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## LEGISLATIVE SUMMARY



### **Bill C-53:**

### **An Act to amend the Criminal Code and the Corrections and Conditional Release Act and to make related and consequential amendments to other Acts**

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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.

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

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*Legislative Summary of Bill C-53*  
(Legislative Summary)

Publication No. 41-2-C53-E

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# LEGISLATIVE SUMMARY OF BILL C-53: AN ACT TO AMEND THE CRIMINAL CODE AND THE CORRECTIONS AND CONDITIONAL RELEASE ACT AND TO MAKE RELATED AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

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## 1 BACKGROUND

Bill C-53, An Act to amend the Criminal Code and the Corrections and Conditional Release Act and to make related and consequential amendments to other Acts (short title: Life Means Life Act) was introduced in the House of Commons on 11 March 2015 by the Minister of Justice, the Honourable Peter MacKay. The bill “follows through on the 2013 Speech from the Throne commitment to ensure that a life sentence means a sentence for life.”<sup>1</sup> The bill died on the *Order Paper* at first reading when Parliament was dissolved in August 2015 for the 42<sup>nd</sup> election.

The bill amends the *Criminal Code* to make a sentence of imprisonment for life without parole mandatory for the offences of high treason and first degree murder that is planned and deliberate in specific circumstances, such as the murder of a police officer or a correctional officer acting in the course of his or her duties.

It also allows a judge to impose a sentence of imprisonment for life without parole at sentencing for second degree murder if this was not the accused’s first murder conviction. The court’s decision is to be based on the accused’s age and character, the nature of the offence, the circumstances surrounding its commission and any jury recommendation.

The proposed new *Criminal Code* orders for mandatory and discretionary life imprisonment without parole are incorporated into the *National Defence Act’s Code of Service Discipline*, making imprisonment for life without parole also applicable to persons convicted by military courts.

Bill C-53 also amends the *Corrections and Conditional Release Act* to establish the process through which an offender who is sentenced to imprisonment for life without parole can apply to the Minister of Public Safety for executive release after serving at least 35 years of his or her sentence.

Finally, amendments to the *International Transfer of Offenders Act* make Canadian offenders sentenced abroad to life imprisonment without parole ineligible for parole in Canada in most cases where the circumstances in which the offence was committed were such that, if the offence had been committed in Canada, the offender would have been subject to mandatory life imprisonment without parole.

## 1.1 INTERNATIONAL CONTEXT

The government has said that, in introducing the bill, it aimed to “align Canada’s criminal justice approach with likeminded countries such as the United Kingdom, New Zealand, the United States, and Australia.”<sup>2</sup>

An overview of the measures in place in these countries or some of their states<sup>3</sup> shows that there are indeed laws that allow sentences of life imprisonment without parole. However, in most of these jurisdictions, these are not automatic mandatory minimum sentences.<sup>4</sup> In other words, judges are not completely bound to impose a sentence of imprisonment for life without parole; they have varying degrees of discretion to avoid imposing this sentence.

In some jurisdictions, life sentences are not minimums. In others, judges have the discretion to depart from the rules and reduce the parole ineligibility period in certain circumstances. For example, in New Zealand, judges may reduce the parole ineligibility period if the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust not to do so.<sup>5</sup> In England and Wales, while the court must consider life without parole in specific circumstances, it is not required to make such an order if it believes that applying such a sentence is not justified because of mitigating factors.<sup>6</sup>

Moreover, in England and Wales, sentences of life imprisonment without parole may not be imposed on individuals who were younger than 21 years old at the time of the offence.<sup>7</sup> While this sentence has already been imposed on minors in the United States, on 25 June 2012 in *Miller v. Alabama*,<sup>8</sup> the Supreme Court ruled that this was unconstitutional.<sup>9</sup> As in a 2005 ruling banning the death penalty for young offenders, the United States Supreme Court ruled that the offender’s youth should be considered a mitigating circumstance. At the time of the *Miller* ruling, legislation in 29 American states and federal legislation authorized sentences of life imprisonment without parole for young offenders convicted of murder.<sup>10</sup>

## 1.2 HISTORY OF EARLY RELEASE

Historically, there have been three means by which those sentenced to imprisonment in Canada can be released into the community before the expiry of their sentence: by an act of clemency; by remission of sentence; or by release on parole.<sup>11</sup>

### 1.2.1 CLEMENCY

Clemency, also known as the Royal Prerogative of Mercy, is a discretionary power based on the right of the monarch to grant mercy. It is exercised by the Governor General or the Governor in Council (i.e., the federal Cabinet), based upon a ministerial recommendation, usually that of the Minister of Public Safety Canada. Section 748 of the *Criminal Code* codifies the ability to grant clemency into two types of pardons, namely free pardons and conditional pardons.

A free pardon is based on innocence; it is recognition that a conviction was in error and erases the consequences and records of the conviction. A free pardon may be granted if there is new evidence to prove the innocence of the convicted person and all appeal mechanisms under the *Criminal Code* or other pertinent legislation have been exhausted.

A conditional pardon is the release of an inmate prior to eligibility for release under the *Corrections and Conditional Release Act* (CCRA).<sup>12</sup> In order for a conditional pardon to be granted, the inmate must be ineligible for any other form of release under the CCRA, and there should not be a risk of the offender reoffending. A conditional pardon may also be granted in advance of eligibility under the *Criminal Records Act*.<sup>13</sup> Such a pardon causes a criminal record to be kept separate and apart from other records in the same manner as a regular pardon (now called a record suspension).<sup>14</sup> In addition, the Governor General can grant a remission of all or part of a sentence, a respite or interruption in the execution of a sentence, and relief from a prohibition, such as one prohibiting the possession of firearms.<sup>15</sup>

The Parole Board of Canada (PBC) reviews clemency applications, conducts investigations at the direction of the Minister of Public Safety Canada and makes recommendations to the Minister regarding whether to grant the clemency request. For a clemency request to be granted, there must be clear and strong evidence of injustice or undue hardship (e.g., suffering of a mental, physical and/or financial nature that is out of proportion to the nature and the seriousness of the offence and more severe than for other individuals in similar situations).<sup>16</sup>

### 1.2.2 STATUTORY RELEASE

A second form of release from imprisonment before the expiry of a sentence is statutory release, which is defined in section 99 of the CCRA as “release from imprisonment subject to supervision before the expiration of an offender’s sentence, to which an offender is entitled under section 127.” The statutory release date is at the two-thirds mark of the sentence. Statutory release can be refused if there is considered to be a risk that the offender will commit a serious offence if released. The sentence continues to run while the offender is in the community and there is supervision of the offender. Statutory release can be revoked and the offender returned to incarceration should there be a breach of the release conditions. Those serving life or indeterminate sentences are not entitled to statutory release.

