Brief to the Standing Committee on Justice and Human Rights

House of Commons

Review of the Corrections and Conditional Release Act

Submitted by
The John Howard Society of Canada

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Corrections and Conditional Release Act Review

1. Introduction and Summary

i. About this brief

The following brief focuses on the three elements of the CCRA that we believe are of particular importance in achieving the purpose of federal corrections:

a, fair and legal treatment of prisoners,

b, professional treatment and programs, and

c, properly operated gradual release processes.

We are submitting with this document a companion brief relating specifically to the detention provisions of the Act. We have kept the briefs separate because of the particular concerns about those provisions.

ii. Important Principles Relating to this Brief

The CCRA is the primary legislation that governs the conduct of correctional officials in carrying out the sentences of the court. The provisions of the Act and the actions of correctional officials should be consistent with the purpose of corrections as set out in the Act (Figure 1). There is no "Punishment Act of Canada" or "Detention Act of Canada". It is of great importance to recognize that the only legal activities of correctional officials are those that reflect the proper care and custody of offenders while incarcerated and promote changes in the behaviour of those in their care so that they can be reintegrated into the community as law-abiding citizens. Personnel within the Correctional Services of Canada and the National Parole Board must govern their activities with respect to this statement of purpose.

Purpose of Federal Corrections

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

(a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and (b) assisting the rehabilitation of offenders in their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

Figure 1: *Corrections and Conditional Release Act, Section 3.*

The John Howard Society of Canada supports the Purpose of Federal Corrections set out in the Act, as being principled, logical and appropriate. We believe that the degree to which the other provisions of the Act and the policies and practices of the Correctional Service of Canada and the National Parole Board are inconsistent with these purposes is the degree to which they fail "to contribute to the maintenance of a just, peaceful and safe society."

Prison will contribute to a change of behaviour through what it teaches. It teaches through programs, education and treatment and it teaches through the examples it sets. A system that abuses individuals teaches that "might is right" and that those with legal authority are hypocrites who say one thing and do another. It reinforces antisocial attitudes and values: the very opposite to those required for successful reintegration into the community as a law-abiding citizen. Fair and respectful treatment is a requirement of the Act because they are integral and necessary to achieving the purpose of public protection through successful reintegration.

Good, accessible programs and treatment set the groundwork for reintegration. Prison programs teach the theory while gradual reintegration provides the opportunity to apply the theories under supervision in the community. Prison rehabilitation programs are like teaching tennis in a submarine. You can teach the rules and the theory, but there is no opportunity to practice. Imprisonment fails if it makes no attempt to set the groundwork. Prison programs are likely to fail if there is no follow-through in the community.

The *Act* recognizes, quite properly, that without measures which ensure the fair treatment of individuals and their successful reintegration into the community, public protection cannot be achieved in the longer term. Good reintegration continues the learning process started in prison into the community. Because the risks associated with reintegration are exceeded by the risks of doing nothing, reintegration programs are not at the expense of public protection but are essential to achieving public protection.

iii. Key Points and Recommendations

Correctional Investigator

A mechanism should exist whereby a serious unresolved dispute between the Correctional Investigator and the Correctional Service of Canada could be taken before a suitably trained third party who will recommend a resolution to the Solicitor General. The Correctional Service of Canada would be required to comply with the ruling unless that decision is overruled by the Solicitor General. If the ruling confirms the position of Correctional Service of Canada then the matter would be dropped by the Correctional Investigator unless overruled by the Solicitor General.

Internal Investigations

The primary investigator for internal investigations convened under section 20 of the Act should be a person who has no career aspirations, past or present, within either the CSC or NPB, has specialized training that is appropriate for the investigation of such matters and has a thorough knowledge of due process and rules of fundamental justice. Retired judges might be good sources of expertise for such functions.

Independent Adjudication for Segregation

We agree with the premise that long term segregation should be reviewed by an independent adjudicator and at the very least, the proposal of the Task Force on Segregation for a pilot project should be implemented.

Statutory Release with Residence

If residence is to be maintained as a condition of Statutory Release, it should be imposed after a hearing with the National Parole Board that takes place at least six months prior to the warrant expiry date, be imposed only when specific criteria are met that demonstrate that the person poses a serious threat of violent offending, and once imposed, continue for no more than four months and be imposed only in the community of the person's planned destination.

