasing the public's access to the parole decision process.**

The Standing Committee recognized that there may be a need to exclude the public from part or all of the hearing. The Committee stated that while it supported open hearings, it did not, for example, support the provision to the victim of a right to speak at the hearing.

Parole is intended to contribute to the protection of society by facilitating the timely reintegration of offenders as law abiding citizens. Parole decision-making is administrative, not judicial. There are no formal rules of evidence or limits on the information the Board may consider, so long as that information informs the Board about the likelihood of reoffending and the risk that the offender presents. The Board is bound by the *Charter of Rights and Freedoms*, and must ensure that the offender is aware of the information that it is using to make its decision and is given an opportunity to respond in an informed manner. In general, if disclosure of particular information would be contrary to the public interest (for example, if it would put an individual at risk), it is withheld from the offender. Unlike judicial reviews, parole reviews are inquisitorial: the Board is responsible for weighing the information, assessing the probability of future criminal behaviour, and making decisions on the timing and conditions of release of the offender.

Information about the possibility of reintegration of an offender comes from a variety of sources. The police are routinely asked how they would view a release. Professionals, including psychologists, psychiatrists, parole and case management officers, act as independent advisors to the Board. Statements from victims are considered when they assist the Board in the determination of future risk and appropriate release conditions. Information presented to the Board may involve detailed personal information on the family of the offender, on relationships with others in the community, and other information, such as medical records, that are relevant to risk assessment.

Openness and increased access to the decision process should not jeopardize the protection of society, offender reintegration or rehabilitation, effective communications within the criminal justice system, or the professionalism and accountability of the Board.

ACCESS TO HEARINGS

The Government proposes that the *Parole Act* be amended to provide to the Board the right to permit observers at hearings. To ensure that the hearing remains an interview with the offender conducted by the Board, in its assessment of risk, the government does not propose that observers at hearings would have a right to address the Board or the offender. The responsibilities of the Board, to respect the rights of those subject to decisions consistent with the *Charter of Rights* and the duty to act fairly, must guide any changes to current law and practice.

The government proposes that the Board be empowered to consider the interests of those who wish to attend a hearing, and to balance the interests of the offender, those wishing to observe the hearing, and those who have provided information. The Board must consider these interests in light of its unique mandate and responsibilities.

In making its decisions on access to hearings, the Board would consider the following:

a) preservation of the hearing process:
The Board would consider if the hearing would be disrupted, or if the ability of the Board to assess risk through the offender interview would be limited by the presence of observers.

b) protection of third parties:
The protection of those who have provided information, such as victims, families of the victims, or families of the offender, would be considered.

c) the interests of the offender:
The offender would be consulted, and while the offender would not have a veto, the offender's concerns or consent would be considered by the Board. The Board must balance the public right to information with its responsibilities to assist in the reintegration of the offender.

d) institutional security and costs:
Given that hearings occur in prisons and penitentiaries, the security and good order of the institutions would continue to be relevant considerations in approving any individual request for attendance at a hearing or in determining if a hearing should be closed. The Correctional Service of Canada or the appropriate provincial corrections authorities would determine the possible impact of observers and advise the Board if they would recommend against an open hearing. As well, corrections authorities would be required to screen observers, as they would any visitor, in advance of recommending whether or not the individual should have access to the institution to attend the hearing.

PROTECTION FROM LITIGATION

Increased emphasis on accountability should not mean personal criminal or economic risk to Board Members where they act reasonably and in good faith. **To ensure that**

members are protected from such risk, the government proposes to include in revisions to the *Parole Act* protection for members from civil or criminal proceedings for anything done, reported or said reasonably and in good faith in the course of the exercise or performance of their powers, duties and functions under the Parole Act. Such protection is consistent with existing government policy and the common law.

MEMBERSHIP AND VOTING STRUCTURES

The government proposes specific revisions to the voting structure of the Board to ensure professionalism and community input, and to ensure that the Board continues to be structured in a manner fully consistent with its accountabilities to the public, to the offender, and to government for its decisions.

The government also proposes changes to the composition of the Board that should further strengthen professionalism and accountability while maintaining the community focus that the government considers essential to the Board. The National Parole Board is a citizen board. The members of the Board are diverse in their occupational, cultural, and professional backgrounds and are intended to represent community views and interests. The Board is also professional to the degree that its decision-making is structured by policies and informed by research and appropriate case information.

As previously stated in the proposal on purpose and principles, the Board would be responsible for ensuring a policy structure, training for members, and communication to both offenders and the public. The government proposes a number of measures to address concerns raised by the Standing Committee, the Nielsen Task Force and others that members must have skills and training commensurate with their responsibilities.

The Government also proposes to eliminate the category of community members. There are currently three types of members: regular members are appointed by the Governor-in-Council for a fixed term, to serve on a full time basis; temporary members are appointed by the Governor-in-Council for a period of up to three years to work with the Board on a *per diem* or part-time basis to supplement the available regular or full-time members; and community members are designated by the Solicitor General to serve terms of up to two years, and participate only in decisions affecting the release of those serving life or indeterminate sentences.

The concept of "community member" was created to increase the input of the community in decisions on those serving life for murder or those serving indeterminate sentences. Community members' participation is restricted to these cases.

Community members pose serious training and support dilemmas for the Board. These members work infrequently because of the limited number of offenders serving life or indeterminate sentences. As a result of their infrequent participation in decisions, these members are not as experienced with the decision policies, case law, and case management practices as other members. It is very difficult to provide

adequate training opportunities and work experience so that these members are full and fully effective participants in the decision process.

With the elimination of the category of community members, regular and/or temporary members would continue to participate in all decisions. They are capable of being fully representative of the community and can be provided on an economical basis with the training and support necessary to ensure a high degree of professionalism. **The maximum number of members that can be appointed on a regular or full-time basis would be increased from thirty-six to up to forty-five to allow increases without legislative change when necessary.**

DIVISIONS OF THE BOARD AND STATUS AND ROLE OF THE EXECUTIVE COMMITTEE

In addition, the government proposes changes to the *Parole Act* to entrench current practice, structure and a number of developments designed to ensure fairness, consistency and quality in policy development and decision-making.

The regional structure of the Board would be recognized in the Act to reflect the operating reality of the Board. The Appeal Division of the Board, which has the authority to review adverse decisions, would be recognized in the Act, thus entrenching the right of an offender to appeal in cases of adverse decisions and meeting the requirements of principle (d). To strengthen the accountability structure for members, the position of Senior Member of each region and of the Appeal Division would be recognized in the *Parole Act*. The Chairperson would designate Senior Members from those appointed by the Governor-in-Council, after consultation with the Minister. This amendment will improve the quality assurance demanded of senior members.

As well as the clarification of the regional structure of the Board, and with the recognition of the Senior Members, **the Act would be amended to specify membership on the Executive Committee to include the Chairman, Vice-Chairman, regional Senior Members, and Senior Member, Appeal Division,** consistent with the current practice. Other members could be included as designated by the Chairman after consultation with the Minister. Currently, the Act does not specify that each of the Regions and the Appeal Division will be represented on the Executive Committee.

Consistent with the principles, it is proposed that the Chairman and the Executive Committee have authority in law, after seeking the advice of the Sentencing and Parole Commission, to enact policies structuring parole reviews.

As indicated in the proposals of the Minister of Justice, the members of the Parole Panel of the Commission would have authority to provide advice to the Chairman of the Parole Board on policies proposed by the Chairman and the Executive Committee. To ensure that the policies of the Board are subject to rigorous review and to strengthen accountability to the public with respect to these policies, all Board decision policies would be submitted to the Commission. The reporting requirements of the Commission are detailed in the proposals of the Minister of Justice.

OTHER AMENDMENTS

There are also other amendments of a more technical nature in response to provincial and other concerns that will be discussed with officials of provincial governments and with provincial boards of parole.

PART III. CORRECTIONS REFORM

A. TOWARDS A NEW CORRECTIONS ACT

The *Penitentiary Act* is the federal statute that creates the Correctional Service of Canada and sets out the rules that govern the way in which penitentiaries are run. First enacted in 1868, it has evolved through numerous *ad hoc* amendments. Many provisions are now obsolete and because substantive changes have frequently been introduced by way of amendment to the regulations, the statute has been left virtually silent on many important matters.

Since its inception, the federal correctional system has been marked by growth, change and innovation. The legislative framework must reflect the broader range of correctional operations and services that exist today, define the authorities that are necessary, and regulate many aspects of the more complex system that has evolved.

Correctional legislation must also reflect legal and constitutional developments, particularly where the *Charter of Rights and Freedoms* is concerned. Because the Charter is drafted in general, abstract terms, legislative provisions play a crucial role in articulating and clarifying Charter rights and the restrictions on them that are necessary in the corrections context. This latter point is essential, as limitations and restrictions on Charter rights must be "prescribed by law", and limitations in policy directives do not meet the Charter's demands.

Many of the problems associated with the present statute stem from the fact that it contains no statement of philosophy. The lack of a clear, Parliamentarily endorsed and publicly accepted statement of purpose and principles for corrections has been identified as a significant gap in the correctional system by virtually every major report or study of the area.

It is of the utmost importance that staff, management and others in the system are not frustrated by confusing or conflicting understandings of the objectives of the system. Other components of the criminal justice system, as well as the public, should not have conflicting expectations as to what the correctional system should be able to achieve.

A legislated statement of purpose and principles would be a clear statement of Parliamentary intention with respect to the correctional system, and would provide the basic framework for correctional policy and program development. It would also provide a unifying context for all of the substantive provisions proposed for the new *Corrections Act* as well as the new regulations.

