Legislative Summary **LS-663E**

BILL C-43: STRENGTHENING CANADA'S CORRECTIONS SYSTEM ACT

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LEGISLATIVE HISTORY OF BILL C-43

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	16 June 2009	First Reading:	
Second Reading:	29 October 2009	Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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BACKGROUND

Bill C-43, An Act to amend the Corrections and Conditional Release Act and the Criminal Code (short title: Strengthening Canada's Corrections System Act) was introduced and received first reading in the House of Commons on 16 June 2009.[1]

The bill is designed to improve public safety, notably by:

- stating explicitly that the active participation of offenders in attaining the objectives of the correctional plan is an essential requirement for their conditional release or any other privilege;
- expanding the categories of offenders who are ineligible for an accelerated parole review and the categories of offenders subject to continued detention after their statutory release date when they have served two thirds of their sentence (e.g., offenders convicted of child pornography, luring a child or breaking and entering to steal a firearm);
- extending the length of time that offenders convicted of a subsequent offence must serve before being eligible for parole;
- increasing from six months to a year the waiting period for a hearing after the National Parole Board has turned down a parole application;

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

1 Bill C-43: An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 2nd Session, 40th Parliament, 2009 http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3994571&file=4. Versions of a similar bill had been introduced previously but died on the *Order Paper*: Bill C-46, An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 1st Session, 38th Parliament, 2005 (received first reading 20 April 2005 and proceeded no further); Bill C-19, An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 3rd Session, 37th Parliament, 2004 (received first reading 13 February 2004 and referred 23 February 2004 to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, which held one meeting to study the bill on 11 May 2004); and Bill C-40, An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 2nd Session, 37th Parliament, 2003 (received first reading 4 June 2003 and proceeded no further).

- authorizing a peace officer to arrest without a warrant an offender who is on conditional release for a breach of conditions;

- granting the Correctional Service of Canada permission to oblige an offender to wear a monitoring device as a condition of release, when release is subject to special conditions regarding restrictions on access to a victims or geographical areas; and

- increasing the number of reasons for the search of vehicles at a penitentiary to prevent the entry of contraband or the commission of an offence.

The bill also focuses specifically on the interests of victims, by:

- expanding the definition of victim to anyone who has custody of or is responsible for a dependant of the main victim if the main victim is dead, ill or otherwise incapacitated;

- allowing disclosure to a victim of the programs in which an offender has participated for the purpose of reintegration into society, the location of an institution to which an offender is transferred, and the reasons for the transfer; and

- entrenching in the Act the right of victims to make a statement at parole hearings.

A number of the sections in the bill make minor amendments to the *Corrections and Conditional Release Act*, such as linguistic modifications or reformulations designed to clarify the legislative intent. Some sections are also designed to make the administration of sentences more effective, for example, by increasing the maximum number of members that may sit on the National Parole Board.

Finally, it should be noted that many of the bill's provisions are based on the recommendations formulated in the report entitled *A Roadmap to Strengthening Public Safety*,[2] presented in October 2007 by the Correctional Service of Canada Review Panel in response to the mandate it received from the federal government on 20 April 2007, i.e. to review Correctional Service of Canada operations. Michael Jackson, a law professor at the University of British Columbia, and Graham Stewart, former Director General of the John Howard Society of Canada, severely criticized this report in a document entitled *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*,[3] which appeared in September

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2 Correctional Service of Canada Review Panel, *A Roadmap to Strengthening Public Safety – Report of the Correctional Service of Canada Review Panel*, October 2007, http://www.publicsafety.gc.ca/csc-scc/cscrprprt-eng.pdf. The executive summary of the report can also be found on the Public Safety Canada website at http://www.publicsafety.gc.ca/csc-scc/rprt-eng.aspx.

3 Michael Jackson and Graham Stewart, *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*, September 2009, http://www.justicebehindthewalls.net/resources/news/flawed_Compass.pdf.

2009. The authors argue that the suggested transformation of the correctional system fails to respect human rights. They also feel that it is based not on empirically validated evidence but on ideological myths.

A. The Federal Correctional System and the *Corrections and Conditional Release Act*

In Canada, responsibility for corrections is divided between the federal and the provincial and territorial governments based on the sentence imposed by the court. Individuals sentenced to two years or more are the responsibility of the Correctional Service of Canada, while those sentenced to less than two years or to a conditional sentence or who are detained while awaiting trial are the responsibility of the provincial and territorial correctional systems.

The federal correctional system consists of the Correctional Service of Canada (CSC), the National Parole Board (NPB) and the Office of the Correctional Investigator (OCI). The *Corrections and Conditional Release Act* (CCRA), in force since 1992,[4] forms the legislative basis of the CSC (Part I), NPB (Part II) and OCI (Part III). It sets out their respective responsibilities and the principles that must guide their actions, and provides the definitions and rules for applying conditions of release, as well as the security requirements for high-risk offenders. It also contains the rules designed to ensure the transparency of the correctional system and the participation of victims. The CCRA is complemented by the *Corrections and Conditional Release Regulations* (CCRR).[5]

The CSC is headed by the commissioner of the Correctional Service of Canada, who reports to the minister of Public Safety. The CSC is charged with incarcerating offenders and preparing them for eventual release into the community. In addition to enforcing sentences, the CSC is responsible for supervising offenders on conditional release in the community. To that end, it enters into contracts with numerous private-sector agencies that operate halfway houses.