Programs and Services

It makes sense to give strong support for appropriate and effective programs and services. It also makes sense that we devote substantial resources to multi-disciplinary research both within the CSC and with independent academics. Programs and services of crucial importance are those that contribute to a pro-social environment, enhance education and work skills, protect and support strong family ties, enhance cognitive skills and address addictions.

Gradual Release with Higher Risk Offenders

Public protection is achieved through gradual release not at the expense of gradual release. Decisions which exclude gradual release for higher-risk individuals are completely inconsistent with the purpose of the Act and the methods that the Act identifies as the most important ways to reduce recidivism. It is wrong that those identified as having the greatest likelihood of offending are the ones most likely to be released from prison without the benefit of a gradual release program involving either supervision or support.

Accelerated Parole and Statutory Release

Because of the overall success of all gradual release programs and because the decisions of the Parole Board are so modest and contribute so little to the overall use of gradual release, it is both appropriate and necessary to continue to support the APR and SR provisions of the Act.

Graduated Presumptive Release: A proposed Model

We propose that it is entirely consistent with the Purpose of Corrections that all release decisions be based on a positive presumption. Paroling authorities should be required to establish the reasons why a person should not be granted gradual release. The test for denial of release should be graduated and become more difficult as a person approaches warrant expiry.

2. Fair Treatment

Prisoners or criminals do not have special rights but neither are they without any rights. They retain those rights that all citizens have except for those which must necessarily be diminished by virtue of their sentence.

Every sentence involves the loss of some choice. Imposition of a fine means the loss of the choice of how one spends a portion of their income, a community service order means losing the choice over how one spends free time, imprisonment deprives the person of the choice to come and go as they please. The punishment is the loss of the choices implied by the sentence. This is an important principle to respect. In a civilized society, we do not sentence people to starvation, torture, abuse, ignorance, loss of family, or poor health. Correctional officials must treat those in their care recognizing the authority they have to carry out the sentence but also recognizing the responsibilities they have to ensure safe and humane treatment. The alternative is unsafe or inhumane treatment - hardly a worthy standard. The responsibility of care is greatest for correctional officials when imprisonment is used.

The prison is a difficult environment in which to work or live. There is a built-in antipathy between the keeper and the kept that is derived from the fact that one has the keys to freedom and the other does not. It is often hostile, tense and confrontational. Fear is a common and sometimes all-pervasive feeling. Both prisoner and correctional officer struggle to maintain some control over their lives. It should not surprise anyone that correctional officers are sometimes tempted to justify actions and the use of authority that others would reject as excessive.

Corrections operate outside of the light of public scrutiny. Unlike the courts or police which generally function in public forums, prisons are hidden away and are generally inaccessible. At the same time correctional officials have enormous authority to control every aspect of a person's life from what he eats, when he sleeps, and whether he can see his family or obtain an education, to whether he will be offered protection under threatening situations.

Abusive or unfair treatment of prisoners does two things: it brutalizes those who receive the abuse and it teaches them that the justice system is hypocritical - that just is might. Neither contributes to changes necessary to reduce future criminal activity.

Special measures must be in place to reassure the public, the staff and the prisoner that minimum standards of fairness are the responsibility - the trust - that is placed in the hands of prison officials. Because the public does not have direct access to observe, other agents of the public's concern have been put in place to investigate incidents and provide redress.

i. Correctional Investigator

The work of the Correctional Investigator will never be credible unless the issues raised by that office are resolved in a fair, principled and timely manner. Most ombudsmen act on behalf of those that have the sympathy of the public. Government departments that are criticized by ombudsmen feel compelled to respond in a timely and open manner. Because the prisoner does not have public sympathy, the Correctional Service of Canada is not under the same public pressure to be responsive. Special measures are necessary to ensure that issues raised by the Correctional Investigator will be dealt with fairly and in a timely manner. At the same time it is not fair to the Correctional Service of Canada to have the Correctional Investigator pursue the same issue from year to year if they think the criticism is unreasonable. There must a better mechanism to resolve the issues.
We are convinced that a mechanism should exist whereby a serious unresolved dispute between the Correctional Investigator and the Correctional Service of Canada could be taken before a suitably trained third party who will recommend a resolution to the Solicitor General. The Correctional Service of Canada would be required to comply with the ruling unless that decision is overruled by the Solicitor General. If the ruling confirms the position of Correctional Service of Canada then the matter would be dropped by the Correctional Investigator unless overruled by the Solicitor General.