### 1.2.3 PAROLE

The third type of release into the community before the expiration of a sentence of imprisonment is parole, an early form of which was introduced into Canadian law by the *Ticket of Leave Act* in 1899.<sup>17</sup>

In 1992, the *Corrections and Conditional Release Act* (CCRA) became the statute setting out the rules for parole. One of the most significant aspects of the CCRA is an articulation of the purpose and principles of parole, one form of conditional release. As expressed in section 100 of the CCRA, the purpose of conditional release is “to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.”

There are two types of parole: day parole and full parole. Day parole allows an offender to participate in community-based activities, such as employment or volunteer work, during the day and then return to an institution every evening.

Full parole allows an offender to serve the rest of his or her sentence under supervision in the community. The offender is normally allowed to live independently but must report to a parole officer on a regular basis. If the conditions of release on parole are not followed, parole can be suspended and/or revoked and the offender may be returned to an institution. For most offenders, eligibility for full parole comes after serving one third of the sentence or seven years, whichever is less. Eligibility for day parole for most offenders comes six months prior to full parole eligibility.

Section 161 of the *Corrections and Conditional Release Regulations*<sup>18</sup> sets out conditions that apply to every release on parole or statutory release. Some of these conditions require an offender to remain within a certain geographical area and report regularly to his or her parole supervisor, while others require an offender to report immediately any change of address or any change in employment, educational training, or volunteer work.

In addition, under section 133 of the CCRA, the Parole Board may impose any conditions on parole that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender. This may include conditions to protect a victim, including an order that the offender abstain from having any contact, including communication by any means, with the victim or from going to any specified place. The Board may also require the offender on parole to reside in a community-based residential facility (such as a halfway house).

### 1.3 THE PAROLE SYSTEM APPLICABLE TO OFFENDERS SERVING LIFE OR INDETERMINATE SENTENCES

#### 1.3.1 THE RULES APPLICABLE TO MURDER AND HIGH TREASON CONVICTIONS

In Canada, adult offenders convicted of first degree murder or high treason receive an automatic sentence of life imprisonment without eligibility for full parole before 25 years. Those serving a life sentence for second degree murder are eligible for full parole after serving between 10 and 25 years, as determined by the judge at sentencing. That said, when these individuals have prior murder convictions, the sentence provided under sections 745(b) and 745(b.1) of the *Criminal Code* is life imprisonment without eligibility for parole for 25 years.

Further to amendments made to the *Criminal Code* in 2011, which allow judges to impose consecutive parole ineligibility periods for multiple murders committed after 23 March 2011,<sup>19</sup> a small number of offenders are currently serving a sentence of life imprisonment without eligibility for full parole for a period of between 25 and 75 years.<sup>20</sup>

Offenders serving a life or indeterminate sentence may apply for day parole<sup>21</sup> three years before they are eligible for full parole.

### 1.4 THE RULES APPLICABLE TO DANGEROUS OFFENDERS

Since 1997, the “dangerous offender” designation at sentencing automatically results in an indeterminate prison sentence.<sup>22</sup>



Offenders with such a designation are normally eligible for parole after serving seven years of their sentence. Their cases are then reviewed every two years by the PBC (section 761 of the *Criminal Code*) to determine whether they meet the criteria for conditional release. However, those designated as “dangerous offenders” who have also been convicted of murder are not eligible for parole until they have served between 10 and 25 years, depending on their sentence.<sup>23</sup> Therefore the ineligibility period pertaining to the murder applies. The ineligibility period could even be longer for individuals who received consecutive parole ineligibility periods.

As mentioned earlier, offenders serving life or indeterminate sentences are not eligible for statutory release.

### 1.5 THE POSSIBILITY OF NEVER BEING GRANTED PAROLE

As of 14 April 2013, 5,335 offenders were serving a life or indeterminate sentence in the federal correctional system.<sup>24</sup> This group made up 23% of the total Correctional Service of Canada (CSC) population.<sup>25</sup> Most of them (64.4%) were serving their sentence in custody. Of those serving their sentence under community supervision, the majority were serving a life sentence for second degree murder (81.9%).<sup>26</sup>

Offenders serving a life or indeterminate sentence might never be granted parole and would then spend their entire lives in prison. However, the current system does not provide such a guarantee at sentencing. Under the *Criminal Code* and the CCRA, these offenders periodically have their cases reviewed by the PBC to determine whether they meet conditional release criteria.

Offenders who continue to pose an unacceptable risk to society remain in custody for life, while those who meet parole criteria may be granted day parole or full parole. Parole for these offenders is never automatic. Parole necessarily depends on a PBC decision, which is based on the assessment of the risk that the offender poses to society.<sup>27</sup> When these offenders are granted parole, they continue to serve their sentences in the community. They must therefore comply with the conditions imposed by the PBC, and they are subject to correctional supervision for the rest of their lives. They may be reincarcerated if their parole conditions are not met or if the PBC receives information to the effect that they now pose an undue risk to the community.

### 1.6 A FEW STATISTICS ON PAROLE FOR OFFENDERS SERVING A LIFE SENTENCE

In Canada, offenders sentenced to life imprisonment without eligibility for full parole for 25 years spend an average of 28 years in custody before being granted conditional release.<sup>28</sup> Research shows that offenders serving a life sentence have low rates of reoffending. A CSC study shows that only 3.5% of these offenders committed a new offence during the five years following their release under community supervision.<sup>29</sup> The study shows that offenders serving a life sentence for homicide were more likely to succeed in the community, compared to those serving a life sentence for other types of offences. This is consistent with findings by the PBC, which stated in its *Performance Monitoring Report 2008–09* that over the previous 10 years, only 1% of offenders serving a life sentence for homicide had been reincarcerated for a new offence after being granted day parole.<sup>30</sup>

## 2 DESCRIPTION AND ANALYSIS

### 2.1 AMENDMENTS TO THE *CRIMINAL CODE*

Bill C-53 amends the *Criminal Code* provisions relating to the parole admissibility of offenders convicted of murder and high treason, making a sentence of imprisonment for life without parole mandatory in certain circumstances, and making such a sentence discretionary in others. Imprisonment for life without parole does not apply to young persons that have been convicted of murder or high treason committed when they were under the age of 18 years (new section 744.1(1), amended section 745 and existing section 745.1 of the *Criminal Code*).

Currently, persons sentenced to imprisonment for life without parole for a specified number of years may not be granted day parole or unescorted temporary absences prior to three years before the expiry of the ineligibility period. As described in the table below, under Bill C-53, persons sentenced to imprisonment for life without parole are not eligible for unescorted temporary absences, day parole or full parole.