Created in 1959,[6] the NPB is an independent administrative tribunal with the exclusive authority to grant, refuse, cancel or revoke offenders' parole, that is, day parole and

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4 The *Corrections and Conditional Release Act* (S.C. 1992, c. 20), proclaimed 1 November 1992, replaced the *Penitentiary Act* and the *Parole Act*. A number of amendments have been made since its proclamation, including the addition of offences to its schedules.

5 *Corrections and Conditional Release Regulations*, SOR/92-620.

6 The NPB was created under the *Parole Act*, S.C. 1958, c. 38.

full parole. The NPB also makes decisions on the parole of offenders in the provinces and territories without their own parole boards.[7]

The Correctional Investigator, whose position was created in 1973 but not formally provided for in legislation before the adoption of the CCRA in 1992, acts as an ombudsman for offenders under federal responsibility. The OCI's primary function is to investigate complaints made by or on behalf of offenders and to follow up on them. The OCI also examines CSC policies and practices to identify systemic problems and their solutions, and makes recommendations to that end.

B. Types of Conditional Release

Under the terms of the CCRA, at any time after their admission to a penitentiary, offenders may be granted escorted temporary absences and, after the applicable eligibility date, unescorted temporary absences, work release, day parole, full parole and statutory release.

1. Temporary Absences

A temporary absence is generally the first form of release that an inmate in the federal system may be granted. The purpose of this form of release is to integrate certain inmates temporarily into the community for very specific purposes.[8] There are two types of temporary absences: escorted temporary absences (ETAs) and unescorted temporary absences (UTAs), both of which are forms of release into the community that generally last for a maximum of 15 days.

Inmates under federal responsibility may request an ETA at any time during their sentence. The power to grant this type of release lies with the institutional head, except in the case of individuals sentenced to imprisonment for life, where the institutional head must obtain the approval of the NPB.

For UTAs, the eligibility criteria vary depending on the nature and length of the sentence:

- Inmates serving their sentences in a maximum-security institution are not eligible.

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7 Only the provinces of Ontario and Quebec have their own parole boards with authority to release offenders serving sentences of less than two years' imprisonment.

8 There are several grounds for this type of release: medical reasons, facilitating the inmate's contact with family, the inmate's obtaining confirmation of planned employment as part of the release plan, and helping the inmate to fashion a personal development plan, to receive counselling or to have a chance to participate in community service.

- Other inmates,
  - if they have been sentenced to three years or more, become eligible for a UTA after having served one sixth of their sentence;
  - if they have been sentenced to less than three years, become eligible after having served six months of their sentence; and
  - if they have been sentenced to life or are serving an indeterminate sentence may not request a UTA until three years before their full parole eligibility date.

Depending on the circumstances under which the request is made, the power to authorize UTAs lies with the NPB, the commissioner of the CSC or the institutional head.

2. Work Release

Work release is a program of release that enables inmates to work in the community. The maximum length of a work release is 60 days. Inmates may generally request this type of release after serving six months or one sixth of their sentence, whichever is longer.

This type of release is granted by the institutional head. However, only inmates who do not present an undue risk of reoffending may participate in this kind of program, and only for the purpose of performing community service, such as work in a community centre, a hospital or a home for the aged.

3. Day Parole

Day parole is a form of parole whose purpose is to prepare the inmate for full parole or statutory release. It is generally granted for a maximum of six months and provides offenders with an opportunity to participate in supervised activities in the community. The power to authorize day parole lies exclusively with the NPB.

This form of parole is more limited than full parole, given that, unless special authorization is given by the NPB, inmates on day parole must return to a correctional institution or halfway house every night.

Eligibility for this type of release also varies, depending on the length and type of sentence:

- Inmates serving life sentences may apply for day parole three years before the date on which they are eligible for full parole.
- Inmates sentenced to a term of three years or more are eligible for this type of release six months before the date on which they are eligible for full parole.

- Inmates serving a sentence of two to three years may apply for day parole after serving six months of their sentence.

The CCRA provides for an accelerated release procedure for granting day parole for certain offenders, who must meet a number of requirements to be eligible for this accelerated procedure. They must:

- be serving their first sentence in a penitentiary;
- not have been sentenced for murder or conspiracy to commit murder;
- not have been sentenced to life in prison;
- not have been sentenced for an offence set out in schedules I or II of the CCRA;[9]
- not have committed an offence linked to organized crime;
- not have been sentenced for an offence where the court ordered that they serve at least half their sentence before being eligible for parole.

If an inmate meets these conditions, the NPB conducts a simplified review of his or her case under the accelerated release program to determine whether it will grant the offender day parole. In order to do so, the NPB must be satisfied that there is no risk of the inmate's committing one of the violent offences referred to in Schedule I of the CCRA if released before the expiration of the sentence. The determining criterion in this case is not the general risk of the inmate's reoffending if released, as in the case of inmates who are not eligible for the accelerated parole review; rather, it is the assessment of the risk of reoffending with violence. Where the assessment is positive, the NPB grants day parole after the longer of these two periods of time served of six months or one sixth of the sentence, and the inmate is released on the date of day parole eligibility without a hearing before the NPB.

4. Full Parole

Full parole allows offenders to serve the rest of their sentence under supervision in the community. Because this is a form of parole, the power to grant it lies exclusively with the NPB. Inmates on full parole must report regularly to a parole supervisor and advise the parole supervisor of any major change in their personal or employment situation. Except for offenders

9 Copies of schedules I and II of the CCRA are annexed to this document.

sentenced to life imprisonment for murder, who must serve between 10 and 25 years of their sentence before applying,[10] a majority of offenders may apply for full parole after serving one third of their sentence (unless the judge had ordered, in imposing sentence, that a minimum of 10 years or one half of the sentence be served before the inmate might be granted this type of release).