Cases that would be eligible to be heard would be serious cases. Jurisdiction to hear cases would be restricted to those that meet the following criteria:

A) reflect important points of law and compliance of Correctional Service of Canada with the law, or
B) involve a serious issue of human rights, or
C) have serious consequences for the health, safety or fair treatment of the individual involved

In addition to the above, the Solicitor General could refer any other matter that he/she feels is appropriate.While we propose that the Solicitor General have the discretion to refuse to have cases referred, he/she would, in turn, be responsible to ensure that eligible matters raised in the Correctional Investigator's Annual Report are either referred, resolved, or rejected with reasons in a timely manner. We think that this process could be of considerable benefit to the Solicitor General when the issues at stake are important and complex and where he/she would benefit from an expert and independent person(s) acting to resolve the matter

ii. Internal Investigations

Increasingly the operations of the Correctional Service of Canada are being driven by the recommendations of Internal Investigation convened under Section 20 of the CCRA. An investigation of a serious event is necessary, but if the investigation is to improve matters it must be completed with a very high standard of competence reflecting proper investigation techniques, thoroughness, and fairness to all parties.

The quality of investigations currently being completed by CSC and NPB staff varies substantially. Some reports seem incomplete or inadequately address important issues. Some appear to focus excessively on the minutiae of violations of policy rather than looking at the bigger picture of correctional operations. The fact that the primary investigators and authors are typically middle-to-senior officials within the same organizations as those being investigated can raise serious doubts about the independence and objectivity of the investigators and, therefore, the validity of their conclusions. Also, the fact that the investigators change regularly means that it is difficult to build a base of experience for all those who conduct the investigation to ensure a high level of competence.

A poorly prepared report is worse than no report at all. The Commissioner of the Correctional Service of Canada and the Chairperson of the National Parole Board cannot be seen to interfere with or dispute the findings of the reports. This leaves those conducting the investigations in the position where they can virtually dictate policy in areas that normally would require broader consultation or be made by others with greater expertise or responsibility.

Because of the technical nature of many of the investigations, CSC and NPB staff must be involved to support and advise the investigator, but the staff should not be the primary investigators. *The primary investigator should be a person who has no career aspirations, past or present, within either the CSC or NPB, has specialized training that is appropriate for the investigation of such matters and has a thorough knowledge of due process and rules of fundamental justice. Retired judges might be a good source of expertise for such functions*.

By strengthening the objectivity, independence and professionalism of the investigatory process, reports would likely be based on better investigation techniques conducted in an environment that is more respectful of the rights of individuals. The increased separation from CSC management would allow the Commissioner and the Chair of the NPB greater latitude to disagree with the findings and recommendations. Recommendations that flow logically from a single incident may have important unintended consequences in other situations. It is important that senior management be able to consider the recommendations in this broader context.

iii. Independent Adjudication for Segregation

The report of Madam Arbour on the incidents at the Prison for Women made a series of recommendations with respect to the independent adjudication of the placement of prisoners into segregation[1]. In doing so she recognized the serious impact imprisonment within a prison has on individuals as well as the serious lapses that took place in CSC's compliance with the law and its own regulations. Since that time, CSC convened a Task Force to examine the policies regarding segregation and to make recommendations regarding Madam Arbour's proposals.

[1] Arbour, L. *Commission of Inquiry into Certain Events at The Prison For Women in Kingston*, Canada, 1996, p. 190

The Task Force proposed that a pilot project be initiated using independent adjudication for those who would be detained in segregation[2] for a long term. Finally, the Report of the Working Group on Human Rights under the chairmanship of Max Yalden, the former Chief Commissioner of the Canadian Human Rights Commission also recommended that the Task Force recommendations to be pursued[3].

We agree with the premise that long term segregation should be reviewed by an independent adjudicator and at the very least, the proposal of the Task Force for a pilot project should be implemented.

iv. Statutory Release with Residency

The use of Statutory Release with residency (133.4.1) has created serious problems for the Correctional Service of Canada and for offenders that are required to live under it. Prisoners are being advised that a residency requirement will be imposed without a hearing or opportunity to submit their objections. Often they learn of this decision within days of release when other plans have been developed. Worse still, the lack of appropriate residential beds sometimes results in them being diverted from their home community to a strange community where they have no ties or plans. Some are required to remain in residence for years.

