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THE JOHN HOWARD SOCIETY OF CANADA
La SOCIÉTÉ JOHN HOWARD DU CANADA

Presumptive Gradual Release

A position paper of
The John Howard Society of Canada

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Corrections and Conditional Release Act Review

1. Introduction and Summary

i. Purpose of this paper

The following Proposes a revised model for gradual release decision making based on a series of positive presumptions.

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*. 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.

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.

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.*

Corrections and Conditional Release Act, Section 3.

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.

2. 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 re-offend 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 higher¹.

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. *Similarly, it is because we do not know with sufficient accuracy who will re-offend 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.

¹ P. Gendreau, "Principles of effective correctional programming", *Forum on Corrections Research*, Vol. 8, No. 3, September 1996 pp:38.
L. Motiuk, C. Cousineau and J. Gileno, *The Safe Return of Offenders to the Community: Statistical Overview*, Research Branch, Correctional Service of Canada, April 2005.

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.*

ii. How much do we underestimate success?

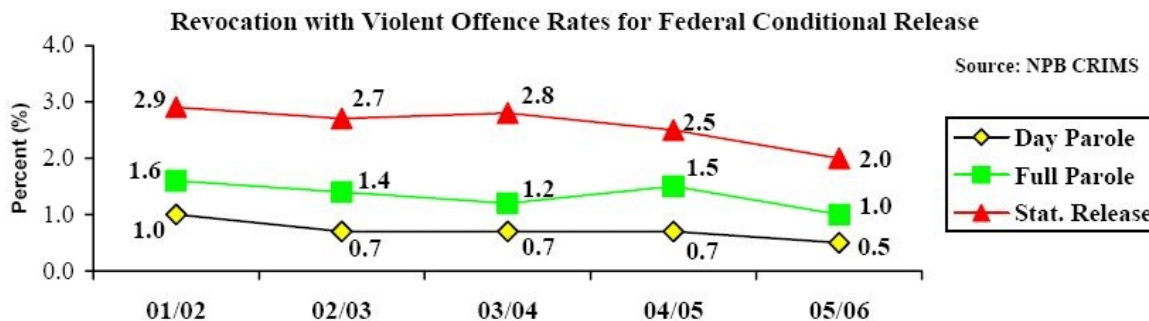
As Table 1 and Figure 2 shows, those released on all forms of supervision do much better than most people believe to be the case.

Outcomes of Federal Conditional Release												
Release Type/Yr.	Successful Completion		Revocation for Breach of Condition		Total No Re-offending		Revocation with Offence				Total Revocations with Offence	
	#	%	#	%	#	%	#	%	#	%	#	%
Day Parole	#	%	#	%	#	%	#	%	#	%	#	%
2003-04	2506	83.3	365	12.1	2871	95.4	119	4.0	20	0.7	139	4.6
2004-05	2548	82.2	399	12.9	2947	95.1	132	4.3	20	0.7	152	4.9
2005-06	2464	83.5	366	12.4	2830	95.9	106	3.6	14	0.5	120	4.1
Full Parole*	#	%	#	%	#	%	#	%	#	%	#	%
2003-04	1047	73.0	261	18.2	1308	91.2	109	7.6	17	1.2	126	8.8
2004-05	1050	72.8	254	17.6	1304	90.4	117	8.1	21	1.5	138	9.6
2005-06	978	70.8	269	19.5	1247	90.3	120	8.7	14	1.0	134	9.7
Statutory Release	#	%	#	%	#	%	#	%	#	%	#	%
2003-04	3120	57.9	1596	29.6	4716	87.5	523	9.7	148	2.7	671	12.5
2004-05	3137	58.0	1608	29.7	4745	87.8	528	9.8	133	2.5	661	12.2
2005-06	3201	59.0	1639	30.2	4840	89.2	476	8.8	108	2.0	584	10.8

*Full parole includes only those offenders serving determinate sentences as offenders serving indeterminate sentences can only successfully complete full parole by dying.

Source: National Parole Board Performance Monitoring report 2005-06 p24

The following chart shows the same data trend over a longer term.



Source: National Parole Board Performance Monitoring Report 2005-06 p139

Three important observations can be made based on the shaded data in Table 1:

- 1, the offence rate between the Full Parole and the Statutory Release groups have been very similar,
- 2, the offence rate for both are very low, and
- 3, the offence rate for both are declining sharply.