The accelerated parole review procedure also applies in this case. Accordingly, offenders who meet the requirements set out above in respect of the accelerated procedure for day parole, and who have not already had day parole revoked, are automatically eligible for the accelerated procedure. This simplified process for reviewing cases with a view to granting full parole ensures that, if the NPB is satisfied that the offender will not commit a violent offence referred to in Schedule I of the CCRA, that offender will automatically be granted full parole after having served one third of his or her sentence, without a hearing before the Board.

5. Statutory Release

Statutory release is a last resort. Unlike the other forms of conditional release, statutory release is automatically granted to most offenders after they have served two thirds of their sentence. Under statutory release, offenders may finish serving their sentence under supervision in the community, subject to strict conditions, as do inmates on parole.

Under the CCRA, most inmates under federal responsibility must be given statutory release if they have not been granted full parole; however, the Act stipulates that inmates serving a life sentence or an indeterminate sentence cannot be granted statutory release. As well, to protect public safety, the CSC may submit an offender's file to the NPB for analysis if the CSC considers that the offender is likely to commit an offence causing death or serious harm to another person, a sexual offence involving a child, or a serious drug offence before the expiration of his or her sentence.

Normally, a case is referred to the NPB six months before the planned statutory release date. The NPB can then authorize the inmate's statutory release, a "one-chance" statutory release (i.e. if the release is revoked for any reason, the offender will automatically serve the rest of the sentence in detention), attach residency requirements to the statutory release or decide, by

10 Inmates sentenced to life imprisonment for first-degree murder are eligible for full parole after serving 25 years of their sentence, while those sentenced to life imprisonment for second-degree murder are eligible after serving 10 to 25 years of their sentence, depending on the court's decision at the time of sentencing.

means of an order, to keep the offender in detention until the end of the sentence. Any such order is reviewed annually, at which time the NPB either confirms or cancels the order. If the order is cancelled, the inmate will receive statutory release, which may be accompanied by a requirement to reside in a community-based residential facility.

Detention is an instrument that serves the correctional system in its role of protecting the public, by making it possible to keep offenders deemed dangerous to society in detention until the end of their sentence.

In all cases and for all types of release, the CSC is responsible for the supervision of offenders in the community. The CSC's parole officers therefore have the power to return inmates on release to custody if they believe that the inmates present too high a risk to the community. Members of the NPB have the power to revoke an individual's conditional release if they do not comply with requirements in their release plan.

DESCRIPTION AND ANALYSIS

Bill C-43 contains 62 clauses. The following description highlights selected aspects of the bill; it does not review every clause.

A. Part I – The Correctional System

1. Interpretation (Clause 2)

Subsection 2(1) of the CCRA defines a "victim" as a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence. If the person dies or becomes ill or otherwise incapacitated, any of the following people may be considered a "victim": the person's spouse or the person with whom the dead or incapacitated person was cohabitating for at least one year in a conjugal relationship, a relative or a dependant of the person, or anyone who in law or in fact had custody of or was responsible for the care or support of the person. The bill broadens the definition to include anyone who, in law or in fact, has custody of or who is responsible for the care and support of a dependant of the primary victim, if that person is dead, ill or otherwise incapacitated.

2. Purpose and Principles (Clauses 3 and 4)

Under section 3 of the CCRA, the correctional system must contribute to the maintenance of a just society by carrying out sentences through the safe and humane custody and supervision of offenders. The correctional system must also provide adequate programs in penitentiaries and in the community, since all rehabilitation must promote the reintegration of offenders into the community as law-abiding citizens.

Section 4 of the CCRA sets out the principles that guide the CSC in achieving its purpose, notably that the protection of society be the paramount concern in the correctional system. The bill moves this principle to a new section 3.1 under the new heading, "Purpose and Principles," which also includes sections 3 and 4 of the CCRA (currently under the headings "Purpose" and "Principles," respectively).

It is important to note that the concept of mental health has been added to the principles, which means that the CSC, in achieving its purpose, must be responsive in its policies, programs and practices to the special needs of persons requiring mental health care, among others.

3. Correctional Plan (Clause 5)

Clause 5 modifies the CCRA to expressly provide for the concept of a "correctional plan." This concept is not new; it is already provided for in section 102 of the regulations.

To develop a correctional plan, the offender meets a correctional officer as soon as possible after his or her reception at the penitentiary. At that time, the offender is informed of the objectives concerning participation in programs and court-ordered obligations. The correctional plan is aimed at fostering rehabilitation and reintegration into the community, and it sets out the administration's expectations. It is expected that the offender will actively participate to fulfill the objectives of his or her correctional plan. To achieve this goal, clause 5 of the bill states that the commissioner of the CSC can "provide offenders with incentives to encourage them to make progress towards meeting the objectives of their correctional plans."

4. Disclosure of Information to Victims (Clause 7)

Subclause 7(1) amends section 26 of the CCRA, which authorizes the CSC to disclose information to a victim. When the interest of a victim clearly outweighs an invasion of

the offender's privacy, the victim now has the right to know not only the location of the penitentiary in which the sentence is being served but also the name of the penitentiary, the reasons for the offender's transfer to another penitentiary and the name and location of that penitentiary. To the extent possible, the victim is also entitled to be notified ahead of time of the offender's transfer to a minimum security institution, the name and location of that institution and the reasons for the transfer. In addition, the victim may be notified of the offender's participation in programs designed to meet his or her needs and to contribute to the reintegration of the offender into the community. The victim may also be informed of any serious disciplinary offences the offender has committed.