The proposals for a new *Corrections Act* specify a clear set of rules governing how a sentence of imprisonment is to be served. They make it clear that public safety is the paramount consideration in all correctional decision-making, and provide explicit

criteria for all significant correctional decisions, such as discipline, search, transfer, placement and administrative segregation.

The following statement of purpose and principles is proposed for corrections:

STATEMENT OF PURPOSE AND PRINCIPLES FOR CORRECTIONS

The purpose of federal corrections is to contribute to the maintenance of a just, peaceful and safe society by:

(i) carrying out the sentence of the court through the imposition of appropriate measures of custody and control; and

(ii) contributing to the rehabilitation and reintegration of offenders into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

The following principles shall guide correctional staff members in achieving the above purpose:

(a) offenders under sentence retain the rights and privileges of all members of society, except those that are necessarily removed or restricted as a consequence of the sentence;

(b) the sentence should be carried out having regard to all relevant information, including the stated reasons and recommendations of the sentencing judge, information from the trial or sentencing process, and the release policies of, and any comments from, the National Parole Board;

(c) correctional authorities should use the least restrictive measures necessary to protect the public, staff members and offenders;

(d) correctional authorities should ensure effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through the public communication of information about correctional policies, programs and resources;

(e) correctional decisions should be made in a forthright and fair manner, with access to effective grievance mechanisms;

(f) correctional policies, programs and practices should respect gender, ethnic and cultural differences, and should be responsive to the needs of women and Aboriginal Peoples, as well as the needs of other groups of offenders with special needs; and

(g) **correctional staff should be properly selected and trained, and supported by appropriate personnel development opportunities, good working conditions, and opportunities to participate in correctional policy and program development.**

The overall thrust of the statement, which is consistent with the new Mission Statement of the Correctional Service of Canada, was supported by virtually all individuals, groups and governments consulted during the Correctional Law Review process. There was general recognition that the mandate of corrections is necessarily complex and diverse, and also clear consensus that programs, in both the institutions and the community, are fundamental to a modern correctional system that must make every effort to reintegrate offenders into the community as law-abiding individuals.

The proposed statement applies only to federal corrections, although some provincial or territorial jurisdictions might regard it as an appropriate statement for their correctional systems. A statement of purpose and principles for provincial corrections, while it may be consistent with the federal statement, should not be limited by the federal institutional perspective. It is not proposed to develop such a broad statement here.

In determining the mandate of federal corrections, it is recognized that the public expects, and has the right to expect, that once a sentence of incarceration is imposed, the correctional system will administer that sentence safely, in accordance with law. In the short term, a safe, secure penitentiary system protects society by isolating dangerous inmates while they are serving their sentences. However, society's long-term interests are clearly best protected if the correctional system can influence offenders to begin or resume law-abiding lives. Thus, society has a great interest in a correctional system that is fair, reasonable and that assists in the successful reintegration of the inmate into the community upon his or her release.

The objectives of secure penitentiaries and reintegration of offenders facilitate the goal of public protection, separately and in combination with one another. A secure penitentiary means a penitentiary in which inmates and staff members feel safe, the kind of penitentiary that is conducive to participation in rehabilitative programs. Conversely, good programs mean good security. When inmates are productively occupied, they are less likely to build up frustrations and are therefore less likely to be aggressive.

Consistent with the statement of purpose and principles, the proposed *Corrections Act* provides a clear and comprehensive set of provisions dealing with institutional security, institutional decision-making, the use of information about offenders, fairness, programs and services for Aboriginal offenders and female offenders, and mental health services.

The following sections highlight the most significant changes in the proposed new Act. However, the Act has been entirely rewritten, not only to reflect the statement of purpose and principles, but also to bring up to date the many technical sections of the Act dealing with such things as the legal requirements of lawful custody, the definition of inmate, and the creation of the Correctional Service of Canada with the

appropriate authorities. The proposals for a new Act are attached in their entirety as Appendix A to this document.

CUSTODY AND CONTROL OF INMATES

Placement, Transfer and Administrative Segregation

The proposals for the new Act contain clear criteria, consistent with the statement of purpose and principles, to govern decisions concerning institutional placement, transfer and administrative segregation. As a general rule, every inmate should be confined in a penitentiary that provides the least restrictive measure of custody and control appropriate in the circumstances, taking into account the following criteria: the necessary security level, accessibility to the inmate's home community or cultural environment, the availability of appropriate programs, the availability of cell space, and the inmate's need for special protection.

Transfers of inmates between institutions are governed by the same set of criteria.

Recognizing that the institutional head must be able to respond effectively where security and other important interests are at stake, the proposals set out the criteria governing when an inmate can be placed in administrative segregation. The above criteria would apply in situations where there also exist reasonable grounds to believe that the inmate would jeopardize the security of the institution or the safety of an individual, or would interfere with the investigation of an offence if he or she remained in the general population, or that the inmate would be in danger in the general population.

Search and Seizure

Correctional authorities must be able to prevent the introduction of contraband, including weapons, drugs and other items that jeopardize security, into penitentiaries and community-based residential facilities. But the current statute is silent on the issue of search and seizure, while the regulations contain the barest minimum on the search of offenders, staff members and visitors, and nothing on the search and seizure powers of the staff of community-based residential facilities.

It is vital that CSC staff members and the staff of community-based residential facilities be legislatively empowered to perform searches and seizures in a manner that is consistent with the guarantees under the Charter. To this end the legislation must be detailed enough to ensure that staff members know in what circumstances they can search and seize, and how search and seizures must be performed. The proposals set out the standards, criteria and circumstances of application for searches that enable the institution to meet its security needs while at the same time protecting the dignity, privacy and other rights of the person being searched.

Briefly, the proposals for the Act provide for two types of searches that are necessary in the corrections context:

* **investigative searches** that are based on specific grounds for believing that a particular person is in possession of contraband or evidence of an offence; and

* **routine searches** that are not based on specific grounds for believing that a person is in possession of contraband or evidence of an offence, but are based on ongoing institutional security and safety needs.

The proposals reflect the principle that the more intrusive a search is, the greater are the safeguards that must be afforded to the person being searched, both in terms of how the search is to be carried out and the standards and criteria that must be met before the search can take place. The Regulations would provide further detail as to how the searches are to be conducted.

Interception of Communications

In a modern penitentiary, inmates maintain considerable contact with various people from the outside, including family, friends, the media, members of voluntary organizations who run a whole range of programs inside the penitentiary walls, and a number of people under contract with CSC who are counsellors, chaplains, shop instructors or teachers. This variety of community contacts is absolutely vital for effective and diverse rehabilitative programming and for effective community participation in corrections. At the same time, such contact creates security problems that would not exist in a more structured and limited environment.

Neither the current legislation nor the current regulations address the importance of community or family contact, or CSC's power to intercept inmates' communications with the public where security demands it. While it is crucial to maintain community contact and to protect the privacy of inmates' communications with others, it is also necessary that **the proposals for the *Corrections Act* provide CSC with the power to monitor inmates' mail, visits and telephone conversations, where it is reasonable to maintain the security of a penitentiary or the safety of an individual.**

Inquiries

Under the current legislation, the Commissioner may appoint a person to investigate and report upon any matter affecting the operation of the Service, and a person so appointed has all the powers of a commissioner appointed under Part II of the *Inquiries Act*. This is important to ensure that the Commissioner can respond quickly and appropriately in the management of the Service.

The proposals in the *Corrections Act* extend this power of appointment to the Minister, to ensure that he can take immediate action to institute an independent inquiry in cases where, for example, there has been a serious breach of security or the safety of the public has been threatened. Inevitably there will be some tragedies associated with corrections. It is vital that the Minister be in a position to act immediately to find out what led to the tragedy and to determine what steps should

be taken to avoid its repetition. Currently, the Minister cannot conduct an inquiry, pursuant to the *Inquiries Act*, without first having obtained an Order-in-Council appointing the person to conduct the inquiry. Although this can be obtained relatively quickly, it is important that in serious matters of public safety, the Minister be empowered to act without delay and to personally respond to requests made to him or her for an inquiry.

Discipline

The discipline of inmates is currently provided for in the Regulations to the *Penitentiary Act*. There is, however, a need for greater specificity in the Act to ensure that the disciplinary process furthers the overall goals of corrections.

The proposals would clarify that the purpose of the disciplinary process is both to deal quickly with institutional problems and to encourage inmates to adopt acceptable standards of behaviour. They would also provide a clear structure for dealing with disciplinary offences. They would clarify the procedure to be followed and also provide for a range of punishments for offences, including "restitution" and "extra duties" that are intended to increase inmates' responsibility for their actions.

CORRECTIONAL DECISION-MAKING

The foundation of sound, reliable correctional decision-making is thorough and accurate information about offenders. And reasonable access to information about offenders is a critical element of any open and accountable correctional system.

Because of the essential role that information about offenders plays in the operation of the correctional system, the collection and disclosure of it merits the attention of correctional legislation. However, this issue is not addressed by the current legislation, and is addressed by just one provision in the current regulations. That provision requires CSC to conduct an investigation into the "medical, psychological, social, educational and vocational condition and history of the inmate and the motivation for his or her offence", upon reception to penitentiary.

The proposals for the *Corrections Act* contain comprehensive provisions on the collection and disclosure of information about offenders that are reviewed below.

Collecting Information

The proposals require the collection of information about offenders upon their being sentenced, committed or transferred to penitentiary, and further require that the information be updated on a regular basis. Under these proposals, CSC must collect essentially the same information about an offender as under the current regulations, with one important difference: the Service will also be required to take reasonable steps to obtain relevant young offender files. This responds to

recommendations from a number of recent inquests and fills a significant gap in the information currently existing in relation to inmates.