When used in such an ad hoc manner, the residency provisions cause as much harm as good. The provision promotes great bitterness and suspicion among both those subjected to it and to others who see it as capricious and unfair. It should be no surprise that those who are released with the residency clause have a high rate of technical revocation - often for running away.

If residence is to be maintained as a condition of Statutory Release, it should be imposed after a hearing with the National Parole Board that takes place at least six months prior to the warrant expiry date, be imposed only when specific criteria are met that demonstrate that the person poses a serious threat of violent offending, and once imposed, continue for no more than four months and be imposed only in the community of the person's planned destination.

[2] Task Force Report. Commitment to Legal Compliance, Fair Decisions and Effective Results: Reviewing Administrative Segregation, Correctional Service of Canada, March 1997.

[3] Human Rights and Corrections: A Strategic Model, Report of the Working Group on Human Rights, December 1997, p. 33

3. Programs and Services

It is important in the context of the review of the Act to recognize the importance of programs and services in the correctional system. *In particular, it is also important to differentiate activities which supervise and control from programs and services which develop changes in the person*. The first set of activities imposes external controls while the latter encourage internal controls. Both have a valid role and often are concurrent and complimentary. If we are not vigilant to the differences, however, the external control methods will overwhelm attempts to develop internal controls. For instance, imprisonment (external control) will stop a person from consuming alcohol but unless the person can deal with his addiction (internal control) the risk of failure after release from prison will remain high. We must recognize that by the time the warrant expires and external controls are no longer available, we must depend entirely on the internal controls that the individual has developed to ensure our continued safety. *It makes sense, therefore, to give strong support for appropriate and effective programs and services. It also makes sense that we devote substantial resources to multi-disciplinary research both within the CSC and with independent academics*.

The likelihood of gradual release being successful can be enhanced through the presence of good prison programs that address those factors that relate to offending behaviour[4]. Time spent in prison is really only a window of opportunity to change attitudes and knowledge so that on release the person has an improved chance of successful reintegration. *Programs and services of crucial importance are those that contribute to a pro-social environment, enhance education and work skills, protect and support strong family ties, enhance cognitive skills and address addictions*.

Programs and services should not be seen as being "soft on crime." With the abundance of evidence on the success of programs and services in reducing future offences, they become essential to any program that has correctional objectives.

All prisoners should be engaged in constructive activity throughout their sentence. Currently, too many are only engaged in make-work activity which has little value to the individual, the institution or releasing authorities. Time spent in this largely meaningless activity is a lost opportunity. Work, treatment, education and volunteer activities should be meaningful, relevant to the person's development and delivered in a manner that reflects good principles of behavioural change. Correctional programs and services should have appropriate resources and officials should be held accountable for the constructive activity of the prison population. Many programs can and should be provided while on gradual release. Research indicates that many programs delivered in the community have superior results than those delivered in the prison environment[5].

[4] H. A. Marquis, "Reducing recidivism through institutional treatment programs," *Forum on Corrections Research*, Vol. 8, No. 3, September 1996 pp:3.

[5] D. Robinson, "Factors influencing the effectiveness of cognitive skills training," *Forum on Corrections Research*, Vol. 8, No. 3, September 1996 pp:6.

4. Gradual Release and Successful Reintegration

i. Prediction and Risk

It is difficult to predict with accuracy which individuals will offend after release from prison. The research literature shows clearly, however, that those who are involved in good gradual release programs reoffend less frequently than those who are not involved in such programs. This is particularly true of higher-risk offenders. Reductions in recidivism for those in appropriate programs typically reach 25% and under optimal conditions the results are much higher[6].

We require all people to wear a seatbelt even though we know that most will not be involved in serious accidents. It would be foolish to try to predict who might be involved in a serious accident by studying risk factors and only require that high-risk individuals buckle up. It is because we do not know with certainty who will be involved in accidents that we require all people to buckle up. We know that by making seat belt use mandatory we will reduce the number of victims in traffic accidents overall. Similarly, it is because we do *not* know with sufficient accuracy who will reoffend that we should expect that all persons released from prison will go through a gradual release program.