5. Administrative Segregation (Clause 10)

The purpose of administrative segregation is set out in section 31 of the CCRA: to keep an inmate from associating with the general inmate population. The bill amends this provision, making the purpose of administrative segregation to maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates.

6. Release of Inmates (Clause 14)

Clause 14 adds a provision to the CCRA stating that the CSC may in certain circumstances demand that an offender wear a monitoring device. The offender is entitled to make representations in relation to the duration of the requirement.

7. Search and Seizure (Clause 15)

Clause 15 of the bill amends section 61 of the CCRA to allow an institutional head to authorize, in writing, the search of vehicles at a penitentiary. The institutional head must have reasonable grounds to believe that there is a clear and substantial danger to the life or safety of persons or to the security of the penitentiary because evidence exists that there is contraband at the penitentiary or that a criminal offence is being planned or has been committed at the penitentiary. Authorization may also be given if it is necessary to search the vehicles in order to locate and seize the contraband or other evidence and avert the danger.

It should be noted that section 61 of the CCRA already provides that, in reasonable circumstances for security purposes, a staff member may, without individualized suspicion, conduct routine searches of vehicles at a penitentiary. In circumstances constituting an offence under section 45,[11] a staff member who believes on reasonable grounds that contraband is located in a vehicle at a penitentiary may, with prior authorization from the institutional head, search the vehicle. Where the delay in obtaining the authorization would result in danger to human life or safety or the loss or destruction of the contraband, the staff member may search the vehicle without that prior authorization.

8. Authority to Make Regulations (Clause 19)

The CCRA provides that the Governor in Council may make regulations. Clause 19 modifies section 96 of the CCRA to authorize the following:

- "... the Commissioner to, by Commissioner's Directive, make rules regarding the consequences of tampering with or refusing to wear a monitoring device referred to in [new] section 57.1";
- with respect to publications, video and audio materials, films and computer programs, the institutional head or a staff member designated by him or her to restrict or prohibit the removal from a penitentiary of these materials, in the prescribed circumstances;
- the Minister to make rules regarding penitentiary industry so that individuals may be appointed to advisory boards in respect of penitentiary industry and reimbursed for associated travel and living expenses;
- the CSC to pay transportation, funeral, cremation and burial expenses for a deceased inmate under approved circumstances;
- the Commissioner of the CSC to make rules regarding the security classifications and subclassifications of inmates;
- the institutional head or a staff member designated by him or her to monitor, intercept or prevent communications, in the prescribed circumstances, between an inmate and another person; and
- the Commissioner of the CSC to make rules regarding the circumstances in which the institutional head may authorize escorted temporary absences and work releases.

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11 Pursuant to s. 45 of the CCRA:

> Every person commits a summary conviction offence who (*a*) is in possession of contraband beyond the visitor control point in a penitentiary; (*b*) is in possession of anything referred to in paragraph (*b*) or (*c*) of the definition "contraband" in section 2 before the visitor control point at a penitentiary; (*c*) delivers contraband to, or receives contraband from, an inmate; (*d*) without prior authorization, delivers jewellery to, or receives jewellery from, an inmate; or (*e*) trespasses at a penitentiary.

B. Part II – Conditional Release, Detention and Long-term Supervision

1. The National Parole Board

As previously mentioned, the NPB is an independent administrative tribunal that has authority to make parole decisions, based on hearings that it conducts or information provided by the CSC, or both.

The jurisdiction of the NPB is set out in section 107 of Part II of the CCRA. The NPB:

- may grant, terminate, revoke or cancel parole;
- may terminate or revoke statutory release or cancel a decision regarding statutory release;
- may in certain cases authorize or cancel unescorted temporary absences;
- has jurisdiction with respect to offenders who, pursuant to section 743.1 of the *Criminal Code* (the Code), are sentenced for an offence under a provincial Act and are serving the sentence in a penitentiary; and
- has jurisdiction in respect of an offender serving a sentence in a provincial facility when the province in question does not have a provincial parole board.

a. Purpose of Conditional Releases and Principles Guiding the NPB and Provincial Parole Boards (Clause 21)

The principles that guide the NPB (and the provincial parole boards) in achieving the purpose of conditional release, set out in section 101 of the CCRA, are amended by the bill to reflect the amendments made to the principles guiding the CSC set out in Part I of the Act. The bill amends the CCRA to ensure that, in determining cases, the protection of society is the paramount consideration for boards and to ensure that the nature and gravity of the offence and the degree of responsibility of the offender are taken into consideration.

b. Membership (Clause 22)

Clause 22 amends section 103 of the CCRA, increasing from 45 to 60 the maximum number of full-time members on the NPB (the maximum number of part-time members remains indeterminate).

c. Eligibility for Parole (Clauses 24 and 25)

Clause 24 adds section 119.2 to sections 119 and 119.1 of the CCRA to clarify that, for the purpose of determining eligibility for parole review, a sentence is not one that is the result of merging two or more sentences (see clause 45), unless the context requires otherwise. Rather, the rules for determining eligibility dates for offenders serving more than one sentence are set out in sections 120.1 to 120.3 of the CCRA. Clause 25 replaces these sections of the CCRA and the amendments help to clarify the various eligibility dates.

d. Parole Reviews (Clauses 27 and 28)

Clauses 27(1) and 28(2) amend the timeline for parole applications (day parole and full parole). When an application for day parole or full parole is denied or when parole is cancelled or terminated, no new application may be made until one year after the date of the NPB's decision, or until any earlier time that the regulations prescribe or the NPB determines.