CSC would be required to request the reasons for sentence and recommendations of the sentencing court, and reports relevant to sentencing submitted to that court, on every person sentenced, committed or transferred to penitentiary. This is consistent with recommendations of the Canadian Sentencing Commission, the Standing Committee on Justice and Solicitor General, and recent Coroner's inquests that emphasize the importance of improving the flow of information between the various components of the criminal justice system.

Disclosure of Information

The government proposes that the new *Corrections Act* set out provisions governing the disclosure of information to various persons.

a. Disclosure to Offenders

Under the proposals, CSC must disclose to an offender all information relevant to the making of a decision that affects the offender's liberty or other significant interests. But, consistent with recent court decisions, where the Commissioner or his or her delegate is satisfied that full disclosure of information to the inmate would:

* jeopardize the safety of another person;

* be injurious to the conduct of an ongoing criminal investigation; or

* jeopardize the security of the penitentiary,

the Commissioner or his or her delegate may authorize the withholding of as much information as is strictly necessary for the purpose of protecting the interest.

b. Disclosure to Victims

Information related to the imposition and administration of an offender's sentence may be released, upon application, to a victim where:

* the offender consents to its release; or

* the Commissioner or his or her delegate is satisfied that the victim's need for the information, in a particular case, clearly outweighs the offender's interest in privacy.

Victims' groups have been pressing for such a provision. Access to information, their greatest priority, has been described as "vital to greater victim satisfaction with sentencing and correctional processes."

c. Disclosure to Other Components of the Criminal Justice System

For all the components of the system to function most effectively, information must be shared with the National Parole Board and, when an offender is to be released, with all those agencies and individuals in the community who will be involved in supervising the offender (contracting agencies operating half-way houses, the police, provincial agencies such as mental health or social services, etc.) Internal policies of the Ministry require the sharing of key information with certain key partners in the system.

A provision addressing this is contained in the proposed Act. It confirms CSC's obligation to provide information about an offender to the National Parole Board, contracting agencies, provincial governments and police, where the information is relevant to release decision-making or the supervision of the offender on conditional release. In addition, CSC would be required to provide relevant information to the police force in the jurisdiction where an inmate is to be released on warrant expiry, before warrant expiry, where the Commissioner or his or her delegate has reasonable grounds to believe that the inmate would pose a threat to the safety or security of the public upon release.

FAIRNESS IN DECISION-MAKING

Fairness is an essential element in decisions that affect inmates. Not only is the duty to act fairly necessary from a legal point of view, it is also sound correctional policy; how inmates are treated will have an impact on how they behave. Fair decision-making is open, understandable, consistent, and not arbitrary.

The proposals ensure that decision-making in relation to an offender's liberty or other significant interest is open and understandable by requiring that the offender be provided with all information relevant to the making of the decision (with certain exceptions, which are discussed above), and is given a reasonable opportunity to respond.

By permitting an inmate to respond where decision-making could have significant consequences for him or her, the proposals:

* increase opportunities for collecting more reliable information about that inmate;

* increase opportunities for staff to recognize and respond to trouble before it escalates into violence; and

* encourage negotiation and communication — extremely important skills for reintegrating into society.

Grievance Procedure

While the current policy directives provide for an inmate grievance system, legislation does not require CSC to consider inmates' complaints and grievances about their treatment by correctional authorities.

Experience has shown that the presence of a fair and expeditious means for inmates to air their grievances is fundamental to reducing the tensions and frustrations of penitentiary life, thus making penitentiaries safer for staff members and inmates and more conducive to rehabilitation. To ensure the continued presence of this essential mechanism, the proposals require that there be an inmate grievance procedure at each penitentiary, and that every inmate has ready and open access to it.

PROGRAM PARTICIPATION

The statement of purpose and principles recognizes the critical role of programs in promoting the rehabilitation of offenders. At the same time, legislation can only set out the basic framework, which must be fleshed out by policy and programs.

Female Offenders

Women's groups and others, including the Canadian Bar Association, have criticized the correctional system for failing to rectify the disparity in treatment between male and female inmates in relation to the availability of programs and services, geographic location and security classification. This problem has been the subject of a comprehensive Task Force on the problems of the federally sentenced female offender, and the Government will be making proposals in relation to programs, facilities and resources for female offenders once it has had an opportunity to consider the Task Force Report, as well as other opinions and recommendations in this area.

While legislation cannot overcome the problem of limited resources, **it is proposed that there should be a guarantee in the new Act of programs and services particularly suited to serving the needs of female offenders.** This provision is left sufficiently open so as not to restrict the kinds of programs that are necessary or appropriate at a particular point in time, while requiring the provision of appropriate programs at all times.

This provision would be complemented by the provisions related to placement and transfer, which require the availability of programs and services, geographic location and security classification to be taken into account at each placement and transfer decision.

Aboriginal Offenders

Aboriginal people represent between two and three per cent of Canada's population, but make up approximately ten per cent of admissions to federal penitentiaries. While incarcerated, Aboriginal offenders tend not to participate in programs designed for and run by non-Aboriginal people, and do not benefit from parole as frequently as non-Aboriginal people. When parole is granted to Aboriginal inmates, it is usually later in the inmate's sentence, and the revocation rate is higher for Aboriginal offenders.

One of the key elements in improving programs and services for Aboriginal offenders is to increase the numbers of Aboriginal peoples participating in the development and delivery of those services. Consistent with the government's policy of endorsing greater Aboriginal control over matters that affect them, **the proposed Act authorizes CSC to enter into agreements with Aboriginal communities and Aboriginal correctional authorities to permit them to assume varying degrees of control and custody over Aboriginal offenders.** This would be done through agreements for services ranging from the provision of programs in a penitentiary to the full care and custody of Aboriginal offenders (eg., the running of parole offices and correctional institutions).

For those Aboriginal offenders who remain within a penitentiary, the proposals ensure:

* **the availability of programs that are suited to serving the needs of Aboriginal offenders; and**

* **that Aboriginal spirituality and spiritual leaders are accorded the same status, protections and privileges as other religions and religious leaders, including where numbers warrant, the provision of an Aboriginal Elder.**

Recognizing the importance of the Native Advisory Committee which has been created as a matter of policy, **the proposed legislation would establish in law a National Aboriginal Advisory Committee, and, where appropriate, regional or local committees** to consult with Aboriginal communities and advise CSC about the provision of correctional services to Aboriginal inmates.

Health Care and Mental Health Services

Under the current *Penitentiary Service Regulations*, all inmates are guaranteed the essential medical and dental care that they require, in accordance with the Directives. The Regulations do not enunciate what medical care means, or whether it includes mental health care, and they say nothing about significant health care issues. **The proposed Act guarantees reasonable access to health care and also deals with such issues as informed consent to treatment, treatment under therapeutic research programs and force feeding.**

B. IMPROVED CORRECTIONAL PROGRAMS FOR REHABILITATION AND SUCCESSFUL REINTEGRATION

Among the greatest challenges in corrections remains the need for high quality programs that will assist offenders to remain law-abiding when they ultimately return to the community. Our understanding of the causes of criminal behaviour is still quite limited, as is our knowledge of what will work with specific offenders at specific times. However, there are certain elements that appear to be strongly linked to crime and that justify intensive programming efforts. Among the areas that have been identified as requiring specific strategies are drug and alcohol abuse, lack of

living skills, mental disorders, disorders related to sex offences, and the particular needs of Aboriginal offenders and female offenders.

The magnitude of the challenge to create and maintain effective rehabilitative programs for offenders is in direct proportion to its importance. Correctional success in this area is important to everyone affected — the offender, the victim, the various components of the criminal justice system, and the community at large.

Drug and Alcohol Abuse

The Correctional Service of Canada currently provides substance abuse programs to offenders using varying approaches, including contracts with agencies specializing in treatment of drug addicts and self-help groups. Current program development is focused on programs that will aid in the reduction or elimination of substance abuse by offering alternate coping mechanisms to the offender. Pilot projects are on-going within the regions in response to 1989 proposals on substance abuse, and the Correctional Service is also in the process of developing a comprehensive approach to substance abuse among offenders.

Living Skills

A core curriculum for living skills is being developed by The Correctional Service of Canada in order that offenders may acquire the cognitive skills and values required for their successful re-integration into the community. The specific areas being addressed are self-control, critical reasoning, anger management, parenting skills and interpersonal problem solving. Such programming will be available in all institutions and it is anticipated that most offenders will participate at some point in their sentences.

Mental Disorders and Sex Offenders

The Correctional Service of Canada is in the process of analyzing the results of an in-depth study that will provide a clear picture of the extent of mental disorder among offenders. In doing so, the Service will define what programs and resources are required to deal with these problems. Among the most serious problems in this area is the handling of sex offenders, who require particular attention for assessment and treatment. The Solicitor General recently released a report on sex offender treatment prepared under the auspices of the Ministry of the Solicitor General. Its findings will form part of the review for treatment program development.

Aboriginal Offenders

Consultation has been completed with groups involved in Aboriginal offender issues through the Solicitor General Task Force on Aboriginal Peoples in Federal Corrections. The information obtained is being used to develop and implement programs and

address identified disparities, including the over-representation of Aboriginal peoples within the criminal justice system.

Throughout all regions, the Correctional Service of Canada is increasing the participation of Aboriginal peoples in program delivery and examining the availability of community programs for release options. Focus has also been placed on improving relations with Aboriginal communities. Three 10-minute films have been produced with funding by the Correctional Service of Canada to orient Aboriginal offenders and communities to federal corrections. These films will be available in English, French, Cree, Montagnais and Inuktatuk.