Table 1 – Number of Years of Imprisonment Without Eligibility  
for Conditional Release for Adult Offenders  
Serving Life or Indeterminate Sentences

	Unescorted Temporary Absence <sup>a</sup> (CCRA, s. 115; <i>Criminal Code</i> , ss. 746.1 and 747)	Day Parole (CCRA, s. 119; <i>Criminal Code</i> , ss. 746.1, 744.1 and 745.31)	Full Parole (CCRA, s. 120; <i>Criminal Code</i> , ss. 746.1 and 747)	Executive Release (Part II.1 of the CCRA)
First degree murder and high treason	22 years	22 years	25 years ( <i>Criminal Code</i> , s. 745) <sup>b</sup>	N/A
Second degree murder	7–22 years	7–22 years	10–25 years ( <i>Criminal Code</i> , s. 745.4)	N/A
Second degree murder with prior murder conviction	22 years	22 years	25 years ( <i>Criminal Code</i> , s. 745)	N/A
Multiple murders	3 years earlier than full parole	3 years earlier than full parole	Option to order that parole ineligibility periods be served consecutively ( <i>Criminal Code</i> , s. 745.51)	N/A
Dangerous offenders	4 years	4 years	7 years ( <i>Criminal Code</i> , s. 761)	N/A
Bill C-53: Life without parole	N/A	N/A	N/A	35 years

- Notes:
- a. Maximum security offenders are not eligible for an unescorted temporary absence (CCRA, s. 115(3)).
  - b. Application can be made for a reduction of the required number of years of imprisonment for parole eligibility after 15 years served (*Criminal Code*, s. 745.6). No reduction in the required number of years of imprisonment for parole eligibility is available for offenders who committed murders after 2 December 2011.

Source: Table prepared by the authors based on the *Criminal Code*, the *Corrections and Conditional Release Act* and Bill C-53.

## 2.1.1 MANDATORY SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE (CLAUSES 6 AND 7)

Proposed new section 744.1(1) of the *Criminal Code* provides that an offender convicted of high treason or first degree murder that is planned and deliberate and committed under specified circumstances must be sentenced to imprisonment for life without parole. Specifically, imprisonment for life without parole applies upon a conviction for any of the following offences:

- high treason, which includes violent actions against the Queen, levying war (or preparing to do so) against Canada and assisting an enemy at war with Canada, or any armed forces against whom Canadian Forces are engaged in hostilities as specified in section 46(1) of the *Criminal Code*; or
- first degree murder that is planned and deliberate:
  - where the victim was:
    - a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of duty,
    - a warden, deputy warden, instructor, keeper, jailer, guard or other officer or a permanent employee of a prison, acting in the course of duty, or
    - a person working in a prison acting in the course of his or her work therein;
  - where the death was caused by the accused while committing or attempting to commit:
    - hijacking of an aircraft,
    - a hostage taking,
    - sexual assault,
    - sexual assault with a weapon, threats to a third party or causing bodily harm,
    - aggravated sexual assault, or
    - kidnapping or forcible confinement;
  - where the death was caused while the accused was engaged or attempting to engage in terrorist activity;<sup>31</sup> or
  - in which the accused's behaviour, associated with the offence, was of such a brutal nature as to compel the conclusion that he or she is unlikely to be inhibited by normal standards of behavioural restraint in the future.

In cases involving murder that is planned and deliberate, the prosecutor must give notice to the accused prior to a plea being entered that he or she intends to apply to have the accused sentenced to imprisonment for life without parole (new section 744.1(2) of the *Criminal Code*).

## 2.1.2 DISCRETIONARY SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE (CLAUSES 5, 7, 8, 9, 11 AND 12)

Where a sentence of life imprisonment without parole is not mandatory, new section 745.31(1) of the *Criminal Code* provides sentencing judges with the discretion to make such an order where an offender is convicted of:

- first degree murder (other than where the order is mandatory); or
- second degree murder where the offender has previously been convicted of murder or genocide, a crime against humanity or a war crime based on an intentional killing.

The judge's discretion is to be exercised by taking into consideration the age and character of the accused, the nature of the offence and the circumstances surrounding its commission, as well as any jury recommendation as to whether the accused should be sentenced to life imprisonment without parole (pursuant to new section 745.32 of the *Criminal Code*).

Before the court can consider making such an order, the prosecutor must bring an application for the order to be made, on notice to the accused prior to a plea being entered (new section 745.31(2) of the *Criminal Code*).<sup>32</sup>

## 2.1.3 COROLLARY AMENDMENTS FOLLOWING THE ADDITION OF THE MANDATORY AND DISCRETIONARY ORDERS OF IMPRISONMENT FOR LIFE WITHOUT PAROLE (CLAUSES 7 AND 12)

Clause 7 of the bill amends section 745 of the *Criminal Code*, which provides the parole ineligibility periods for life sentences. Some changes to the section reflect the addition of the new mandatory and discretionary orders of imprisonment for life without parole in new sections 744.1(1) and 745.31(1) of the *Criminal Code*, while others specify that the possibility of increasing the ineligibility period does not apply to offenders previously convicted of another murder, as, in that case, the ineligibility period is a minimum of 25 years (amended sections 745(c) and 745.4 of the *Criminal Code*).

## 2.1.4 FINDINGS IN THE APPLICATION OF THE MANDATORY AND DISCRETIONARY ORDERS OF IMPRISONMENT FOR LIFE WITHOUT PAROLE PROVISIONS (CLAUSE 8)

Proposed new section 745.001 of the *Criminal Code* requires that where an accused charged with murder is being tried by a court composed of a judge and jury and the prosecutor has given notice of an application to have the accused sentenced to imprisonment for life without parole, the judge presiding at the trial must instruct the jury that if its members find the accused guilty of the murder, they must also make specific findings upon rendering their verdict, namely, the jury must specify:

- whether the murder was planned and deliberate; and
- if the relevant evidence was presented at trial:

- whether the victim was:
  - a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of duty,
  - a warden, deputy warden, instructor, keeper, jailer, guard or other officer or a permanent employee of a prison, acting in the course of duty, or
  - a person working in a prison acting in the course of his or her work therein;
- whether the death was caused by the accused while committing or attempting to commit:
  - hijacking of an aircraft,
  - a hostage taking,
  - sexual assault,
  - sexual assault with a weapon, threats to a third party or causing bodily harm,
  - aggravated sexual assault, or
  - kidnapping or forcible confinement;
- whether the death was caused while the accused was engaged or attempting to engage in terrorist activity; and
- if the murder was planned and deliberate, whether the behaviour was of a brutal nature.

While it is the role of the jury to specify under section 745.001(e) that the accused's behaviour associated with the offence was of a brutal nature, under new section 744.1(3), the judge is required to determine whether that behaviour was of such a brutal nature as to compel the conclusion that the future behaviour of the accused is unlikely to be inhibited by normal standards of behavioural restraint.<sup>33</sup>

#### 2.1.5 NON-APPLICATION OF ORDERS FOR CONSECUTIVE PAROLE INELIGIBILITY PERIODS (CLAUSES 10 AND 13)

Bill C-53 provides that where an offender has been convicted of committing more than one murder, the *Criminal Code* provision allowing orders for consecutive parole ineligibility periods for offenders previously convicted of murder does not apply if the offender has previously been sentenced to imprisonment for life without parole (new sections 745.21(3) and 745.51(4) of the *Criminal Code*).