2. Accelerated Parole Reviews (Clause 30)

Under section 125 of the CCRA, some offenders are ineligible for accelerated parole review. Clause 30 eliminates the following offences provided for in subparagraph 125(1)(*a*)(ii.1) of the CCRA in order to place them in Schedule I of the Act: participation in the activity of a terrorist group (section 83.18 of the Code), facilitating terrorist activity (section 83.19 of the Code), carrying out activity for a terrorist group (section 83.2 of the Code), instructing another to carry out activity for a terrorist group (section 83.21 of the Code) and instructing another to carry out terrorist activity (section 83.23 of the Code).

The bill also expands the category of offenders who are ineligible for accelerated parole review (clause 55) by adding to Schedule I offences such as participation in the activity of a terrorist group, child pornography, luring a child and living on the avails of prostitution. (It is noteworthy that, while the provisions of the Code respecting gangs were repealed and the term "criminal organization" is now used with regard to gangs or gangsterism (defined in section 2 of the Code), the French version of the CCRA continues to use the outdated term "acte de gangstérisme" in subparagraph 125(1)(*a*)(vi), while the English version has been updated ("criminal organization offence")).

3. Statutory Release (Clauses 31 to 35)

Subject to a contrary order following a detention review, there is a presumption that all offenders not serving life or indeterminate sentences are entitled, after serving two thirds of their sentence, to be released and remain at large until the expiration of their sentence, sometimes referred to as "warrant expiry" (section 127 of the CCRA). Clause 31 clarifies when an offender whose parole or statutory release has been revoked becomes eligible for statutory release. It is the day on which the offender has served two thirds of the remaining sentence, now including any additional sentence if one has been imposed after the offender was recommitted to custody. Clause 31 also adds a subsection establishing the new statutory release date of an offender who receives an additional sentence while on release, and whose parole or statutory release is suspended rather than revoked. He or she is required to serve the portion that remains until the statutory release date on the current sentence, plus two thirds of the additional sentence.

Clause 32 adds a section regarding statutory release provisions for young people who are convicted under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) of the *Youth Criminal Justice Act* and who are transferred to a penitentiary under subsection 89(2), 92(2) or 93(2) of that Act. The new provision provides that these young people are entitled to statutory release on the day on which the custodial portion of their youth sentence would have expired.

Subclause 34(1) requires that, more than six months before the day on which the offender is entitled to be released on statutory release, the CSC refer the case of offenders serving two years or more to the NPB for detention review and provide the relevant information, if it reasonably believes that one of three situations exists:

- the offender committed a Schedule I offence that caused death or serious harm to another person, and is likely to commit a similar offence before expiry of the full sentence;
- the offender committed a Schedule I offence that was a sexual offence involving a child, and is likely to commit a similar offence or (under a new provision) an offence causing death or serious harm to another person before expiry of the full sentence; or
- the offender committed a Schedule II serious drug offence and is likely to commit a similar offence before expiry of the full sentence.

Under the current Act, offenders who have been ordered to remain in custody may be granted an escorted temporary absence for medical reasons only. Clause 35 of the bill adds the possibility of such an absence for administrative reasons, in addition to medical reasons.

4. Conditions of Statutory Release (Clause 36)

The NPB may impose special conditions on statutory release to protect society or facilitate the successful reintegration of the offender, including a residency condition by which the offender must live in a community-based residential or psychiatric facility.[12] Subsection 133(4.1) of the CCRA currently allows a residency condition only if it is believed that an offender may commit a Schedule I offence before the expiration of his or her sentence and so may present an undue risk to society. Clause 36 amends subsection 133(4.1) to allow a residency condition on the basis that the offender is likely to commit a criminal organization offence.[13]

5. Suspension, Termination, Revocation and Inoperativeness of Parole, Statutory Release or Long-term Supervision (Clauses 39 to 42)

Clause 39 amends section 135 of the CCRA, governing the possible suspension, termination or revocation of an offender's parole or statutory release, if he or she breaches a condition, or commits another offence and receives an additional sentence. Subclause 39(1) provides for an automatic suspension where the offender receives an additional sentence, other than a conditional sentence or an intermittent sentence, which suspension takes effect the day the new sentence is imposed. The NPB, commissioner of the CSC or designate may issue a warrant to apprehend the offender and recommit him or her to incarceration until the suspension is cancelled, parole or statutory release is terminated or revoked, or the sentence expires. A warrant for the transfer of the offender to a federal penitentiary may also be issued, if the offender has been committed to another facility.

The automatic suspension of parole or statutory release after an additional sentence replaces automatic revocation under the current CCRA,[14] as revocation without a hearing has been found to be unconstitutional.[15] Subclauses 39(2) and 39(3) accordingly require that a suspension due to an additional sentence be referred to the NPB within the prescribed period.[16] Where a suspension of parole or statutory release is due to the breach of a condition

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12 CCRA, s. 133.

13 Criminal organization offences are those under *Criminal Code*, s. 467.11 (participation in activities of a criminal organization), s. 467.12 (commission of an offence for a criminal organization) and s. 467.13 (instructing the commission of an offence for a criminal organization).

14 CCRA, subsection 135(9.1).

15 *Illes* v. *Kent Institution* (2001), 160 C.C.C. (3d) 307, 2001 BCSC 1465 (B.C. Supreme Court).