In the Prairie and Pacific regions, where the largest proportion of Aboriginal offenders are incarcerated, the Ministry of the Solicitor General and the Correctional Service of Canada are co-funding a number of programs including a residential facility in Saskatoon for Aboriginal female offenders, and a federal-provincial task force in Alberta to investigate why such a large number of Alberta Aboriginal peoples are incarcerated. The Ministry Secretariat, Correctional Service of Canada and National Health and Welfare, in partnership with the National Native Association of Treatment Directors, are funding the development of pre-treatment, substance abuse programs for Aboriginal offenders. These models are being tested at two British Columbia federal institutions. The project will also develop policies and procedures for aboriginal treatment centres accepting released offenders for treatment.

The number of Aboriginal full-time, temporary and community members of the National Parole Board has increased from two to eight. In order to increase Board member sensitivity to and knowledge of Aboriginal issues, training workshops on Aboriginal issues are included at general Board meetings. All new Board policies will be considered in light of the impact on Aboriginal offenders.

The Task Force on Federally Sentenced Female Offenders, co-chaired by the Correctional Service of Canada and the Elizabeth Fry Society, had significant representation from the Aboriginal community, and the report released in April 1990 addresses their specific concerns. The recommendations of that report, which included the construction of a healing lodge for Aboriginal female offenders to be located in the Prairie region, are currently under review by the federal government. The Ministry Secretariat and the Correctional Service of Canada are also contributing to a film about the effects of Native spiritualism on the successful reintegration of federal Aboriginal female offenders.

Female Offenders

During recent years there has been much attention focused on the federal female offender as ways have been examined to provide appropriate programming and alternate housing to the Kingston Prison for Women, where the majority of female offenders sentenced to the federal system currently are housed. To permit some federally sentenced women to serve their sentence closer to home, the Correctional Service of Canada has entered into agreements with certain provinces to place federal female offenders into provincial institutions.

In recent years, improvements have been made to programming at the Prison for Women, including treatment for victims of sexual abuse and expanded access to Aboriginal spiritual leaders. The Solicitor General recently opened a new minimum security institution for female offenders in Kingston to provide female offenders with the opportunity to prepare for release to the community in a minimum security setting.

As part of its response to the recent Task Force on Federally Sentenced Female Offenders as well as other views and recommendations in this area, the federal government will continue to assess the program requirements for female offenders.

PART IV. CONCLUSION

The proposals outlined in this paper have been designed to modernize and make more effective correctional law and correctional practice. They also seek to better integrate corrections and the rest of the criminal justice system. They acknowledge the inescapable impact on correctional operations of sentencing policy, the Canadian *Charter of Rights and Freedoms,* and relevant jurisprudence.

Improved public protection through more effective corrections is the paramount objective of these proposals. They will better differentiate between offenders who require stringent control for longer terms and those who can more effectively be dealt with in the community without increased risk to the public. This will allow for more efficient targeting of scarce correctional resources on those who require them the most.

Some of these proposals are not entirely new. They have been the subject of public discussion in the past. Others are innovative or reflect the evolution of concepts informed by consultations that have already occurred. Nevertheless, they are being put forward at this time in a comprehensive package so that the complete picture can be discerned, along with all of the potential interactions between all of the proposals. Based on this paper, a companion paper on Sentencing and an over-arching Framework paper, the views of the public, professionals, interest groups and other levels of government are again being sought.

This paper and those that accompany it set out a tentative agenda for action. They must now be assessed in the light of the views of the public, professionals and government representatives whose comments are being invited. These joint efforts can only serve to improve public safety along with correctional legislation and programs.

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APPENDIX A

PROPOSALS FOR A

CORRECTIONS ACT

SHORT TITLE

1. This Act may be cited as the Corrections Act.

INTERPRETATION

2. In this Act

"**contraband**" means an item that could jeopardize the safety of an individual or the security of a penitentiary, including

(a) an intoxicant,

(b) a weapon, a part thereof, ammunition for a weapon, and anything that is designed to kill, injure or disable a person,

(c) an explosive or bomb, and a part thereof, and

(d) currency over the limit prescribed by a schedule to the regulations;

"**inmate**" means a person under sentence who

(a) is in penitentiary pursuant to

(i) a sentence or committal to penitentiary, or

(ii) a transfer to penitentiary under the authority of this Act or any other Act of Parliament, or

(b) is outside penitentiary by reason of

(i) statutory release where a residency requirement has been imposed,

(ii) day parole, or

(iii) a temporary absence, or

(c) is outside penitentiary subject to the authority of a staff member;

"institutional head" means the person responsible, under the direction of the Commissioner, for

(a) the care, custody and control of all inmates in a penitentiary, or offenders supervised by a parole office,

(b) the management, organization, safety and security of a penitentiary or parole office, and

(c) the direction and welfare of staff members of a penitentiary or parole office, and

in the event of his or her absence or inability to act, the person who assumes his or her authority;

"intoxicant" means any substance that if ingested has the potential to impair or alter judgement, behaviour, the capacity to recognize reality or ability to meet the ordinary demands of life, but does not include caffeine, nicotine, or any authorized medication used in accordance with directions given by a staff member or a health care professional;

"Minister" means the Solicitor General of Canada;

"offender" means inmates and released inmates;

"parole office" means a facility that is operated by the Service for the supervision of released inmates;

"penitentiary" means a facility of any description, including all lands connected therewith, that is operated by the Service for the custody, treatment or training of inmates, and any place declared to be a penitentiary pursuant to this Act;

"regional head" means the person responsible, under the direction of the Commissioner, for a regional headquarters of the Service;

"released inmate" means an individual under sentence who has been released from penitentiary

(a) on parole other than day parole, or

(b) on statutory release where a residency requirement has not been imposed;

"Service" means the Correctional Service of Canada;

"staff member" means an employee of the Correctional Service of Canada;

"working day" means a day on which offices of the Public Service of Canada are generally open.

DECLARATION OF PURPOSE AND PRINCIPLES OF FEDERAL CORRECTIONS

3. It is hereby recognized and declared that

(a) the purpose of federal corrections is to contribute to the maintenance of a just, peaceful and safe society by

(i) carrying out the sentence of the court through the imposition of appropriate measures of custody and control; and

(ii) contributing to the rehabilitation and reintegration of offenders into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community; and

(b) the principles that shall guide correctional staff members in achieving the above purpose are

(i) offenders under sentence retain the rights and privileges of all members of society, except those that are necessarily removed or restricted as a consequence of the sentence;

(ii) the sentence should be carried out having regard to all relevant information, including the stated reasons and recommendations of the sentencing judge, information from the trial or sentencing process, and the release policies of, and any comments from, the National Parole Board;

(iii) correctional authorities should use the least restrictive measures necessary to protect the public, staff members and offenders;

(iv) correctional authorities should ensure effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through the public communication of information about correctional policies, programs and resources;

(v) correctional decisions should be made in a forthright and fair manner, with access to effective grievance mechanisms;

(vi) correctional policies, programs and practices should respect gender, ethnic and cultural differences, and should be responsive to the needs of women and Aboriginal Peoples, as well as the needs of other groups of offenders with special needs; and

(vii) correctional staff should be properly selected and trained, and supported by appropriate personnel development opportunities, good working conditions, and opportunities to participate in correctional policy and program development.

CORRECTIONAL SERVICE OF CANADA

4. There shall be an agency known as the Correctional Service of Canada, and it shall be responsible for

(a) the care and custody of inmates;

(b) the provision of programs that contribute to the rehabilitation and reintegration of offenders;

(c) subject to subsection 21(1) of the *Parole Act*, the supervision of offenders;

(d) the timely provision of all relevant information under its control to the National Parole Board, for the purpose of release decision-making;

(e) establishing and maintaining a program of public education about corrections and the operation of the Service; and

(f) carrying out this Act and the regulations hereunder in accordance with the purpose and principles set out in section 3.

Commissioner

5. (1) The Governor in Council may appoint a person to be known as the Commissioner of Corrections who, under the direction of the Minister, has the control and management of the Service and all matters connected therewith.

(2) The Commissioner may issue rules to facilitate the carrying out of this Act and the regulations thereunder, and they shall be known as Commissioner's Directives and shall be accessible to inmates and staff members and publicly available.

Headquarters

6. (1) The headquarters of the Service and the offices of the Commissioner shall be in the National Capital Region.

(2) The Commissioner may establish regional headquarters of the Service and fix the location of regional offices.

Penitentiary

7. (1) Subject to subsection (3), the Commissioner may, by order, declare any prison as defined in the *Prisons and Reformatories Act* or any hospital to be a penitentiary in respect of any person or class of persons.

(2) Subject to subsection (3), the Governor in Council may, by order, declare any place to be a penitentiary.

(3) No prison, hospital or place administered or supervised under the authority of an Act of the legislature of a province may be declared a penitentiary under subsection (1) or (2) until an officer designated by the Lieutenant Governor of the province in which the prison, hospital or place is located gives his or her approval.

Lawful Custody

8. A person is in the lawful custody of the Service where

(a) having been sentenced, transferred or committed to penitentiary or a provincial institution, he or she is in transit to penitentiary in the custody of a staff member;

(b) having been sentenced or committed to penitentiary, or transferred to penitentiary pursuant to this Act or the *Criminal Code*, he or she is in penitentiary; or

(c) he or she is an inmate outside a penitentiary subject to the authority of a staff member.

9. In any proceedings before a court in Canada in which a question arises concerning the location or dimension of lands alleged to constitute a penitentiary, a certificate, purporting to be signed by the Commissioner, setting out the location or description of the said lands as constituting a penitentiary, is admissible in evidence and in the absence of any evidence to the contrary is proof that the lands as located or described in the certificate constitute a penitentiary.