#### 2.1.6 APPEALS (CLAUSES 2, 3 AND 4)

An offender convicted of an indictable offence may appeal to a court of appeal on the basis of several enumerated grounds, including an appeal against:

- a period of parole ineligibility that is in excess of the mandatory 10 years for a second degree murder conviction (section 675(2) of the *Criminal Code*); and
- an order requiring that the period of parole ineligibility be consecutive to a period of parole ineligibility imposed for another murder (section 675(2.3) of the *Criminal Code*).

Bill C-53 adds additional grounds of appeal related to the new mandatory and discretionary orders for a sentence of imprisonment for life without parole.

An offender subject to such an order may appeal:

- a finding that a murder constitutes a murder subject to the new order for a sentence of mandatory life imprisonment without parole (new section 675(2.21) of the *Criminal Code*); and
- the imposition of an order that the accused serve a sentence of imprisonment for life without parole where the order has been made by a court on the basis of its discretionary power under new section 745.31(1) of the *Criminal Code* (new section 675(2.22) of the *Criminal Code*).

Similarly, section 676 of the *Criminal Code* concerns the matters that may be appealed by the Attorney General to a court of appeal. These include:

- in cases of second degree murder, appeals regarding the length of the parole ineligibility period of less than the maximum 25 years (section 676(4) of the *Criminal Code*); and
- where the sentence being imposed is for murder and the offender has already been convicted of one or more murders, appeals against the decision of the court not to make an order that the period of parole ineligibility be served consecutively with a period of parole ineligibility imposed for another murder (section 676(6) of the *Criminal Code*).

Bill C-53 adds that the Attorney General may appeal:

- a finding that the murder is not one that constitutes a murder subject to the new order for a sentence of mandatory life imprisonment without parole (new section 676(5.1) of the *Criminal Code*); and
- a decision of the court not to make an order that the accused serve a sentence of imprisonment for life without parole under new section 745.31 of the *Criminal Code* (amended section 676(6) of the *Criminal Code*).

## 2.1.7 TEMPORARY ABSENCES (CLAUSES 14 AND 16)

Temporary absences for specific purposes are generally the first form of release that an inmate in the federal system may be granted in order to assist integration into the community.<sup>34</sup> It is said that temporary absences are “the first opportunity for the Correctional Service of Canada and the [Parole Board of Canada] to gauge how well an offender adjusts when the restrictions of the penitentiary environment are removed.”<sup>35</sup> There are two types of temporary absences: escorted temporary absences and unescorted temporary absences. Both are forms of release into the community that generally last for a maximum of 15 days.

Currently, persons sentenced to imprisonment for life or another indeterminate sentence may not be granted unescorted temporary absences prior to three years before the expiry of the full parole ineligibility period. Escorted temporary absences can, however, be granted for medical reasons, or in order for the offender to attend judicial proceedings or a coroner’s inquest. In addition, with the approval of the PBC,

an escorted temporary absence could be granted for other reasons in the three years prior to the expiry of the full parole ineligibility period, including for contact with family members, personal development and/or counselling, and participation in community service work projects (sections 746.1(1) and 746.1(2) of the *Criminal Code* and section 17.1 of the CCRA).

With Bill C-53, new section 747 of the *Criminal Code* provides that offenders serving sentences of imprisonment for life without parole may never be granted unescorted temporary absences. Moreover, they may only be granted escorted temporary absences:

- for medical reasons, or in order to attend judicial proceedings or a coroner's inquest; or
- where the offender has served a minimum of 35 years in prison and the escorted absence is approved by the PBC, for administrative or compassionate reasons, community service, personal development for rehabilitative purposes or family contact, including parental responsibilities.

## 2.2 AMENDMENTS TO THE *NATIONAL DEFENCE ACT*

### 2.2.1 APPLICATION OF LIFE IMPRISONMENT WITHOUT PAROLE TO OFFENCES UNDER THE *NATIONAL DEFENCE ACT*'S *CODE OF SERVICE DISCIPLINE* (CLAUSES 18, 19 AND 20)

Part III of the *National Defence Act* sets out the *Code of Service Discipline*, which applies to members of the Canadian Armed Forces and to certain other persons. The *Code of Service Discipline* sets out offences unique to the armed forces (such as mutiny or desertion), as well as the procedure for the holding of courts martial. By the terms of section 130 of the Act, an act or omission that is punishable under the *Criminal Code* or any other Act of Parliament constitutes an offence under the *Code of Service Discipline*, and where a service tribunal convicts a person of such an offence, minimum punishments provided in the *Criminal Code* or any other Act of Parliament – such as imprisonment for life for murder and high treason – apply.

With Bill C-53, under new section 226.01(1) of the *National Defence Act*, mandatory imprisonment for life without parole also applies to an accused being sentenced under the *National Defence Act* who has been convicted of high treason or first degree murder committed under the circumstances specified in new section 744.1(1)(b) of the *Criminal Code*. Additionally, mandatory imprisonment for life without parole applies to an accused convicted of:

- an offence of misconduct in the presence of an enemy, an offence related to security or an offence in relation to prisoners of war, if the accused person acted traitorously; or
- first degree murder that is planned and deliberate where the death is caused by the accused while committing or attempting to commit a serious offence under the *National Defence Act* where the act or omission constituting the offence also constitutes terrorist activity.<sup>36</sup>

As with the *Criminal Code* procedure, in cases involving murder that is planned and deliberate, notice that the prosecutor intends to apply to have an accused sentenced to imprisonment for life without parole must be provided to the accused. Likewise, if the panel of a General Court Martial specifies under section 226.11(e) that the accused person's behaviour, associated with the offence, is of a brutal nature, the military judge shall determine whether that behaviour is of such a brutal nature as to compel the conclusion that the accused's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint.<sup>37</sup>

The new *Criminal Code* section 745.31 discretionary power of judges to order life imprisonment without parole is also incorporated into the *Code of Service Discipline*, giving military judges the discretion to order life imprisonment without parole where an offender is convicted of first degree murder (other than first degree murder to which the mandatory order for life imprisonment without parole applies) or second degree murder, where the offender has previously been convicted of murder or genocide, crimes against humanity or war crimes based on an intentional killing (amended sections 226.1(1) and 226.1(2) of the *National Defence Act*).

The amendments also incorporate the *Criminal Code* provisions (with any modifications that the circumstances require) that provide the factors that a judge is to consider in the exercise of the discretion to order life imprisonment without parole and that require:

- notice to the accused of the prosecutor's intention to seek an order of imprisonment for life without parole;
- the military judge to ask the panel if they wish to make a recommendation with respect to whether the accused should be sentenced to life imprisonment without parole;
- the limiting of temporary absences; and
- the non-application of orders for consecutive parole ineligibility periods where an offender has been convicted of committing more than one murder and has previously been sentenced to imprisonment for life without eligibility for parole (amended section 226.1(2) of the *National Defence Act*).