16 The referral must be within 14 days of recommitment for offenders serving less than two years, and within 30 days of recommitment for all other offenders (CCRA, subsection 135(3)). Subject to adjournments with the consent of the offender, the NPB must hold a hearing within 90 days of the referral, or 90 days of the offender's readmission to a correctional facility (CCRR, subsection 163(3)).

only, the suspension may be cancelled after a review by the CSC, and must be referred to the NPB only if it is not cancelled.[17]

As already occurs under the CCRA, the NPB may decide to cancel the suspension, possibly reprimanding the offender, issuing alternate conditions or delaying the cancellation for up to 30 days. If it determines that there is an undue risk to society if the offender is released, the NPB may terminate the parole or statutory release (if the circumstances for the suspension were beyond the offender's control) or revoke it (in any other case).[18] Whether parole or statutory release is terminated or revoked has an effect on eligibility for future statutory release, and may delay the next day parole or full parole review.[19]

Subclause 39(4) makes stylistic changes and clarifies that, at the offender's request, the NPB may adjourn a hearing that has begun, or a board member or designate may postpone a hearing that has not yet begun. It is also made clear that where the offender is no longer eligible for parole or statutory release at the time that it is suspended, the NPB may nonetheless cancel the suspension, rather than terminate or revoke release. Subclause 39(5) adds three new subsections to address the situation where a parole suspension is cancelled, but there is a new eligibility date for parole as a result of an additional sentence:

- First, the offender does not resume day parole or full parole (whichever he or she was on at the time of the suspension) until the new date.
- Second, the NPB may, before parole resumes and on the basis of new information, cancel or terminate parole.
- Third, such a decision to cancel or terminate parole, if made without a hearing, must be confirmed or cancelled by way of a hearing within the period prescribed by the regulations.

Subclause 39(6) has the effect of striking existing subsections that are no longer required[20] and renumbering remaining subsections.[21] The remaining subsections allow provinces

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17 CCRA, subsection 135(3).

18 Ibid., subsections 135(5) and (6).

19 Ibid., s. 138. Offenders whose parole or statutory release has been revoked (as opposed to terminated) must serve two thirds of the remaining sentence before being eligible for statutory release (Ibid., subsection 127(5)). The usual deadlines notwithstanding, their day or full parole review may not occur for one year after the revocation(Ibid., subsection 138(5)).

20 Subsections 135(9.1) and (9.2) of the CCRA, providing for the automatic revocation of parole or statutory release, and setting out an exception, are repealed. The situation addressed in subsection 135(9.3) is now addressed in subsections 135(6.2) to (6.4) (see clause 39(5)).

21 Subsections 135(9.4) and (9.5) of the CCRA become subsections 135(9.1) and (9.2).

with provincial parole boards to opt into the automatic suspension scheme that replaces the automatic revocation scheme.[22] The offenders in provincial facilities to which the automatic suspension scheme always applies, and the rules that apply where provinces do not opt in, remain the same as under the current CCRA.[23]

Clause 40 amends a subsection governing the NPB's review of a suspension of long-term supervision. The deadline for review is changed from 60 days after the referral to 90 days after the offender is recommitted. Clause 41 makes clarifications and amends section references in a provision allowing a warrant to be issued for the apprehension and recommitment of an offender whose parole or statutory release has been terminated, revoked or rendered inoperative.

Clause 42 adds the new section 137.1 to the CCRA to allow any security officer to arrest an offender without warrant for a breach of a condition of their parole, statutory release or unescorted temporary absence. However, officers may not arrest an offender without warrant if they believe on reasonable grounds that the public interest may be satisfied without arresting the person, having regard to, for example, the need to establish the identity of the person or prevent the continuation or repetition of the breach, or if they have no reason to believe on reasonable grounds that, if they do not arrest the person, the person will fail to report to their parole supervisor.

6. Multiple Sentences (or Merged Sentences) (Clauses 44 and 45)

Clause 44 changes the heading "Multiple Sentences" to "Merged Sentences." Clause 45 clarifies the rule in section 139 of the CCRA, which is that, for the purpose of the CCRA and other Acts,[24] an offender who is subject to two or more sentences is deemed to have one sentence, which starts on the first day of the first sentence and ends on the last day of the last sentence to be served.

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22 The former subsection reference in 135(9.1) is replaced by that in subsection 135(1.1), the new subsection on automatic suspension.

23 The automatic suspension scheme always applies to offenders serving a federal sentence in a provincial facility as a result of an exchange of service agreement, and to offenders in a provincial institution who become subject to a federal sentence as a result of an additional sentence (CCRA, new subsection 135(9.1)). If a province has not opted into the automatic suspension scheme, and an offender's parole eligibility date is set at a later date as a result of an additional sentence, parole that is not revoked or terminated becomes inoperative and is resumed on the new date, unless revoked or terminated before that date (Ibid., new subsection 135(9.2)).

24 The *Criminal Code*, the *Prisons and Reformatories Act*, R.S.C. 1985, c. P-20, and the *International Transfer of Offenders Act*, S.C. 2004, c. 21. (The *Prisons and Reformatories Act* is federal legislation that applies to provincial prisons and institutions.)