COMMUNITY INVOLVEMENT

10. To promote openness and accountability in the operation of the Service, the Commissioner shall ensure the existence of mechanisms that facilitate the involvement of members of the community in federal corrections in accordance with the regulations.

STAFF MEMBERS

Duties

11. Every staff member shall

(a) familiarize himself or herself with this Act, the regulations made pursuant to this Act, and written policy directives;

(b) make his or her best effort to achieve the purpose and to uphold the principles set out in this Act, and perform his or her duties impartially and diligently, in accordance with the law; and

(c) encourage and assist offenders in becoming law-abiding persons.

Peace Officer Status

12. The Commissioner may, in writing, designate any staff member of the Service or each member of a class of staff members of the Service to be a peace officer, and a staff member so designated is a peace officer in every part of Canada and has all the powers, authority, protection and privileges that a peace officer has by law.

INVESTIGATIONS

General

13. (1) The Minister or the Commissioner may appoint a person or persons to

(a) investigate any matter within the jurisdiction of the Commissioner, and

(b) submit a report with respect to an investigation under paragraph (a),

on his or her direction.

(2) A person appointed under subsection (1) has the powers of a commissioner under Part II of the *Inquiries Act*, and subject to subsection (1), Part II of the *Inquiries Act* applies to investigations carried out under the authority of this section.

Injury or Death of an Inmate

14. Where an inmate suffers death or serious bodily injury, the institutional head shall cause an investigation to be made and shall make a report to the Commissioner of

(a) the findings of the investigation; and

(b) the recommendations, if any, arising out of the investigation.

COMMITTAL

Warrant of Committal and Reasons for Sentence

15. Where a person is sentenced to serve a term of imprisonment that, in accordance with the *Criminal Code*, is required to be served in a penitentiary

(1) he or she may be received into any penitentiary whether or not the warrant of committal specifies that the person is sentenced to a particular penitentiary; and

(2) the court that sentenced the person shall order that a copy of the reasons for sentence and any relevant reports considered by the court during the trial or sentencing be forwarded to the Service.

Reception

16. (1) A person who has been sentenced or committed to penitentiary shall not be received in penitentiary until after the expiration of 30 days from the date of sentence, unless the person waives his or her entitlement to remain in provincial custody, and thereupon that person may, subject to subsection (2), be received in a penitentiary.

(2) The institutional head may refuse to accept a person into custody where there is not a certificate of a duly qualified medical practitioner as to whether the person is suffering from a dangerous, contagious or infectious disease.

17. (1) A person who by reason of section 16 is not received into a penitentiary shall be confined in any prison, common jail or other place, not being a penitentiary, in which persons who are charged with or convicted of offences are usually kept in custody.

(2) The keeper of any prison, common jail or other place referred to in subsection (1) to whom a person referred to in that subsection is delivered shall, on sufficient authority, receive, safely keep and detain that person under custody in the prison, common jail or other place

until that person is returned to or transferred to a penitentiary or discharged from custody in accordance with law.

(3) The original of the warrant or other instrument by which a person referred to in subsection (1) is committed or is to be imprisoned in a penitentiary, or a copy thereof duly certified by any judge or provincial court judge or by the clerk of the court in which that person was convicted, is sufficient authority for that person's detention in accordance with subsection (2).

Newfoundland

18. (1) Notwithstanding anything in this Act or any other Act of Parliament, every person sentenced by a court in Newfoundland to imprisonment for life, or for a term of not less than two years, shall be sentenced to imprisonment in the prison operated by the Province of Newfoundland at the city of St. John's, known as Her Majesty's Penitentiary, and shall be subject to the statutes, rules, and regulations, pertaining to the management and control of the said prison.

(2) Where a person is imprisoned in accordance with subsection (1), no transfer to a federal penitentiary may be authorized without the approval of an officer designated by the Lieutenant Governor of Newfoundland.

(3) Subject to the approval of the Governor-in-Council, the Minister may enter into an agreement with the Province of Newfoundland providing for the payment to the Province of the cost of maintaining the persons who are or have been sentenced or committed to penitentiary.

EXCHANGE OF SERVICE AGREEMENTS

19. (1) The Minister may, with the approval of the Governor-in-Council, enter into an agreement on behalf of the Government of Canada with the government of any province for

(a) the confinement in penitentiary of persons sentenced or committed to imprisonment for less than two years for offences under any Act of Parliament or any regulations made thereunder, but any such agreement shall include provisions whereby such persons shall be confined at the expense of the provincial government concerned; and

(b) the confinement in prisons or hospitals in that province of persons sentenced or committed to penitentiary, but any such agreement shall include provisions whereby such persons shall be confined at the expense of the federal government.

(2) A person who is confined in or transferred to a penitentiary, prison or hospital pursuant to an agreement made under subsection (1) is lawfully confined during the term of his or her sentence or period of committal, and is subject to all the statutes, regulations, and rules applicable in the penitentiary, prison or hospital to which he or she is transferred.

INMATES PARTICIPATING IN JUDICIAL PROCEEDINGS

20. (1) Where the institutional head is ordered by a court of competent jurisdiction to bring an inmate before a court, he or she shall produce the inmate in accordance with the order, and in accordance with any Act of Parliament that applies thereto.

(2) Where an inmate is an applicant, pursuant to section 745 of the *Criminal Code*, for a reduction in his or her number of years of imprisonment without eligibility for parole, the Commissioner or his or her delegate shall produce him or her in court for the purpose of attending the proceeding.

(3) To facilitate an inmate's attendance at court or a Coroner's inquest, the Commissioner or his or her delegate may authorize a transfer to another penitentiary or a prison for that purpose.

RELEASE OF INMATES

Place of Release

21. An inmate may be released from a penitentiary or from any other place designated by the Commissioner.

Timing of Release

22. (1) Subject to subsection (2), where an inmate is entitled to be released as a result of the operation of law, he or she shall be released during the daylight hours of the last working day prior to the day that he or she is entitled to be released.

(2) Where an institutional head believes that a release under subsection (1) would not satisfactorily facilitate an inmate's re-entry into the community, he or she may release the inmate up to five days prior to the day he or she is entitled to be released by operation of law, and he or she shall be deemed to be released by operation of law.

(3) Where an inmate is granted a temporary absence and the day on which he or she is due to be released by operation of law falls within the period of that temporary absence, he or she shall be deemed to have

been released by operation of law on the day on which the temporary absence commenced.

TEMPORARY ACCOMMODATION

23. Where it is the opinion of an institutional head or his or her delegate that it would assist the rehabilitation of a released inmate to be temporarily accommodated in a penitentiary, he or she may, on the request of the released inmate, allow him or her to stay temporarily in the penitentiary, and he or she shall be deemed to be an inmate for the duration of the temporary stay.

TEMPORARY ABSENCE

Escorted Temporary Absence

24. Where, in the opinion of the Commissioner or the officer in charge of a penitentiary, it is necessary or desirable that an inmate should be absent, with escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate, the absence may be authorized by

(a) the Commissioner, for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the inmate; or

(b) the officer in charge, for a period not exceeding fifteen days for medical reasons and for a period not exceeding five days for humanitarian reasons or to assist in the rehabilitation of the inmate.

Temporary Absence Without Escort

25. (1) Subject to section 26, where, in the opinion of the Commissioner, it is necessary or desirable for an inmate to be absent without escort for medical, community service, socialization, personal development or humanitarian reasons including parenting, the Commissioner may, subject to subsection (3), authorize the absence on being satisfied that

(a) the inmate will not present an undue risk of committing an offence during the absence;

(b) the inmate's institutional behaviour warrants the absence; and

(c) a structured plan for the temporary absence has been prepared.

(2) Not later than six months following the reception of an inmate into a penitentiary, the Service shall determine whether the inmate is a person

to whom paragraphs 21.3(2)(a) and (b) of the *Parole Act* apply and shall notify the inmate in writing of the determination.

(3) An application for a temporary absence without escort by an inmate who is serving a sentence of imprisonment for life that was imposed as a maximum punishment or who has been determined pursuant to subsection (2) to be a person described therein shall, before it is considered by the Commissioner, be referred to the National Parole Board if

(a) the application is the first application for temporary absence without escort made by the inmate during the inmate's term of imprisonment;

(b) the last preceding application for a temporary absence without escort during the inmate's term of imprisonment was refused by reason of an order made pursuant to paragraph (4)(a) or by reason of a decision made pursuant to section 25.1 or 25.2 of the *Parole Act* as it read immediately before the coming into force of this section; or

(c) the application is the first such application made by the inmate following the termination of a temporary absence without escort during the inmate's term of imprisonment or following the conviction of the inmate during that term of imprisonment for an offence.

(4) On referral to the National Parole Board of an application for temporary absence without escort, the Board shall

(a) order that the application be refused if it is satisfied that the inmate will, having regard to the circumstances, present an undue risk of committing an offence during the absence; or

(b) if the Board is satisfied that the inmate will not present such a risk, return the application to the Commissioner for a determination in accordance with subsection (1).

(5) Temporary absences without escort may be authorized for an unlimited period for medical reasons and for a period not exceeding fifteen days in any other case.

(6) The Commissioner may delegate to a designated person the power to authorize temporary absences without escort and to terminate such absences.

(7) Where, pursuant to an agreement under subsection 19(1), an inmate or a class of inmates has been admitted to a mental hospital or other institution operated by a provincial government in which the liberty of patients is normally subject to restrictions, the Commissioner may

delegate to the person in charge of the hospital or institution the power to authorize and terminate temporary absences without escort.