If well managed, programs of gradual release are the best method known to reduce recidivism. Failure to involve people in these programs places the community at greater risk and in so doing contravenes the purpose of the *Act*. It should be expected, therefore, that all offenders, on leaving prison, would be in an appropriate program of gradual release.

Some people fail to respond to gradual release programs in a satisfactory manner and fall back into criminal behaviour. Efforts to predict accurately who will commit offenses in the future remains a very crude science in which large numbers of errors in prediction are made. Much attention is given to those errors where people who are released go on to commit new offenses. Unfortunately, little attention is given to the much more frequently occurring errors where people are held in custody but do not go on to commit new crimes. The rate of success of those denied parole and even detained to warrant expiry shows that release decision makers dramatically underestimate success.

[6] P. Gendreau, "Principles of effective correctional programming", *Forum on Corrections Research*, Vol. 8, No. 3, September 1996 pp:38.

ii. How much do we underestimate success?

As Table 1 and Figure 2 shows, those released on all forms of supervision do much better than most people believe to be the case. Three important observations can be made based on the shaded data in Table 1:

(i) the offence rate between the Full Parole and the Statutory Release groups have been very similar,

(ii) the offence rate for both are low, and

(iii) the offence rate for both are declining.

If offending could be predicted with complete accuracy, those who were granted parole would never offend while those who were not granted parole would always reoffend. In fact, in some years the Statutory Release group have done better than those on Full Parole.

Table 1

SUCCESS RATE										
RELEASE TYPE/YEAR	SUCCESSFUL COMPLETION		REVOCATION		RECIDIVISM RATE				RECIDIVISM RATE TOTAL	
			Violation of condition		Non violent crime		Violent crime			
	#	%	#	%	#	%	#	%	#	%
Day Parole										
1993-94	**3663**	**77.8**	**703**	**14.9**	**278**	**5.9**	**62**	**1.3**	**340**	**7.2**
1994-95	**3246**	**78.3**	**690**	**16.6**	**168**	**4.1**	**42**	**1.0**	**210**	**5.1**
1995-96	**2791**	**81.7**	**457**	**13.4**	**130**	**3.8**	**39**	**1.1**	**169**	**4.9**
1996-97	**2384**	**83.6**	**350**	**12.3**	**100**	**3.5**	**19**	**0.7**	**119**	**4.2**
1997-98	**2585**	**83.5**	**368**	**11.9**	**130**	**4.2**	**14**	**0.5**	**144**	**4.6**
Full Parole										
1993-94	**1548**	**62.9**	**511**	**20.7**	**336**	**13.6**	**68**	**2.8**	**404**	**16.4**
1994-95	**1622**	**62.7**	**623**	**24.1**	**281**	**10.9**	**59**	**2.3**	**340**	**13.2**
1995-96	**1533**	**67.4**	**464**	**20.4**	**242**	**10.6**	**34**	**1.5**	**276**	**12.1**
1996-97	**1280**	**65.1**	**423**	**21.5**	**232**	**11.8**	**31**	**1.6**	**253**	**13.4**
1997-98	**1231**	**67.5**	**392**	**21.5**	**183**	**10.0**	**19**	**1.0**	**202**	**11.1**
Statutory Rel.										
1993-94	**2370**	**59.6**	**954**	**24.0**	**551**	**13.9**	**102**	**2.6**	**653**	**16.4**
1994-95	**2590**	**60.6**	**1204**	**28.2**	**381**	**8.9**	**102**	**2.4**	**483**	**11.3**
1995-96	**2826**	**60.6**	**1260**	**27.0**	**469**	**10.1**	**111**	**2.4**	**580**	**12.4**
1996-97	**2971**	**57.8**	**1510**	**29.4**	**567**	**11.0**	**93**	**1.8**	**660**	**12.8**
1997-98	**2965**	**57.5**	**1578**	**30.6**	**540**	**10.5**	**72**	**1.4**	**612**	**11.9**

SOURCE: NPB 1998-09-24
SUCCESS RATE is based on the completion of the supervision period during the fiscal year.
Violent offences include offences on Schedule 1, plus first and second degree murder.

(This data is shown graphically in Figure 2 below.)