As with the new *Criminal Code* provisions, specified findings are to be made by the panel in the application of the mandatory and discretionary orders of imprisonment for life without parole (new section 226.11 of the *National Defence Act*). Moreover, imprisonment for life without parole does not apply to young persons convicted of the specified offences when they were under the age of 18 years (new section 226.01(1) and amended section 226.1 of the *National Defence Act*).

## 2.3 AMENDMENTS TO THE *CORRECTIONS AND CONDITIONAL RELEASE ACT*

Clauses 15 to 17 of Bill C-53 amend the CCRA. Part II of the CCRA is entitled "Conditional Release, Detention and Long-Term Supervision." This part sets out the constitution and jurisdiction of the PBC, as well as the rules applying to various forms of release from imprisonment, including unescorted temporary absences, day parole, full parole, statutory release and long-term supervision.



### 2.3.1 EXECUTIVE RELEASE (CLAUSE 17)

Clause 17 of Bill C-53 adds Part II.1 to the CCRA, entitled “Executive Release” (new sections 156.01 to 156.28). As set out in section 156.02, an offender sentenced to life without parole may apply to the Minister of Public Safety for executive release after having served a minimum of 35 years of his or her sentence.

Upon receipt of an application for executive release, the Minister of Public Safety may direct the PBC to assess the offender’s case under new section 156.03 of the CCRA. Section 156.03 states that the PBC is to assess whether the release of the offender would present an undue risk to society. The PBC is also to assess whether the release of the offender will help protect society by successfully reintegrating him or her into society as a law-abiding citizen.

These two guidelines for the assessment of a release request mirror the purpose of conditional release set out in section 100 of the CCRA, namely contributing to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens. Section 100.1 of the CCRA states that, in the determination of all cases, the protection of society is the paramount consideration for the PBC and the provincial parole boards.

New section 156.03 of the CCRA also sets out that the CSC shall provide all the information the PBC needs to make a proper assessment about the potential release of an inmate. Under new section 156.04, this information, along with any other that is relevant to the assessment of the request for executive release, is to be provided to the offender. Information may be withheld from the offender if the PBC concludes that its release might jeopardize safety or security or the conduct of any lawful investigation.

New section 156.05 stipulates that the offender must be given a reasonable opportunity to make written representations to the PBC as part of the assessment of his or her case. The assessment is then provided to the Minister under new section 156.06, with a copy being provided to the offender. New section 156.07 provides for the Minister to review the offender’s application for release, either upon receipt of the PBC’s report or, if the PBC was not asked for its assessment, upon receipt of the application. The CSC is directed to provide the Minister with any information relevant to the Minister’s review of the application.

The Minister’s assessment will be based upon a determination of whether the fundamental purpose and objectives of sentencing have been met by the portion of the sentence that the offender has served. The purposes of sentencing are set out in section 718 of the *Criminal Code* and include denouncing unlawful conduct, deterring the offender and other persons from committing offences, separating offenders from society, assisting in rehabilitating offenders, providing reparations for harm done to victims or to the community and promoting a sense of responsibility in offenders, and acknowledging the harm done to victims and to the community. In addition, Bill C-32, which is now *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*,<sup>38</sup> amended section 718 to, among other things, emphasize that the fundamental purpose of sentencing is to “protect society.”

The objectives of sentencing are set out in sections 718.01 and 718.02 of the *Criminal Code*. Section 718.01 states that, when a court imposes a sentence for an offence that involved the abuse of a person under the age of 18 years, it must give primary consideration to the objectives of denunciation and deterrence of such conduct. Section 718.02 states that, when a court imposes a sentence for an offence under section 270(1) (assaulting a peace officer), section 270.01 (assaulting a peace officer with a weapon or causing bodily harm), section 270.02 (aggravated assault of a peace officer), or section 423.1(1)(b) (intimidation of a justice system participant), the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

A number of criteria are to be considered in determining whether the fundamental purpose and objectives of sentencing have been met. These criteria include:

- the character of the offender;
- the offender's conduct while serving his or her sentence;
- whether the offender has accepted responsibility for the offence;
- the nature of the offence; and
- any statement made by a victim at the time of sentencing or made to the Minister with respect to the application.<sup>39</sup> This reference to a statement is prompted by the wording of new section 156.12 of the CCRA, which provides for the disclosure of information about an offender to a victim who requests it. The chairperson of the PBC or the commissioner of the CSC, as the case may be, may disclose certain information, such as the date of any executive release, if the interest of the victim in the disclosure clearly outweighs any potential invasion of the offender's privacy. Information may also be disclosed to someone who has complained formally about an offender's behaviour, even if there has been no criminal conviction related to it – the person need only show that harm was done to him or her as the result of an act of the offender.

Humanitarian or compassionate reasons can also constitute grounds, under section 156.07, for granting release. Such reasons can include the likelihood that the offender's physical or mental health will suffer serious damage if the offender continues to be held in confinement.

In addition to the offender's being provided with the information that the CSC and the PBC have furnished to the Minister, under section 156.09 he or she is also given the opportunity to make representations in writing to the Minister. The victim is also permitted to provide a statement describing the harm done to him or her, including continuing harm, as a result of the commission of the offence. A complainant, as described in section 156.12(3), may provide a similar statement. Both a victim and a complainant may express any safety concerns they have concerning a potential release.

Under section 156.11(1), it is the Governor in Council that makes the decision concerning executive release, although this is done on the recommendation of the Minister. If the offender's application is denied, he or she must wait five years before making another application. If an offender is released, the mandatory and discretionary conditions set out in section 156.14 apply to that release.

In addition to the mandatory conditions of release described in section 161 of the *Corrections and Conditional Release Regulations*, the PBC may impose any conditions on an executive release that it considers reasonable and necessary to protect society and to facilitate the offender's successful reintegration into society. One example given in the bill is the possibility that the offender be required to reside in a community-based residential facility.

Section 156.13 specifies that the PBC has exclusive jurisdiction and absolute discretion to impose, remove or vary the conditions of release as well as to terminate or revoke an offender's executive release. The PBC may also approve an escorted release for medical reasons, to allow the offender to attend judicial proceedings or a coroner's inquest, for administrative or compassionate reasons, for community service, for personal development for rehabilitative purposes or for family contact, including parental responsibilities. The broad powers of the PBC with respect to executive release mirror those found in section 107 of the CCRA. In fact, many of the provisions in Bill C-53 closely reflect those already found in the CCRA.