(8) The Commissioner may terminate a temporary absence without escort authorized pursuant to subsection (1) and cause the issuing of a warrant in writing authorizing the apprehension of the inmate and the recommitment of the inmate to custody as provided in this Act.

(9) The Commissioner may fix the terms and conditions under which a power may be exercised pursuant to this section by a person designated by the Commissioner for that purpose.

26. (1) Subject to subsection (2), the portion of the term of imprisonment that an inmate must serve before temporary absence without escort may be authorized is as follows:

(a) where the inmate is serving a sentence of imprisonment for life, the period of time required to be served by the inmate to reach the inmate's full parole eligibility date, minus three years;

(b) where the inmate is serving a term of imprisonment other than a sentence of imprisonment for life, one sixth of the sentence or six months, whichever is the greater; or

(c) where the inmate has been sentenced to detention in a penitentiary for an indeterminate period, three years.

(2) Subsection (1) does not apply

(a) to an inmate admitted to a penitentiary prior to May 4, 1978; or

(b) to an inmate whose life or health is in immediate danger and temporary absence without escort is required in order to administer emergency medical treatment.

COMPENSATION FOR DISABILITY OR DEATH

27. (1) In accordance with the regulations, the Minister may pay compensation to

(a) a person who was an inmate for physical disability attributable to his or her participation in an approved program of a penitentiary; and

(b) the surviving spouse or dependent children of a person who was an inmate for death of the person attributable to his or her participation in an approved program of a penitentiary.

INFORMATION

28. For the purpose of sections 30-33, "information" means information about an identifiable offender recorded in any form, and includes factual information and opinion.

29. Nothing in this Act limits a person's right of access, correction or complaint under the *Access to Information Act* or the *Privacy Act*, or the regulations thereunder.

Collection of Information

30. When a person is sentenced, committed or transferred to penitentiary, as soon as practicable the Service shall take reasonable steps to obtain

    (a) relevant information about the circumstances of the offence and the person, including his or her criminal and young offender history; and

    (b) the reasons and recommendations of the sentencing court, and reports relevant to sentencing submitted to that court.

31. The Service shall take reasonable steps to ensure that information that is used by it is as accurate, up-to-date and complete as possible.

Sharing of Information with Other Components of the Criminal Justice System

32. The Service shall provide relevant information

    (a) to the National Parole Board, contracting agencies, provincial governments, and police, for the purpose of release decision-making or the supervision of the offender on conditional release; and

    (b) before warrant expiry, to the police force in the jurisdiction where an inmate is to be released on warrant expiry, where the Commissioner or his or her delegate has reasonable grounds to believe that the inmate would pose a threat to the safety or security of the public upon release.

Disclosure of Information to Victims

33. (1) The Commissioner or his or her delegate may authorize the release to victims of the following information:

    (a) the offender's name and age;

    (b) court of conviction;

    (c) the nature of the current offence;

(d) date and length of sentence;

(e) probable date for release on mandatory supervision;

(f) parole eligibility dates;

(g) the initial review date for unescorted temporary absences, day parole and parole;

(h) the date and type of release;

(i) the destination of the offender;

(j) whether the offender might be in the vicinity of the victim while in transit;

(k) certain terms and conditions attached to the release where this may reduce the victim's fear; and

(l) whether an offender is in custody or is unlawfully at large,

where he or she is satisfied that the victim's need for the information clearly outweighs the offender's interest in privacy.

(2) For the purpose of subsection (1), "victim"

(a) means a person who suffers physical, mental or economic harm as a result of the commission of an offence by an offender; and

(b) where the person described in paragraph (a) is not able to apply for information due to death, illness or other reason, includes the spouse, common law spouse, or other person who has an interest in the information by virtue of his or her relationship with a person described in paragraph (a).

(3) An offender shall be notified of a disclosure under subsection (1) unless the Commissioner or his or her delegate is satisfied that notification thereof would jeopardize the safety of an individual or the security of a penitentiary.

Disclosure of Information to Offenders

34. (1) Where an offender is entitled to reasons for and an opportunity to respond to a decision taken or to be taken about him or her, subject to subsection (2), he or she shall be provided with all the information relied upon or to be relied upon in the making of the decision.

(2) Where the Commissioner or his or her delegate is satisfied that full disclosure of information under subsection (1) would

(a) jeopardize the safety of an individual;

(b) jeopardize the security of a penitentiary; or

(c) be injurious to the conduct of an ongoing criminal investigation,

he or she may authorize the withholding from the offender of as much information as is strictly necessary to protect the interest identified in paragraph (a), (b), or (c), and give the offender specific grounds for withholding the information.

CUSTODY AND CONTROL OF INMATES

General

35. Every inmate shall be confined in a penitentiary that provides the least restrictive measure of custody and control appropriate in all the circumstances, taking into account

(a) the degree and kind of custody and control considered necessary;

(b) accessibility to the inmate's home community or a compatible cultural and linguistic environment;

(c) the availability of appropriate programs and services, including health care services, and the inmate's willingness to participate in appropriate programs;

(d) the availability of cell space; and

(e) the inmate's need for special protection.

Placement and Transfer

36. The Commissioner or his or her delegate may in accordance with section 35 and the regulations, authorize the placement of an inmate in a penitentiary or the transfer of an inmate to

(a) another penitentiary; or

(b) a provincial institution pursuant to an agreement entered into under the authority of paragraph 19 (1)(b).

Administrative Segregation

37. Where an inmate must be kept from associating with other inmates, he or she may be confined in administrative segregation, in a secure and humane fashion, in accordance with a fair decision-making process, and shall be returned to the general population as soon as possible, in accordance with this Act and the regulations thereunder.

38. The institutional head or his or her delegate may order that an inmate be placed in administrative segregation where placement therein is in accordance with section 35 and there are reasonable grounds to believe

    (a) that the inmate has acted, attempted to act, or plans to act in a manner that jeopardizes the security of the penitentiary or the safety of an individual, and that his or her presence in the general population would jeopardize the security of the penitentiary or the safety of an individual;

    (b) that the presence of the inmate in the general population would interfere with the investigation of a criminal or serious disciplinary offence; or

    (c) that the inmate would be in danger in the general population.

39. Where an inmate is involuntarily placed in administrative segregation, a segregation review board constituted by the institutional head shall

    (a) conduct an in-person hearing to review the case of the inmate;

    (b) conduct regular reviews of the case of the inmate if he or she is kept in administrative segregation after the hearing referred to in paragraph (a); and

    (c) advise him or her whether the inmate should remain in administrative segregation or be released therefrom,

    in accordance with the regulations.

40. Where the institutional head does not intend to follow the advice of the segregation review board to release an inmate from administrative segregation, he or she shall meet in person with the inmate to explain the reasons for the proposed decision, and give the inmate an opportunity to respond in person, or in writing if the inmate prefers.

41. Where the institutional head or his or her delegate refuses to authorize the voluntary placement of an inmate in administrative segregation, he or she shall give the inmate written reasons for his or her decision and an opportunity to respond.

42. Every inmate in segregation shall be visited by a health care staff member at least once every day and the institutional head or his or her delegate at least once every eight hours.

43. Inmates in administrative segregation shall be accorded the same rights, privileges, and conditions of confinement as the general population, except for those that

(a) can only be enjoyed in association with other inmates; or

(b) cannot reasonably be granted having regard to the physical limitations or the security requirements of the administrative segregation area.

INMATE DISCIPLINE

44. In this Part

"disciplinary offence" means a disciplinary offence as prescribed by regulation.

Establishment of Disciplinary System

45. (1) There shall be in each penitentiary a fair and reasonable disciplinary system to foster an environment in which inmates are expected to conduct themselves according to acceptable standards of behaviour, thereby promoting the good order of the institution and contributing to their successful reintegration into the community.

(2) Inmates shall only be disciplined in accordance with this Part and the regulations hereunder.

Disclosure of Information

46. Notwithstanding anything in this Act, information shall not be withheld from an inmate under this Part.

Reporting to Police

47. Where there are reasonable grounds to believe that an inmate has committed a disciplinary offence that is also a criminal offence, the conduct may be dealt with under this Part unless it is in the public interest to have the matter dealt with through the criminal process, in which case the institutional head or his or her delegate shall refer the matter to the police force having jurisdiction.

Informal Resolution or Issue of Charge

48. Where there are reasonable grounds to believe that an inmate is committing or has committed a disciplinary offence, the institutional head or his or her delegate shall reasonably attempt to informally resolve the matter, where possible, but where an informal resolution is not possible he or she may,

depending upon the seriousness of the conduct, issue a charge of a minor or a serious disciplinary offence.

Notice of Charge

49. An inmate charged with a disciplinary offence shall receive a notice of the charge in writing as soon as practicable, in accordance with the regulations.

Hearing

50. Every inmate charged with a disciplinary offence shall be entitled to an in-person hearing of the charge, in accordance with the regulations, and shall not be found guilty of a disciplinary offence unless the person presiding over the hearing is satisfied that the inmate committed the disciplinary offence with which he or she is charged.

Disciplinary Sanctions

51. (1) An inmate who is found guilty of a minor offence is liable, in accordance with the regulations, to

(a) a warning or reprimand;

(b) a loss of privileges;

(c) make restitution;

(d) a fine; or

(e) perform extra duties, with his or her consent.

(2) An inmate who is found guilty of a serious offence is liable, in accordance with the regulations, to

(a) a warning or reprimand;

(b) a loss of privileges;

(c) make restitution;

(d) a fine;

(e) perform extra duties, with his or her consent;

(f) be dissociated from other inmates for a maximum of 30 days; or

(g) any combination of the sanctions in (a), (b), (c), (d), (e) and (f).