7. NPB Hearings, Statements by Victims and Disclosure to Victims (Clauses 46 and 48)

Under the CCRA, the NPB is required to hold a hearing in certain cases, such as at first reviews for regular day parole in the case of offenders serving more than two years, first reviews for full parole, reviews for continued detention rather than statutory release, and reviews following the suspension or termination of parole or statutory release.[25]

Clause 46(2) adds subsections to the CCRA allowing victims to present statements at hearings of the NPB. If attending the hearing, a victim may comment on the harm or damage resulting from the offence, its continuing impact, and the possible release of the offender. If the victim is not attending, the NPB may authorize presentation of the statement in an alternative format. In either case, a transcript of the statement must be provided ahead of time. The ability to present a statement also applies to a person harmed by an act of the offender, even though the act did not lead to prosecution or conviction, provided that a complaint was made or a charge was laid.[26]

Clause 48 provides that the victim may notified if the offender waives the right to a hearing under subsection 140(1) and the victim may be told the offender's reason for doing so.

8. Organization of the NPB (Clauses 50 and 51)

Clause 50 makes an amendment to allow any number of part-time members to be appointed to the Appeal Division of the NPB. As with the current six full-time members, they are to be appointed from among the existing members of the NPB.

Clause 51 adds section 154.1 to the CCRA, stating that members of the NPB are not competent or compellable witnesses in any civil proceeding relating to information learned in the course of their duties. The objective is to allow board members to consider and comment on the relevance and reliability of information from witnesses without being concerned that they may later have to testify in proceedings between parties.

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25 CCRA, s. 140(1). The NPB has the discretion to hold a hearing if one is not mandatory (Ibid., subsection 140(2)).

26 This is a person referred to in subsection 142(3) of the CCRA.

COMMENTARY

The CCRA required a parliamentary review of its operation and provisions five years after its coming into force,[27] and in November 1998 the Standing Committee on Justice and Human Rights tasked a subcommittee with this review. In May 2000, the subcommittee released its report, containing 53 recommendations.[28] The government responded in November that same year.[29] The government also conducted its own public consultation in 1998,[30] culminating in a separate report on possible changes.[31] As was mentioned previously, bills have been introduced to implement some of the recommendations in these reports, but all died on the *Order Paper*. As a result, the CCRA has been amended in only a few respects since its enactment in 1992.[32]

In 2007 the government also tasked a special committee with reviewing the CSC's operational priorities, strategies and business plans. This committee, the CSC Review Panel, released its report, *A Roadmap to Strengthening Public Safety*, in October 2007.

Many of the clauses in Bill C-43 aim to implement the recommendations of the CSC Review Panel (2007) which was heavily criticized by Michael Jackson and Graham Stewart in their 2009 document, *A Flawed Compass: A Human Rights Analysis of the Roadmap to Strengthening Public Safety*.

Some individuals also feel that the bill does not go far enough. On 14 September 2009, Member of Parliament Serge Ménard introduced a bill to end accelerated parole review (Bill C-434: An Act to amend the Corrections and Conditional Release Act (day parole – six months or one sixth of the sentence rule). Indeed, all federal parties have proposed a review

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27 CCRA, s. 233.

28 House of Commons, Subcommittee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights, *A Work in Progress: The Corrections and Conditional Release Act*, Ottawa, May 2000, http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1031714&Mode=1&Parl=36&Ses=2&Language=E .

29 Government of Canada, *Response to the Report of the Subcommittee on Corrections and Conditional Release Act of the Standing Committee on Justice and Human Rights: A Work in Progress: The Corrections and Conditional Release Act*, Ottawa, November 2000 (revised).

30 Solicitor General Canada, *Towards a Just, Peaceful and Safe Society: The Corrections and Conditional Release Act Five Years Later – Consultation Paper*, Ottawa, 1998.

31 Ibid.

32 For example, comprehensive sentence calculation amendments were enacted in 1995 (S.C. 1995, c. 42) and certain parole eligibility dates were amended in 1997 (S.C. 1997, c. 17). The CCRA has also been amended as a consequence of the enactment of other legislation: e.g., *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, and *Youth Criminal Justice Act*, S.C. 2002, c. 1.

of this measure, which allows some offenders to be eligible for parole after serving six months or one sixth of their sentence, whichever is longer. On 26 October 2009, Bill C-53, the Protecting Canadians by Ending Early Release for Criminals Act, was introduced and received first reading in the House of Commons by the Minister of Public Safety with a view to ending accelerated parole review.

APPENDIX

SCHEDULES I AND II OF THE *CORRECTIONS AND CONDITIONAL RELEASE ACT*

SCHEDULE I

(Subsections 107(1), 125(1) and 126(7) and sections 129 and 130)

1. An offence under any of the following provisions of the *Criminal Code*, that was prosecuted by way of indictment:

(*a*) section 75 (piratical acts);

(*a.1*) section 76 (hijacking);

(*a.2*) section 77 (endangering safety of aircraft or airport);

(*a.3*) section 78.1 (seizing control of ship or fixed platform);

(*a.4*) paragraph 81(1)(*a*), (*b*) or (*d*) (use of explosives);

(*a.5*) paragraph 81(2)(*a*) (causing injury with intent);

(*b*) subsection 85(1) (using firearm in commission of offence);

(*b.1*) subsection 85(2) (using imitation firearm in commission of offence);

(*c*) subsection 86(1) (pointing a firearm);

(*d*) section 144 (prison breach);

(*e*) section 151 (sexual interference);

(*f*) section 152 (invitation to sexual touching);

(*g*) section 153 (sexual exploitation);

(*h*) section 155 (incest);

(*i*) section 159 (anal intercourse);

(*j*) section 160 (bestiality, compelling, in presence of or by child);

(*k*) section 170 (parent or guardian procuring sexual activity by child);

(*l*) section 171 (householder permitting sexual activity by or in presence of child);

(*m*) section 172 (corrupting children);