New section 156.24 requires that, when the release of an offender is imminent, the CSC notify the police in the relevant area (if it is known) and provide all the information it has that is relevant to the supervision of the offender. New section 156.25 makes it clear that while an offender who is released on executive release is entitled to be at large, he or she continues to serve his or her sentence and is entitled to remain at large in accordance with the conditions of the sentence and is not liable to be returned to custody by reason of the sentence unless the executive release is suspended, terminated or revoked.

New section 156.26 ensures that many of the provisions of the CCRA that apply to parole also apply to executive release. For example, offenders on executive release may be subjected to urinalysis if there is a suspected breach of a release condition (section 55 of the CCRA) and be required to wear a monitoring device (section 57.1 of the CCRA). New section 156.26 also incorporates the purposes and principles of conditional release into executive release.

### 2.3.2 SUSPENSION, TERMINATION OR REVOCATION OF EXECUTIVE RELEASE (CLAUSE 17)

Section 156.16 makes provision for the possible suspension, termination or revocation of an executive release. When an offender breaches a condition of his or her executive release or when a designated official is satisfied that the release must be suspended in order to prevent a breach of any condition of the release or to protect society, the release may be suspended and the offender may be apprehended and recommitted to custody until the suspension is cancelled or the release is terminated or revoked. Within 30 days, the offender's case is to be reviewed and either the suspension is to be cancelled or the case is to be referred to the PBC, stating the conditions, if any, under which the offender could resume his or her executive release.

If the case is referred to the PBC, the Board will review it and either cancel the suspension or terminate or revoke the executive release if it is satisfied that the offender, by reoffending, will present an undue risk to society. A termination is the

result if the undue risk is due to circumstances beyond the offender's control, while a revocation applies in any other case. If the PBC cancels a release suspension, it may reprimand the offender or vary the release conditions. If the offender has violated the conditions of release on more than one occasion, the PBC can order that the cancellation of the suspension not take place for up to 30 days. If the PBC is satisfied at any time that the continued executive release of the offender would constitute an undue risk to society by reason of the offender reoffending, it may terminate the release.

Under section 156.2, if an offender's executive release is terminated or revoked, he or she is recommitted to custody and continues to serve the sentence. If the release has been terminated, the offender must wait one year before applying again for release, while the wait is five years if the release has been revoked.

Under Bill C-53, new section 156.21 makes provision for a hearing by the PBC to review any suspension, termination or revocation of an offender's executive release. Observers (including victims) may attend such a hearing as long as they do not adversely affect it. The offender may have an assistant present at the hearing to advise him or her and to address the members of the PBC. Victims and complainants attending as observers may present a statement describing the harm done to them, including continuing harm, by the commission of the offence and commenting on the possible release of the offender. Statements need not be presented in person, but a transcript of the statement must be submitted to the hearing board in advance.

As with the original decision on whether to grant an executive release, under new section 156.22, information that is to be considered in a suspension, termination or revocation hearing is to be disclosed to the offender. In this instance, it should be provided at least 15 days in advance of the hearing. Information may be withheld from the offender if the PBC concludes that its release might jeopardize safety or security or the conduct of any lawful investigation.

## 2.4 COORDINATING AMENDMENTS (CLAUSES 24 TO 28)

Clauses 24 through 28 of Bill C-53 coordinate the entry into force of some of its provisions with those of three other bills: C-12, C-479 and C-32.

*An Act to amend the Corrections and Conditional Release Act* (Bill C-12), requires the PBC (or a provincial parole board, if applicable) to cancel parole granted to an offender if, before the offender's release, the offender tests positive in a urinalysis, or fails or refuses to provide a urine sample, and the PBC considers that the criteria for granting parole are no longer met. It also clarifies that any conditions set by a releasing authority on an offender's parole, statutory release or unescorted temporary absence may include conditions regarding the offender's use of drugs or alcohol, including in cases when that use has been identified as a risk factor in the offender's criminal behaviour. Bill C-12 received Royal Assent in June 2015. The coordinating amendment will add to the general conditions of an executive release in section 156.14(2) of the CCRA a statement that those conditions may include one regarding the offender's use of drugs or alcohol.

*An Act to amend the Corrections and Conditional Release Act (fairness for victims)* (Bill C-479), concerns the role of victims in parole hearings of offenders serving sentences of at least two years for offences involving violence. More specifically, it deals with the following:

- the attendance of victims and members of their families at parole review hearings;
- the consideration of victims' statements by the PBC when making a determination regarding the release of an offender;
- the provision of information under consideration by the Board to a victim; and
- the notification of victims if an offender is to be released on temporary absence, parole or statutory release.

Bill C-479 received Royal Assent in April 2015. The coordinating amendments will ensure that the changes to the role of victims in parole hearings set out in that bill also apply to proceedings concerning executive releases.

*An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts* (Bill C-32) enacts the Canadian Victims Bill of Rights, which, among other things, affords victims a right to information about the following:

- the criminal justice system;
- the status of the investigation;
- the criminal proceedings;
- reviews while the offender is subject to the corrections process; and
- the decisions made at those reviews and hearings.

It also gives victims these rights:

- to have their security and privacy considered by the appropriate authorities in the criminal justice system;
- to protection from intimidation and retaliation;
- to request testimonial aids;
- to convey their views about decisions to be made by authorities in the criminal justice system that affect them;
- to present a victim impact statement and to have it considered; and
- to have the courts consider making, in all cases, a restitution order against the offender.

The coordinating amendments will ensure that the rights that will be afforded to victims in the criminal justice and corrections systems will also apply to the proposed system of executive releases.

## 2.5 *INTERNATIONAL TRANSFER OF OFFENDERS ACT* (CLAUSES 22 AND 23)

The *International Transfer of Offenders Act* enables offenders to serve their sentences in the country of which they are citizens or nationals upon the consent of the offender, the foreign entity and Canada (through the consent of the Minister of Public Safety). After an offender is transferred, his or her sentence is administered in accordance with the laws of the receiving country. The stated purpose of the Act is to enhance public safety and to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

In the case of a conviction in a foreign country for what would be considered first degree murder in Canada, section 24(1) of the Act provides that the full parole ineligibility period is 15 years for offences committed before 2 December 2011 and 25 years for offences committed on or after that day.

With Bill C-53, new section 24(1.1) of the Act makes Canadian offenders sentenced abroad to life imprisonment without parole also ineligible for parole in Canada where, in the opinion of the Minister of Public Safety, the documents supplied by the foreign entity<sup>40</sup> show that the circumstances under which the offence was committed were such that, if the offence had been committed in Canada, it would have constituted an offence described in section 744.1(1)(a) of the *Criminal Code* or met the criteria of any of the circumstances described in sections 744.1(1)(b)(i) to 744.1(1)(b)(iii) of the *Criminal Code*, namely:

- high treason;
- first degree murder that is planned and deliberate:
  - where the victim was:
    - a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of duty,
    - a warden, deputy warden, instructor, keeper, jailer, guard or other officer or a permanent employee of a prison, acting in the course of duty, or
    - a person working in a prison acting in the course of his or her work therein;
  - where the death was caused by the accused while committing or attempting to commit:
    - hijacking of an aircraft,
    - a hostage taking,
    - sexual assault,
    - sexual assault with a weapon, threats to a third party or causing bodily harm,

- aggravated sexual assault, or
- kidnapping or forcible confinement;
- where the death was caused while the accused was engaged or attempting to engage in terrorist activity.