Factors to be Considered in Imposing Sanctions

52. In imposing a sanction, the person presiding over the disciplinary hearing shall consider

(a) the seriousness of the offence and the degree of responsibility of the inmate for the offence;

(b) the least restrictive alternative appropriate in the circumstances;

(c) all relevant aggravating and mitigating circumstances;

(d) the sanctions that have been imposed on other inmates for similar offences committed in similar circumstances;

(e) the nature and duration of any other sanction imposed on the inmate, to ensure that the combination of the sanctions is not excessive;

(f) any measures taken by the Service before the disposition of the charge, and any recommendations as to the appropriate sanction.

SUMMARY CONVICTION OFFENCES

53. (1) Every person commits an offence who

(a) possesses contraband beyond the visitor control point within the penitentiary facility, as specified in the regulations;

(b) possesses contraband as defined in paragraph (b) or (c) of the definition of contraband, in a penitentiary;

(c) delivers or attempts to deliver contraband to an inmate;

(d) receives or attempts to receive contraband from an inmate;

(e) without prior authorization, delivers or attempts to deliver jewelry to an inmate;

(f) without prior authorization, receives or attempts to receive jewelry from an inmate;

(g) trespasses upon penitentiary lands; or

(h) assists a person to do anything in paragraph (c), (d), (e), (f), or (g).

(2) Every inmate who possesses contraband in a penitentiary commits an offence.

(3) For the purpose of this section, "prior authorization" means the written permission of the institutional head or his or her delegate.

(4) Every person who commits an offence under subsections (1) or (2) is guilty of a summary conviction offence and is liable to imprisonment for a term not exceeding one year, or to a fine of one thousand dollars, or to both.

SEARCH AND SEIZURE

Definitions

54. In this Part

Personal search includes the following:

Non-intrusive search by technical or other means, as specified in the Regulations.

Frisk search, a hand search of the clothed body, and search of personal possessions the person may be carrying, as specified in the Regulations.

Urinalysis, a procedure in which a person is required to provide a urine sample by the normal excretory process for scientific analysis by an approved instrument.

Strip search, a visual search of the naked body, as well as a search of all clothing and things in the clothing, as specified in the Regulations.

Body cavity search, a procedure in addition to a strip search which includes the physical probing of the rectum or vagina, as specified in the Regulations.
X-rays, as specified in the Regulations.

Routine search or inspection means the power to conduct a search of a person, place or vehicle without individualized suspicion.

Power to Seize

55. Subject to section 58(5) and 58(6)(b), a staff member may seize contraband or evidence of a disciplinary or criminal offence during the course of a lawful search under this Part.

Routine Non-intrusive Searches and Frisk Searches

56. A staff member may conduct routine non-intrusive searches or frisk searches of inmates, visitors and staff members, where reasonably required for security purposes, as specified in the regulations.

Search of Inmates

57. A staff member of the same sex as the inmate may conduct a routine strip search of an inmate where he or she has had access to items which may constitute contraband that may be secreted on the body, as specified in the Regulations, or where he or she is entering or leaving dissociation or segregation.

58. (1) A staff member of either sex may conduct a frisk search of an inmate where he or she has a reasonable suspicion that the inmate is carrying contraband or there is evidence of an offence, including a disciplinary offence.

(2) Subject to subsection (3), where a staff member believes on reasonable grounds that the inmate is carrying contraband or there is evidence of an offence and that a strip search is necessary to detect the presence of the contraband or evidence, and he or she first satisfies the institutional head or his or her delegate, a staff member of the same sex as the inmate may conduct a strip search.

(3) Where a staff member believes on reasonable grounds that an inmate is carrying contraband of a dangerous nature, or that is in danger of loss or destruction, and that the delay necessary to obtain prior approval for a strip search or to comply with the gender requirement in subsection (2) would result in danger to human life or safety, he or she may conduct the strip search.

(4) Where during a strip search a staff member has reasonable grounds to believe contraband is secreted in an intimate body cavity, he or she shall advise the institutional head.

(5) A body cavity search

(a) shall only be authorized where the institutional head is satisfied that there are reasonable grounds to believe that an inmate is carrying contraband within his or her body and that such a search is necessary to detect and seize the contraband, and

(b) shall only be performed by a qualified medical practitioner who has obtained the consent of the inmate.

(6) Where the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in a body cavity, he or she may authorize, in writing,

(a) the detention of the inmate in a cell without plumbing fixtures, with notice to medical staff, on the expectation that the contraband will be expelled, or

(b) the use of an x-ray machine by a qualified technician to detect the contraband where the consent of the inmate and a qualified medical practitioner has been obtained.

Exceptional Power for General Search of Inmates

59. The institutional head may authorize a general frisk search or strip search of all the inmates in the institution or part thereof, where he or she believes on reasonable grounds that there exists a clear and substantial danger to human life or safety and that such a search is necessary to seize contraband to avert the danger.

Urinalysis

60. Subject to section 61, a staff member may require an inmate to submit a urine sample for urinalysis

(a) where the staff member believes on reasonable grounds that the inmate has committed or is committing a disciplinary offence and that a urine sample is necessary to provide evidence of the offence, and he or she obtains the prior authorization of the institutional head or his or her delegate;

(b) as part of a random selection urinalysis program conducted without individualized grounds on a periodic basis in accordance with the regulations;

(c) where the inmate has a documented history of substance abuse and the urinalysis is necessary to meet the eligibility requirements for participation in a community contact program as defined in the regulations; or

(d) as a requirement of a substance abuse treatment program as defined in the regulations.

61. (1) Where an inmate is requested to submit a urine sample, prior to submitting the sample, he or she shall be advised in writing of

(a) the reason for the request; and

(b) the consequences of non-compliance with the request.

(2) Where an inmate is requested to submit a urine sample pursuant to subsection 60(a), he or she shall be provided with an opportunity to

respond to the institutional head or his or her delegate prior to submitting the sample.

Search of Cells and Other Areas

62. Searches of cells and activity areas may be conducted in accordance with the regulations.

Search of Visitors

63. (1) A staff member of the same sex as a visitor may conduct a frisk search of the visitor where he or she suspects on reasonable grounds that the visitor is carrying contraband in circumstances constituting an offence and he or she first obtains the prior authorization of the institutional head or his or her delegate.

(2) Where a staff member suspects on reasonable grounds that a visitor is carrying contraband in circumstances constituting an offence and that a strip search is necessary to detect it, he or she may inform the visitor that he or she may either

(a) leave the institution and be denied the visit; or

(b) be strip searched if prior authorization of the institutional head has been obtained, or upon obtaining the authorization of the institutional head.

(3) Where a staff member has reasonable grounds to believe that a visitor is carrying contraband in circumstances constituting an offence and that a strip search is necessary to detect it, he or she may detain the visitor in order to seek authority from the institutional head

(a) to have the visitor strip searched by a staff member of the same sex; or

(b) to inform the police force having jurisdiction.

(4) Where a visitor is detained under subsection (1) or (3), he or she shall

(a) be informed promptly of the reasons therefore; and

(b) be given a reasonable opportunity to retain and instruct counsel without delay and be informed of that right before being searched.

(5) Where the institutional head is satisfied that there are reasonable grounds to suspect under subsection (2) or to believe under subsection (3) that a visitor is carrying contraband in circumstances constituting an offence

and that a strip search is necessary to detect the contraband, he or she may authorize, in writing, a staff member of the same sex as the visitor to conduct a strip search.

(6) There shall be a sign posted at the entrance to penitentiary property, in a conspicuous position, to give warning that all vehicles and persons on institutional property are subject to being searched in accordance with this Act and the regulations.

Search of Vehicles on Penitentiary Property

64. (1) Routine searches of vehicles on penitentiary property may be conducted in accordance with the regulations.

(2) A staff member who believes on reasonable grounds that contraband is located in a vehicle on penitentiary property in circumstances constituting an offence may, with prior authorization from the institutional head or his or her delegate, search the vehicle.

(3) Where a staff member in subsection (2) believes on reasonable grounds that the delay necessary to obtain prior authorization would result in danger to human life or safety, he or she may search the vehicle without prior authorization.

Search of Staff Members

65. (1) Where a staff member has reasonable grounds to believe that another staff member is carrying contraband in circumstances constituting an offence, he or she may detain the staff member in order to advise the institutional head.

(2) Where a staff member is detained under subsection (1), he or she has the right

(a) to be informed promptly of the reasons therefore; and

(b) to retain and instruct counsel without delay and to be informed of that right.

(3) Where the institutional head is satisfied that there are reasonable grounds to believe that a staff member is carrying contraband in circumstances constituting an offence, he or she may inform the police force having jurisdiction, or may authorize, in writing, a frisk search or a strip search of the staff member where he or she believes that such a search is necessary to detect the contraband.

Search of offenders in Community-based Residential Facilities

66. (1) Where an offender is in a community-based residential facility, an employee of the facility of either sex may

(a) conduct a frisk search of the offender where he or she has a reasonable suspicion that the offender is violating a condition of his or her release, and that such a search is necessary to confirm it; and

(b) search an offender's room where he or she has a reasonable suspicion that the offender is violating a condition of his or her release, and that such a search is necessary to confirm it.

(2) For the purpose of this section, "community-based residential facility" means a facility offering accommodation or treatment to offenders on day parole, parole or statutory release pursuant to a contract with the Service.

Post-search

67. (1) Anyone who seizes an item during the course of a search under this Part

(i) shall make and submit a report and receipt in accordance with the regulations; and

(ii) shall submit the item to the institutional head or person specified in the Regulations.