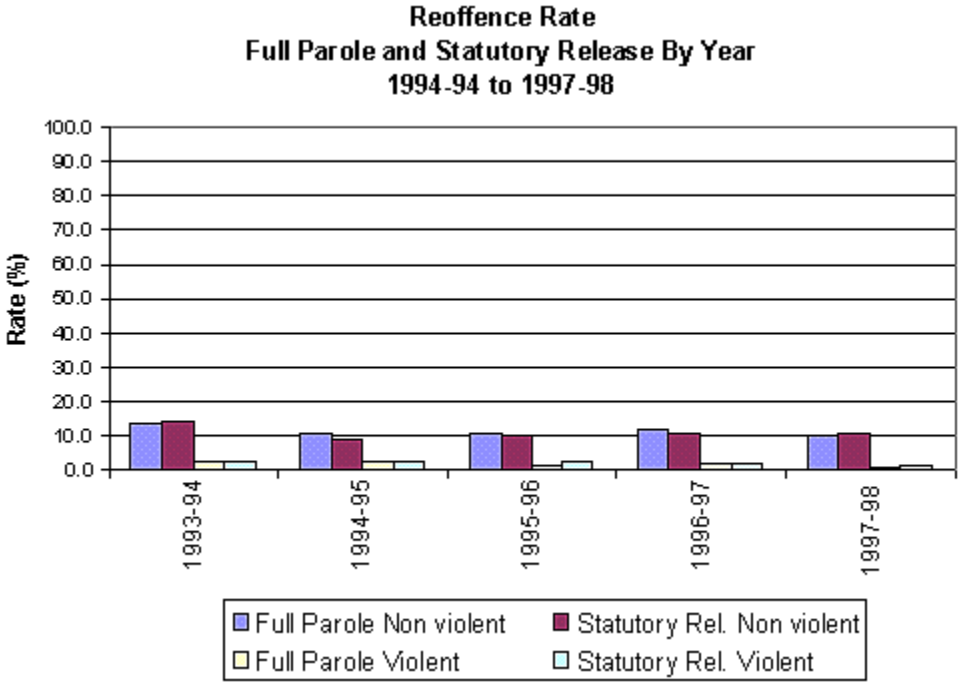

Figure 2 Source: taken from NPB 1998-09-24 - see table 1.
Note: The offence rate for both Full Parole and Statutory Release as low, declining over time, and virtually indistinguishable

One should expect that those refused Full Parole (because they are an unacceptable risk) would have a high rate of criminal recidivism when released on Statutory Release. In fact, the offense rate of re-offending while under supervision is very low - about 10%. Part of the low offence rate for those on Statutory release may, arguably, be attributable to the higher rate of revocation on technical breaches of conditions of release. In any event, the majority of releases on Statutory release experience a crime-free period of adjustment in the community prior to warrant expiry.

Those who complete the period of Statutory Release subsequently offend at a significantly higher rate than those who complete their sentence on parole[7]. This higher offence rate suggests that community supervision reduced the reoffence rate that would have occurred had the person been released without supervision. Because the longer the person lives crime free in the community, the greater the likelihood that the person will continue to live crime-free, it is logical to suggest that a longer period under supervision would contribute to fewer offences over the longer term.

[7] Report of the CCRA Working Group, *Towards a just peaceful and safe society: The Corrections and Conditional Release Act five years later*, Consolidated Report, Solicitor General Of Canada, p. 83

iii. Should "high risk" offenders be eligible for gradual release programs?

If gradual release reduces reoffending, then it stands to reason that the gradual release resources should be directed towards those with the highest likelihood of reoffending. It is unnecessary to "rehabilitate" a person who has both the means and intention of never committing further criminal acts. Focussing rehabilitation methods and resources on individuals assessed as "low risk" will produce few benefits with respect to reduced levels of criminal behaviour.

Gradual release for low-risk individuals reduces the costs of incarceration and personal suffering of some prisoners but will not reduce recidivism simply because most of these people will not recidivate anyway. Gradual release is important because the process involves actually changing behaviour so that those who would otherwise reoffend do not. Fewer crimes mean fewer victims. Public protection is achieved through gradual release not at the expense of gradual release.

It is only when we change the behaviour of those who would otherwise go on to commit crimes that we have contributed significantly to harm reduction in the community through lower recidivism. Research by the Correctional Service of Canada research staff and independent researchers like Dr. Don Andrews shows that greater benefits are achieved when gradual release resources are targeted towards moderate and high risk individuals than when they are targeted towards low risk[8].