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## NOTES

1. Department of Justice Canada, "[The Government of Canada Introduces Legislation to Keep Canada's Most Heinous Criminals Behind Bars for Life](#)," News release, 11 March 2015.
2. Department of Justice Canada, "[Life Means Life Act](#)," Backgrounder, March 2015.
3. International comparisons pose significant challenges, particularly with respect to the early release of offenders, given the complexity and ever-changing nature of legislation. For example, in Canada and elsewhere, offenders serving a life sentence are commonly subject to various conditional release procedures based on the date of conviction.
4. That said, there are automatic mandatory sentences in several American states as well as in the Australian state of New South Wales. In that state, judges have no option but to impose a sentence of imprisonment for life without parole for an individual of at least 18 years of age convicted of the murder of a police officer ([Crimes Act 1900](#), s. 19B). It is also the appropriate sentence in the case of murder or of "a serious heroin or cocaine trafficking offence if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence" ([Crimes \(Sentencing Procedure\) Act 1999](#), s. 61). In such cases, judges nevertheless have discretion not found in cases of murder of a police officer. Lastly, in the United States, sentences of life imprisonment without parole are in place at the federal level and in all states except Alaska. For more information regarding the United States, see Ashley Nellis, "[Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States](#)," *Federal Sentencing Reporter*, Vol. 23, No. 1, October 2010.
5. Since June 2010, under sections 86E and 103 of the [Sentencing Act 2002](#), New Zealand courts convicting an offender of at least 18 years of age to a life sentence for murder may order that the offender serve the sentence without parole once satisfied that no term of imprisonment would be sufficient to satisfy the following purposes:
  - holding the offender accountable for the harm done to the victim and the community by the offending;
  - denouncing the conduct in which the offender was involved;
  - deterring the offender or other persons from committing the same or a similar offence; or
  - protecting the community from the offender.

Under section 86E, the court must order that the offender serve that sentence of imprisonment for life without parole in cases where the murder is a second or third violent offence, unless the circumstances of the offence and the offender would make that sentence manifestly unjust.

6. For more information about sentences of life imprisonment without parole in England and Wales, see United Kingdom, [Criminal Justice Act 2003](#), 2003, c. 44, s. 269, as well as Schedule 21, which requires the court to consider a sentence of imprisonment for life without parole (“whole life order”) in cases that include:

(a) the murder of two or more persons, where each murder involves any of the following –

- (i) a substantial degree of premeditation or planning,
- (ii) the abduction of the victim, or
- (iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

(c) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or

(d) a murder by an offender previously convicted of murder.

As a result of recent amendments to the legislation, the court is now required to consider a sentence of imprisonment for life without parole as the starting point in cases involving the murder of a police or prison officer in the course of his or her duty. This new provision applies to murders committed on or after 13 April 2015. The suggested parole ineligibility period for murders committed prior to 13 April 2015 to be considered by the court is 30 years (United Kingdom, Ministry of Justice, [Criminal Justice and Courts Act 2015](#), Circular No. 2015/01, 23 March 2015; and United Kingdom, Ministry of Justice, [Police and prison officer killers to face life in prison](#), 8 May 2014). See also Mark Pettigrew, “Whole of Life Tariffs in the Shadow of Europe: Penological Foundations and Political Popularity,” *The Howard Journal of Criminal Justice*, July 2015. Useful information can also be found in the practical guide for passing a mandatory life sentence under section 269 and schedule 21 of the *Criminal Justice Act 2003*, [Criminal Practice Directions](#), [2013] EWCA Crim 1631.

7. United Kingdom, *Criminal Justice Act 2003*, Schedule 21.
8. United States, *Miller v. Alabama* and *Jackson v. Hobbs*, 132 S. Ct. 2455 (2012).
9. For more information, see the table “[Legislative Responses to Miller v. Alabama](#),” in Joshua Rovner, *Slow to Act: State Responses to 2012 Supreme Court Mandate on Life Without Parole*, The Sentencing Project, June 2014, p. 2.
10. “[États-Unis : la perpétuité pour les mineurs jugée anticonstitutionnelle](#),” *Le Monde*, 25 June 2012.
11. These are forms of permanent release. Offenders may leave an institution on an escorted or unescorted temporary absence or on day parole, but in each case must return to the institution.
12. [Corrections and Conditional Release Act](#), S.C. 1992, c. 20.
13. [Criminal Records Act](#), R.S.C. 1985, c. C-47.
14. Parole Board of Canada [PBC], [Royal Prerogative of Mercy Ministerial Guidelines](#), 31 October 2014.
15. The power to exercise the Royal Prerogative of Mercy for federal offences is vested in the Governor General of Canada by virtue of the Letters Patent constituting that office. See PBC (2014).
16. PBC, “[Royal Prerogative of Mercy](#),” *Fact Sheet*.
17. *An Act to Provide for the Conditional Liberation of Convicts – the Ticket of Leave Act*, 11 August 1899.



18. *Corrections and Conditional Release Regulations*, SOR/92-620, [s. 161](#).
19. For more information, see Robin MacKay, [Legislative Summary of Bill C-48: An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act \(Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act\)](#), Publication no. 40-3-C48E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 28 February 2011.
20. See, for example, Colin Perkel, [“No parole for 30 years for man who shot 2 dead in crowded Toronto mall,”](#) *The Canadian Press*, 17 April 2015; [R. v. Baumgartner](#), 2013 ABQB 761 (40 years); and [R. v. Bourque](#), 2014 NBQB 237 (75 years).
21. Day parole is a form of conditional release whose purpose is to prepare offenders for full parole. Day parole is a more limited form of parole than full parole. Unless offenders on day parole obtain special permission from the Parole Board of Canada, they must return to a correctional institution or halfway house every night.
22. The “dangerous offender” designation applies at the sentencing stage upon application of the prosecutor in cases where an individual is convicted for committing a “serious personal injury offence” (as defined in [Criminal Code](#), R.S.C. 1985, c. C-46, s. 752). In order for the court to make a “dangerous offender” designation, it must be satisfied that the accused has demonstrated repetitive, persistent and/or brutal behaviour that is evidence that the offender is a threat to public safety or, when the offence was a sexual assault, that the offender has failed to control his sexual impulses and is likely to cause injury, pain or other evil to other persons.
23. House of Commons, Standing Committee on Justice and Human Rights [JUST], [Evidence](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, 9 March 2015 (Don Head, Commissioner, Correctional Service Canada).
24. This category includes dangerous offenders (most of the offenders in this category), habitual criminals, dangerous sexual offenders and those subject to a preventive detention order or a Lieutenant Governor’s warrant. The “habitual offender” and “dangerous sexual offender” designations were replaced by dangerous offender legislation in 1977. Public Safety Canada, [Corrections and Conditional Release Statistical Overview 2013](#), December 2013.
25. The CSC is responsible for administering sentences of two years or more. Provincial and territorial correctional services are responsible for administering sentences of less than two years, individuals on remand awaiting court appearances and young offenders.
26. Public Safety Canada (2013).
27. The PBC retains authority to approve unescorted temporary absences for offenders serving a life or indeterminate sentence. However, maximum security offenders are not eligible for an unescorted temporary absence (CCRA, s. 115(3)).
28. JUST (2015) (Head).
29. Recidivism is defined as reincarceration for committing a new offence, while failures fall under two categories: offenders reincarcerated for committing a new offence, and those reincarcerated for breaching a parole condition or engaging in behaviours that indicate a community adjustment problem. A release is considered a success each time an offender manages to remain out of custody after five years of supervision. Of those reincarcerated during the five-year period (28.5% of the group), 12.4% were reincarcerated for committing a new offence. (Marsha Axford and Matthew Young, *Community Outcomes for Offenders Serving a Life Sentence*, No. R-264, Correctional Service Canada, May 2012.)