(2) A staff member who conducts a strip search under section 58, 63, or 65, in which nothing is seized, shall file a report in accordance with the Regulations.

(3) Where the institutional head authorizes a general search of inmates pursuant to section 59, he or she shall make and submit a report to the Regional Deputy Commissioner in accordance with the Regulations.

CONDITIONS OF CONFINEMENT

Prohibited Treatment

68. Instruments of restraint shall not be applied as punishment.

69. Every staff member is prohibited from administering, instigating, consenting to, or acquiescing in the cruel, inhuman or degrading treatment or punishment of an offender who is or has been incarcerated in a penitentiary.

Physical Conditions

70. The institutional head shall ensure that the penitentiary environment is maintained in a healthful and safe state.

Communications with the Public

71. (1) To promote relationships between offenders and the community through the maintenance and development of contacts with family, friends, community members and community resources, every inmate shall in accordance with the regulations, have reasonable access to telephones, the postal service and visits, subject to reasonable limits for maintaining the security of a penitentiary or the safety of an individual.

(2) In accordance with the regulations

(a) an inmate's communications with members of the public may be intercepted, monitored, or prevented; and

(b) a visit between an inmate and a member of the public may be refused, suspended or restricted,

where it is reasonable to do so to maintain the security of a penitentiary or the safety of an individual.

72. (1) There shall be posted at the entrance of each penitentiary a list of items that a visitor is permitted to have in his or her possession in the visiting area of the penitentiary.

(2) A visitor shall not have in his or her possession in the visiting area of a penitentiary an item that is not on a list of permitted items posted at the entrance of the penitentiary, unless he or she has obtained the permission of a staff member to possess the item.

(3) Where contrary to subsection (2) a visitor has in his or her possession an item mentioned in subsection (2) without having obtained the permission of a staff member to possess it, his or her visit may be suspended or restricted.

Inmate Association and Assembly

73. The Service may limit the entitlement of an inmate to associate and assemble in order to maintain the security and good order of a penitentiary, the safety of an individual, or because of reasonable time, space or resource requirements.

74. To the extent possible and appropriate, inmate committees and organizations shall on a continuing basis be provided with a reasonable opportunity to contribute to decisions concerning the inmate population as a whole.

Religion

75. Every inmate shall be given reasonable opportunities to freely and openly participate in, and express his or her religion or spirituality, subject to reasonable limits for maintaining the security of a penitentiary or the safety of an individual in accordance with the regulations.

76. The Service shall ensure that Aboriginal spirituality and spiritual leaders are accorded the same status, protections and privileges as other religions and religious leaders, and where numbers warrant, make a reasonable attempt to provide a penitentiary with an Aboriginal Elder who has been selected in consultation with the appropriate Aboriginal community.

PROGRAMS AND HEALTH CARE

77. (1) The Service shall make available a range of programs designed to promote the reintegration of offenders and to address their special needs.

(2) Every offender is expected to actively participate in appropriate programs, subject to their availability.

Inmate Pay

78. The Commissioner shall with the approval of Treasury Board, authorize payments to inmates, which shall be designed to encourage them to participate in the programs of the penitentiary and may be subject to deductions and forfeitures in accordance with the regulations.

Female Offenders

79. The Service shall

(a) provide programs particularly suited to serving the needs of female offenders; and

(b) regularly consult with women's groups and persons with experience and expertise on female offenders about the provision of correctional programs to female offenders.

Aboriginal Offenders

80. For the purpose of this Act

"Aboriginal community" means a nation, tribal council, band, organization or other group of predominantly Indian, Inuit or Metis people;

"Aboriginal correctional authority" means a body or an individual that is providing or is designated by an Aboriginal community to provide correctional services, and is, to the extent possible, staffed by Aboriginal persons; and

"correctional services" means services or programs appropriate for offenders, including their care and custody.

81. Correctional services shall be responsive to the needs of Aboriginal offenders, in accordance with this Act.

82. (1) The Minister or his or her delegate may enter into an agreement

(a) with an Aboriginal community; or

(b) with an Aboriginal correctional authority,

for the provision of correctional services to Aboriginal offenders.

(2) An agreement entered into under subsection (1) may provide for payment to the Aboriginal community or the Aboriginal correctional authority in consideration for the provision of correctional services to an offender or offenders.

(3) Pursuant to an agreement entered into under subsection (1), the Commissioner or his or her delegate may place an offender under the care and custody of the Aboriginal community or Aboriginal correctional authority

(a) with the consent of the offender; and

(b) following consultation with the relevant Aboriginal community or Aboriginal correctional authority.

(4) The Service shall consult with Aboriginal communities and Aboriginal correctional authorities providing correctional services pursuant to an agreement entered into under subsection (1), about the provision of correctional services, the exercise of powers, and other matters affecting the offenders to whom they are providing correctional services.

83. The Service shall establish a National Aboriginal Advisory Committee and, where appropriate, regional or local committees to

(a) regularly consult with Aboriginal communities and persons with experience and expertise on Aboriginal offenders, customs and laws; and

(b) provide advice to the Service

about the provision of correctional services to Aboriginal offenders under the care and custody of the Service.

84. The Service shall provide programs that are particularly suited to serving the needs of Aboriginal offenders.

85. With the offender's consent, and where he or she has expressed an interest in being released to an Aboriginal community with a regular and recognized leadership, the Service shall give adequate notice to the Aboriginal community of the offender's parole application or approaching date of release on mandatory supervision, and shall give the Aboriginal community the opportunity to present a plan for the return of the offender and his or her reintegration into the Aboriginal community.

Health Care

86. In this Part

(a) "health care services" means professionally designed medical, dental and mental health care services administered to inmates by registered professionals; and

(b) "mental health care" means the treatment of a disorder of thought, mood, perception, orientation or memory that significantly impairs judgment, behaviour, the capacity to recognize reality or ability to meet the ordinary demands of life.

87. (1) The Service shall provide every inmate with the essential health care services that he or she requires, which includes reasonable access to mental health care services that will assist him or her to reintegrate into the community.

(2) The provision of health care services shall conform to professionally accepted standards of treatment.

88. (1) Subject to subsections (4) and (5), health care treatment shall only be provided to an inmate where he or she has the capacity to understand the consequences of accepting or rejecting the treatment, and gives his or her informed consent thereto.

(2) For the purpose of subsection (1), an inmate's consent to treatment is informed where it is voluntary and he or she has been advised

(a) of the likely effects of the treatment including possible side effects;

(b) of the likelihood and degree of improvement, remission, control or cure under the treatment;

(c) of the degree of uncertainty of the benefits and hazards of the treatment;

(d) of the reasonable alternatives to the treatment; and

(e) that he or she may refuse the treatment or withdraw from the treatment at any time.

(3) For the purpose of subsection (2), an inmate's consent to treatment shall not be considered involuntary only because the treatment is stipulated as a requirement for a conditional release program.

(4) Health care treatment under a therapeutic research program shall not be provided to an inmate unless an independent committee constituted in accordance with the regulations has

(a) approved the program as clinically sound and in conformance with accepted ethical standards; and

(b) reviewed the consent of the inmate thereto, and has determined that it has been given in accordance with subsections (1), (2), and (3).

(5) Where an inmate does not have the capacity to understand the consequences of accepting or rejecting treatment, health care treatment shall be governed by the applicable provincial legislation.

89. The Service shall not authorize the force feeding of an inmate who had the capacity to understand the consequences of not eating at the time he or she made the decision not to eat.

90. Significant institutional decision-making, including placement, classification, transfers, administrative segregation, disciplinary and release decision-making, shall involve reasonable consideration of an offender's health care needs.

GRIEVANCES

91. (1) There shall be an inmate grievance procedure at each penitentiary for fairly and expeditiously resolving inmates' grievances on matters that, subject to subsection (2), are within the jurisdiction of the Commissioner, and it shall operate in accordance with this Act and the regulations.

(2) The operation of the inmate grievance procedure shall not extend to matters relating to the discipline of staff members.

92. Every inmate shall have free access to the inmate grievance procedure without punitive consequences.

ANNUAL REPORT

93. The Minister shall, on or before the 31st day of January next following the end of each fiscal year or, if Parliament is not then sitting, on any of the first five days next thereafter that Parliament is sitting, submit to Parliament a report showing the operations of the Service for that fiscal year.

REGULATIONS

94. The Governor-in-Council may make regulations

(a) for the organization, training, discipline, efficiency, administration and good management of the Service;

(b) for promoting and maintaining the security and good order of penitentiaries;

(c) for the custody, treatment and supervision of offenders including but not restricted to regulations for

(i) the organization, association and assembly of inmates,

(ii) the religion of inmates,

(iii) inmates' access to reading and legal materials, and a commissioner of oaths,

(iv) the provision of appropriate programs for offenders,

(v) the discipline of inmates,

(vi) the communication of inmates with members of the public,

(vii) the access of inmates to legal counsel and legal materials,

(viii) the transfer of inmates to federal and provincial institutions, and

(ix) the administrative segregation of inmates;

(d) for the search of offenders, staff members, visitors, cells, other parts of penitentiaries, and rooms in community-based residential facilities, and the seizure of items found thereon or therein;

(e) for the return and forfeiture of items seized;

(f) for inmate pay;

(g) for the delivery of the estates of deceased inmates to their personal representatives in accordance with the applicable provincial laws;

(h) for paying compensation for the disability or death of an offender;

(i) for an inmate grievance procedure;

(j) for the involvement of members of the community in the operation of the Service; and

(k) generally, for carrying into effect the purpose, principles and provisions of this Act.

NOTES