Decisions which exclude gradual release for higher-risk individuals are completely inconsistent with the purpose of the Act and the methods that the Act identifies as the most important ways to reduce recidivism. It is wrong that those identified as having the greatest likelihood of offending are the ones most likely to be released from prison without the benefit of a gradual release program involving either supervision or support. The risk offenders pose warrants intervention, not avoidance.

Focussing resources of gradual release on higher-risk offenders does not mean that gradual release would have the same characteristics as it would have with lower-risk offenders. Requirements for supervision, treatment and daytime activities might well be more substantial than with other offenders. Special measures might be taken to address special risk factors.

[8] D. Andrews, "Criminal recidivism is predictable and can be influenced: An update," Forum on Corrections Research, Correctional Service of Canada, Vol. 8 No. 3, pp:42

5. Gradual Release Decision-Making Criteria

The CCRA provides for a variety of entry points into gradual release programs. Some entry points are based on the presumption that the individual will not be released unless they can give good reasons why they should be released (i.e., a negative presumption of release). Other entry points are based on the presumption that the person will be released unless the releasing authorities can show that there are good reasons to deny release (i.e., a positive presumption of release). The provisions with respect to Accelerated Parole Review presume that a person will be released unless there are reasonable grounds to believe that the person will commit an offence involving violence. Similarly, Statutory Release has a positive presumption unless criteria are met to lead the Parole Board to the conclusion that a person is likely to kill or cause serious harm before the expiration of the sentence. Although the grounds required to not release the person differ with APR and Statutory Release, both have a positive presumption and define a test the Parole Board must meet to hold the person in prison.

Table 2

Decisions to Grant Release by Type of Presumption 1996/97

	Positive Presumption			***Negative Presumption***	***Total Releases***
	Accelerated Parole Review	Statutory Release	Total	Full Parole	Full Parole and SR
Number	935	4801	5736	797	6533
Percent	14.16%	73.49%	87.80%	12.2%	100%

Source: Report of the CCRA Working Group pages 59 and 79.

The data in Table 2 shows that in 1996/97, 1732 were released on full parole. Of those released on full parole, 54% (935) were released through the APR criteria. In the same year 4801 were released on Statutory release. In other words a full 88% of all discretionary release decisions were based on a positive presumption of release. (Comparable data for day parole is not available.) It is clear that the foundation of our conditional release system is one of presumptive release and that this system has demonstrated its merits as being superior to ones premised on a negative presumption.

As Table 3 shows, decision-making criteria based on a positive presumption is entirely consistent with the *Principles* set out in the CCRA for both Corrections and for Conditional Release that stipulate the use of the least restrictive measures consistent with the protection of the public. It is also consistent with the Principles of Sentencing as set out in the Criminal Code.

Table 3

Statements of Principle	
CCRA	**Criminal Code**
4. d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;	718.2 (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.
101. d) that parole boards make the least restrictive determination consistent with the protection of society;	

The system of conditional release in Canada depends heavily on positive presumption criteria. In the absence of a positive presumption, the National Parole Board contributes surprisingly little (12.2% of positive decisions) to community supervised reintegration. Full Parole contributes much less to the gradual release process than most people realize. Because most prisoners are eligible for parole after serving one-third of the sentence and would be released under normal circumstances after serving two-thirds on Statutory Release, parole can reduce the time that is served in prison by no more than one third of the sentence. Most of the time served on parole is actually time that would have been served in the community on Statutory Release. In fact, most who receive parole are already well past their eligibility date when released and, of course most are not granted parole at all. Full parole reduces the over all use of imprisonment very little - we calculate about 6% of all sentenced time.

Given the very high rates of incarceration in Canada compared to other countries, this minimal contribution to prison time reduction should be both shocking and disappointing. It is particularly disappointing given the general public's false belief that parole is used extensively. Clearly, we need to rethink the way parole contributes to gradual release.

Because of the overall success of all gradual release programs and because the decisions of the Parole Board are so modest and contribute so little to the overall use of gradual release, it is both appropriate and necessary to continue to support the APR and SR provisions of the Act and to recommend that all parole decision making be based on positive presumptions.

i. Problems with the Current Criteria for Release Decision Making

> Those working within corrections and parole have become increasingly intimidated by the fear of the consequences for them personally should a person commit a major offense while under supervision. The personal risks for the decision makers are not consonant with the risks to the public. This lack of consonance results in the ironic and sometimes tragic situation where the public interest over the longer term is subverted by the personal fears of the decision maker over the shorter term. Risk reduction strategies give way to risk avoidance strategies. This subversion of the purpose of the Act is all the more likely to occur when there are few purely objective decision-making criteria.