30. National Parole Board, [\*Performance Monitoring Report 2008–2009\*](#), p. 28.
31. “‘Terrorist activity’ includes a list of specific acts that have been criminalized by international treaty, as well as criminal acts committed inside or outside of Canada intended to intimidate the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or international organization to do or refrain from doing any act.” (Alan D. Gold, *Criminal Offences and Defences*, in *Halsbury’s Laws of Canada*, ed. Sheila Nemet-Brown, LexisNexis Inc., Markham, Ont., 2012, para. HCR-287; see also *Criminal Code*, s. 83.01.)
32. Where an offender accused of second degree murder has previously been convicted of murder or genocide, crimes against humanity or war crimes based on an intentional killing, the notice to the accused that the prosecutor will seek a higher range of sentence by reason of the accused’s past conviction is not required (amended section 727(5) of the *Criminal Code*).
33. Identical language is found in section 753(1)(a)(iii) of the *Criminal Code*, which sets out one of the elements required for a court to declare that an accused is a dangerous offender. Existing case law has considered the phrase “brutal nature” in the context of dangerous offender proceedings: *R. v. Dow*, [1999] B.C.J. No. 659 (B.C.C.A.); *R. v. Langevin*, [1984] O.J. No. 3159 (Ont. C.A.); and *R. v. Melanson*, [2001] O.J. 869 (Ont. C.A.), additional reasons [2001] O.J. No. 1500 (Ont. C.A.). In arriving at a dangerous offender finding, the court is compelled by the *Criminal Code* to hear from psychiatrists on the issue of whether, based on all of the facts, a finding of future dangerousness can be justified and they, in turn, form their opinions using all medically relevant data, which may include the accused’s version of events that never reached the jury (see *R. v. Melanson*). Unlike dangerous offender proceedings, for life imprisonment without eligibility for parole sentencing proceeding purposes, the judge is not required to consider psychiatric evidence in determining whether an offender’s future behaviour is unlikely to be inhibited by normal standards of behavioural restraint.
34. A temporary absence may be granted for “a few hours with a correctional officer escort, a few days if the individual is unescorted, or several weeks if the purpose is to attend a treatment program in the community.” (Sara L. Johnson and Brian A. Grant, [“Using temporary absence in the gradual reintegration process,”](#) *Forum on Corrections Research*, Vol. 13, No. 1, Research Branch, Correctional Service of Canada, 2001.)
35. *Ibid.*, p. 36.
36. A “serious offence” is defined as an offence under the *National Defence Act* or an indictable offence under any other Act of Parliament for which the maximum punishment is imprisonment for five years or more, or an offence that is prescribed by regulation under section 467.1(4) of the *Criminal Code* (section 2 of the *National Defence Act*). The [Regulations Prescribing Certain Offences to be Serious Offences](#) (SOR/2010-161) prescribe the following *Criminal Code* offences:
  - keeping a common gaming or betting house (ss. 201(1) and 201(2)(b));
  - betting, pool-selling and book-making (s. 202);
  - committing offences in relation to lotteries and games of chance (s. 206);
  - cheating while playing a game or in holding the stakes for a game or in betting (s. 209); and
  - keeping a common bawdy-house (ss. 210(1) and 210(2)(c)).

They also prescribe the following *Controlled Drugs and Substances Act* [CDSA] offences:

- trafficking in any substance included in Schedule IV of the CDSA (s. 5(3)(c));
- trafficking in any substance included in Schedule II in an amount that does not exceed the amount set out for that substance in Schedule VII of the CDSA (s. 5(4));
- importing or exporting any substance included in Schedule IV or V of the CDSA (s. 6(3)(c)); and
- producing any substance included in Schedule IV of the CDSA (s. 7(2)(d)).

37. According to National Defence and Canadian Armed Forces, “[Chapter 4: Review of the Court Martial System](#),” in *Judge Advocate General Annual Report 2008–09*:

While courts martial are similar to civilian criminal trials, they maintain a distinct military character. Each court martial is composed of either a military judge alone, known as a Standing Court Martial (SCM), or a military judge with a panel of five Canadian Forces (CF) members, known as a General Court Martial (GCM). The panel in a GCM performs a function roughly analogous to that of a jury in the civilian justice system.

38. [An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts](#), S.C. 2015, c. 13.

39. The term “victim” in section 2 of the CCRA was amended by *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts* (Bill C-32). The new definition reads: “‘victim’, in respect of an offence, means an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission of the offence.” Bill C-32 also amended section 2 of the CCRA by expanding the list of persons who may act on a victim’s behalf:

For the purposes of this Act, any of the following individuals may act on the victim’s behalf if the victim is dead or incapable of acting on their own behalf:

- (a) the victim’s spouse, or if the victim is dead, their spouse at the time of death;
- (b) an individual who is or was at the time of the victim’s death, cohabiting with them in a conjugal relationship, having so cohabited for a period of at least one year;
- (c) a relative or dependant of the victim;
- (d) an individual who has in law or fact custody, or is responsible for the care or support, of the victim; and
- (e) an individual who has in law or fact custody, or is responsible for the care or support, of a dependent of the victim.

40. The term “foreign entity” is defined in section 2 of the *International Transfer of Offenders Act*. In essence, it includes a foreign state – or a province, state or other political subdivision of a foreign state, a colony, dependency, possession, protectorate, condominium, trust territory or any territory falling under the jurisdiction of a foreign state or a territory or other entity, including an international criminal tribunal – with which Canada has entered into a treaty on the transfer of offenders or an administrative arrangement.