If offending could be predicted with complete accuracy, those who were granted parole would never re-offend while those who were not granted parole would always reoffend. In fact, in many respects the differences between these two groups is marginal. Further, while the Statutory release group have a higher recidivist rate over the longer term, the above chart shows what happens during the time that the community is exposed to risk during the sentence.

Those who complete the period of Statutory Release subsequently offend at a significantly higher rate than those who complete their sentence on parole.² This higher offence rate suggests that community supervision reduced the re-offence 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.

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

If gradual release reduces re-offending, then it stands to reason that the gradual release resources should be directed towards those with the highest likelihood of re-offending. 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 re-offend do not. Fewer crimes mean fewer victims. *Public protection is achieved through gradual release not at the expense of gradual release.*

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

² 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

resources are targeted towards moderate and high risk individuals than when they are targeted towards low risk.³

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.

3. 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 of release 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 of release and define a test the Parole Board must meet to hold the person in prison.

Most release decisions occur under a positive presumption of release. In 2005-06 17.9% of admissions are eligible for Accelerated Parole Review⁴ and about 64% of all releases are on Statutory Release⁵. Parole and day parole decision that are subject to a negative presumption of release are by far the minority.

As *Table 3* shows, decision-making criteria based on a positive presumption of release 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

³ 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.

⁴ NPB Performance Monitoring Report 2005-2006 p. 57

⁵ Ibid page 59 Table 25

protection of the public. It is also consistent with the Principles of Sentencing as set out in the Criminal Code.

The system of conditional release in Canada depends heavily on positive presumptions of release criteria. In the absence of a positive presumption, 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 for those serving determinate sentence 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 overall use of imprisonment very little - we calculate about 6% of all time served on determinate sentences.

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 impact of release 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 and expand gradual release provision of the Act that are based on a positive presumption of release. We recommend that all parole decision making be based on positive presumptions.

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;	

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, personal 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 of gradual release that guides release decisions.

ii. Proposed Criteria for Presumptive 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.

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 of release 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.

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 of release. 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.

	Current Criteria	Proposed Criteria
Accelerated Parole Review	<p><u>Positive presumption:</u> for those who meet criteria: Release Granted unless reasonable grounds to believe that the person will commit a violent offence.</p> <p><i>Applies to all serving first penitentiary terms for non-violent offence.</i></p>	<p><u>Positive presumption:</u> Granted unless the person has a high risk of general recidivism and a moderate or higher risk of violent recidivism.</p> <p><i>Applies to all.</i></p>
Day Parole	<p><u>Negative presumption:</u> Release denied unless prisoner can convince the board otherwise</p> <p><i>Applies to all.</i></p>	<p><u>Positive presumption:</u> Granted unless the person has a moderate or higher risk of violent recidivism and a moderate or higher risk of general recidivism.</p> <p><i>Applies to all.</i></p>
Full Parole	<p><u>Negative Presumption:</u></p> <p><i>Applies to all.</i></p>	<p><u>Positive presumption:</u> Granted unless the person has a high risk of violent recidivism.</p> <p><i>Applies to all.</i></p>
Statutory Release	<p><u>Positive Presumption:</u> 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.</p> <p><i>Applies to all.</i></p>	<p><u>Positive presumption:</u> Granted unless the person refuses to cooperate with the gradual release plan.</p> <p><i>Applies to all.</i></p>

Release decisions based on the proposed criteria are, in our view, more consistent with the CCRA and likely to be more easily understood by the public as it is more coherent and consistent. Officials would need to explain gradual release in terms of the benefit in risk reduction rather than undermining the facts and rationale for gradual release by relying on imprisonment with the implied assumption that so doing reduces the risk to the public.

The proposed criteria would be easier to apply and reduce the potential for unreasonable blame directed at individual staff of CSC or the NPB.

Finally, an important implication of these decision-making criteria would be that the NPB members reviewing a case would become much more concerned about the *conditions* of release and the support and supervision that is available than they would be of the *timing* of release. This is as it should be.

4. The John Howard Society of Canada

The John Howard Society across Canada is a network of local and provincial and territorial voluntary sector charitable organizations located in over 60 communities. It has been operating continuously for over 100 years and under the name "John Howard" since the early 1930s.

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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