To achieve the Purposes of Corrections as set out in the CCRA, it is necessary to create an environment in which people can make responsible decisions without fear of unreasonable criticism. It is necessary, therefore, that the risk associated with gradual release not only be understood and incorporated into the policy and practices of the correctional system, but also should be assumed within the Act. Officials of the Correctional Service of Canada and the National Parole Board should be responsible to ensure that they have applied the criteria with respect to release in a thorough and professional manner. The decision that the risk inherent in gradual release is less than the risk of release without supervision should be clearly recognized in the legislation through a positive presumption that guides release decisions.

ii. Proposed Criteria for Gradual Release Decision Making

We propose that it is entirely consistent with the Purpose of Corrections that all release decisions be based on a positive presumption. Paroling authorities should be required to establish the reasons why a person should not be granted gradual release. The test for denial of release should become more difficult as a person approaches warrant expiry. Few, if any, should be detained to warrant expiry. Those very few who are detained should consist only of those who refuse to cooperate with any gradual release program[9].

Table 4 sets out the criteria that we propose would make gradual release decision making more coherent and effective. It would place gradual release in its proper context within the Purpose and Principles of the Act, make the system more comprehensible and coherent, and give decision makers a degree of needed insulation from unfair public criticism.

The criteria are illustrative of a model based on a graduated scale of positive presumption that demonstrates how the strength of the presumption increases during the term of imprisonment. In all cases the paroling authorities would have a range of supervision options and conditions available to assist in the management of risk. The use of special conditions and prohibitions, residential, program and treatment requirements, and the other options currently available for the supervision of offenders in the community would be available to address the problems that might exist.

[9] For a more detailed examination of our views on this point please see our companion brief on the detention provisions of the Act.

iii. Gradual Release Decision Making: Current and Proposed Criteria

Table 4 sets out the framework for gradual release decision making based on a graduated positive presumption. It also compares this proposed model of decision making with the existing hybrid system of positive and negative presumptions. We recommend that a system of graduated positive presumptions be adopted as the framework for all gradual release decision making that falls under the authority of the *CCRA*.

Table 4

	Current Criteria	***Proposed Criteria***
Accelerated Parole Review	*Positive presumption*: *for those who meet criteria*: Release Granted unless reasonable grounds to believe that the person will commit a violent offence. *Applies to all serving first penitentiary terms for non-violent offence*.	*Positive presumption*: Granted *unless* the person has a high risk of general recidivism and a moderate or higher risk of violent recidivism. *Applies to all*.
Day Parole	*Negative presumption*: Release denied unless prisoner can convince the board otherwise *Applies to all*.	*Positive presumption*: Granted *unless* the person has a moderate or higher risk of violent recidivism and a moderate or higher risk of general recidivism. *Applies to all*.
Full Parole	*Negative Presumption*: *Applies to all*.	*Positive presumption*: Granted *unless* the person has a high risk of violent recidivism. *Applies to all*.
Statutory Release	*Positive Presumption*: Granted unless the person meets specified offence criteria and is considered likely to commit an offence causing death or serious harm before the expiration of the sentence. *Applies to all*.	*Positive presumption*: Granted unless the person refuses to cooperate with the gradual release plan. *Applies to all*.

6 The John Howard Society of Canada

In making this submission, the John Howard Society of Canada is speaking on behalf of the 55 John Howard Societies in communities across Canada. It has a membership of about 20,000 and, as such, is the largest voluntary criminal justice organization in Canada.

Mission

Effective, just and humane responses to the causes and consequences of crime.

Description

The John Howard Society of Canada is an organization of provincial and territorial Societies comprised of and governed by people whose goal is to understand and respond to problems of crime and the criminal justice system. They are fiscally responsible for the continuance of the work and service of the National Office.

Methods

In furtherance of its Mission, the Society:

- works with people who have come into conflict with the law,
- reviews, evaluates and advocates for changes in the criminal justice process,
- engages in public education on matters relating to criminal law and its application, and
- promotes crime prevention through community and social development activities.

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