(*n*) subsection 212(2) (living off the avails of prostitution by a child);

(*o*) subsection 212(4) (obtaining sexual services of a child);

(*o.1*) section 220 (causing death by criminal negligence);

(*o.2*) section 221 (causing bodily harm by criminal negligence);

(*p*) section 236 (manslaughter);

(*q*) section 239 (attempt to commit murder);

(*r*) section 244 (discharging firearm with intent);

(*s*) section 246 (overcoming resistance to commission of offence);

(*s.1*) subsections 249(3) and (4) (dangerous operation causing bodily harm and dangerous operation causing death);

(*s.2*) subsections 255(2) and (3) (impaired driving causing bodily harm and impaired driving causing death);

(*s.3*) section 264 (criminal harassment);

(*t*) section 266 (assault);

(*u*) section 267 (assault with a weapon or causing bodily harm);

(*v*) section 268 (aggravated assault);

(*w*) section 269 (unlawfully causing bodily harm);

(*x*) section 270 (assaulting a peace officer);

(*y*) section 271 (sexual assault);

(*z*) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);

(*z.1*) section 273 (aggravated sexual assault);

(*z.2*) section 279 (kidnapping);

(*z.21*) section 279.1 (hostage taking);

(*z.3*) section 344 (robbery);

(*z.31*) subsection 430(2) (mischief that causes actual danger to life);

(*z.32*) section 431 (attack on premises, residence or transport of internationally protected person);

(*z.33*) section 431.1 (attack on premises, accommodation or transport of United Nations or associated personnel);

(*z.34*) subsection 431.2(2) (explosive or other lethal device);

(*z.4*) section 433 (arson – disregard for human life);

(*z.5*) section 434.1 (arson – own property);

(*z.6*) section 436 (arson by negligence); and

(*z.7*) paragraph 465(1)(*a*) (conspiracy to commit murder).

2. An offence under any of the following provisions of the *Criminal Code*, as they read immediately before July 1, 1990, that was prosecuted by way of indictment:

(*a*) section 433 (arson);

(*b*) section 434 (setting fire to other substance); and

(*c*) section 436 (setting fire by negligence).

3. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 4, 1983, that was prosecuted by way of indictment:

(*a*) section 144 (rape);

(*b*) section 145 (attempt to commit rape);

(*c*) section 149 (indecent assault on female);

(*d*) section 156 (indecent assault on male);

(*e*) section 245 (common assault); and

(*f*) section 246 (assault with intent).

4. An offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read immediately before January 1, 1988, that was prosecuted by way of indictment:

(*a*) section 146 (sexual intercourse with a female under 14);

(*b*) section 151 (seduction of a female between 16 and 18);

(*c*) section 153 (sexual intercourse with step-daughter);

(*d*) section 155 (buggery or bestiality);

(*e*) section 157 (gross indecency);

(*f*) section 166 (parent or guardian procuring defilement); and

(*g*) section 167 (householder permitting defilement).

5. The offence of breaking and entering a place and committing an indictable offence therein, as provided for by paragraph 348(1)(*b*) of the *Criminal Code*, where the indictable offence is an offence set out in sections 1 to 4 of this Schedule and its commission

(*a*) is specified in the warrant of committal;

(*b*) is specified in the Summons, Information or Indictment on which the conviction has been registered;

(*c*) is found in the reasons for judgment of the trial judge; or

(*d*) is found in a statement of facts admitted into evidence pursuant to section 655 of the *Criminal Code*.

6. An offence under any of the following provisions of the *Crimes Against Humanity and War Crimes Act*:

(*a*) section 4 (genocide, etc., committed in Canada);

(*b*) section 5 (breach of responsibility committed in Canada by military commanders or other superiors);

(*c*) section 6 (genocide, etc., committed outside Canada); and

(*d*) section 7 (breach of responsibility committed outside Canada by military commanders or other superiors).

SCHEDULE II

(Subsections 107(1) and 125(1) and sections 129, 130 and 132)

1. An offence under any of the following provisions of the *Narcotic Control Act*, as it read immediately before the day on which section 64 of the *Controlled Drugs and Substances Act* came into force, that was prosecuted by way of indictment:

(*a*) section 4 (trafficking);

(*b*) section 5 (importing and exporting);

(*c*) section 6 (cultivation);

(*d*) section 19.1 (possession of property obtained by certain offences); and

(*e*) section 19.2 (laundering proceeds of certain offences).

2. An offence under any of the following provisions of the *Food and Drugs Act*, as it read immediately before the day on which section 64 of the *Controlled Drugs and Substances Act* came into force, that was prosecuted by way of indictment:

(*a*) section 39 (trafficking in controlled drugs);

(*b*) section 44.2 (possession of property obtained by trafficking in controlled drugs);

(*c*) section 44.3 (laundering proceeds of trafficking in controlled drugs);

(*d*) section 48 (trafficking in restricted drugs);

(*e*) section 50.2 (possession of property obtained by trafficking in restricted drugs); and

(*f*) section 50.3 (laundering proceeds of trafficking in restricted drugs).

3. An offence under any of the following provisions of the *Controlled Drugs and Substances Act* that was prosecuted by way of indictment:

(*a*) section 5 (trafficking);

(*b*) section 6 (importing and exporting);

(*c*) section 7 (production).

(*d*) and (*e*) [Repealed, 2001, c. 32, s. 57]

4. The offence of conspiring, as provided by paragraph 465(1)(*c*) of the *Criminal Code*, to commit any of the offences referred to in items 1 to 3 of this schedule.