Legislative Summary **LS-518E**

BILL C-46: AN ACT TO AMEND THE CORRECTIONS AND CONDITIONAL RELEASE ACT AND THE CRIMINAL CODE

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LEGISLATIVE HISTORY OF BILL C-46

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
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Second Reading:		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 which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-46: AN ACT TO AMEND THE CORRECTIONS AND CONDITIONAL RELEASE ACT AND THE CRIMINAL CODE*

INTRODUCTION AND HIGHLIGHTS

Bill C-46, An Act to amend the Corrections and Conditional Release Act and the Criminal Code, was introduced and received first reading in the House of Commons on 20 April 2005.(1) It proceeded no further and died on the *Order Paper* when the 38th Parliament was dissolved on 29 November 2005.

Many of the objectives of Bill C-46 are to improve public safety, for example by:

- expanding the category of offenders who are ineligible for accelerated parole review (e.g., to include those who have committed criminal organization offences) and increasing the period of ineligibility for accelerated day parole review for offenders sentenced to more than six years;

- requiring the National Parole Board, when conducting accelerated parole reviews, to consider the possibility that the offender will reoffend generally, and not just commit a violent offence;

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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) An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 1st Session, 38th Parliament, 2005 (Minister of Public Safety and Emergency Preparedness A. McLellan), available at: http://www.parl.gc.ca/PDF/38/1/parlbus/chambus/house/bills/government/C-46_1.PDF. Versions of this bill had been introduced previously but also died on the *Order Paper*: Bill C-19, An Act to amend the Corrections and Conditional Release Act and the Criminal Code, 3rd Session, 37th Parliament, 2004 (read a first time on 13 February 2004 and referred on 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 (read a first time on 4 June 2003 and proceeded no further).

- requiring the Correctional Service of Canada to review the case of every offender entitled to statutory release, for the purpose of possibly recommending special conditions to the National Parole Board or referring the case for continued detention;

- expanding the category of offences for which an offender may be subject to continued detention rather than statutory release, or may be subject to a residency condition on statutory release (e.g., to include sexual exploitation of a person with a disability, child pornography, luring a child, flight causing bodily harm or death, and torture); and

- permitting the search of vehicles at a penitentiary to prevent the entry of contraband or the commission of an offence.

Other aspects of Bill C-46 specifically address the interests of victims by:

- expanding the definition of victim to include those having care or custody of a dependant of the primary victim;

- 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;

- allowing victims to make statements at parole hearings; and

- allowing victims to have access to a recording of the most recent parole hearing in respect of an offender.

Bill C-46 also recognizes the rights and interests of offenders, for example by:

- broadening the purposes for granting inmates temporary absences so that they are also available for education, training programs and group activities;

- allowing, on compassionate grounds, the parole of a terminally ill inmate otherwise ineligible for parole, and allowing, for administrative and compassionate reasons in addition to medical reasons, the escorted temporary absence of an offender who has been denied statutory release;

- imposing mandatory hearings by the National Parole Board for all accelerated day parole reviews;

- requiring hearings where the National Parole Board intends to impose residency in a community-based facility as a condition of an offender’s statutory release; and

- providing for the automatic suspension, rather than revocation, of the parole or statutory release of offenders who receive an additional sentence while on release, with a requirement for the National Parole Board to review the case by way of a hearing within a prescribed period.

Finally, Bill C-46 aims to streamline certain provisions, increase procedural fairness or improve efficiency by:

- repealing the concept of work release (instead treating work programs as temporary absences);
- redefining who has jurisdiction to grant escorted temporary absences (the Correctional Service in all cases) and unescorted temporary absences (the National Parole Board for offenders serving life or indeterminate sentences and the Correctional Service for all other offenders);
- increasing the maximum number of full-time National Parole Board members from 45 to 60, allowing any number of part-time members of the Appeal Division, and requiring the Senior Board Member of the Appeal Division to be a lawyer or notary;
- providing that, with respect to information learned in the course of their duties, National Parole Board members may not be witnesses in any civil proceeding;
- ensuring that the annual and special reports of the Correctional Investigator include the full responses of the Correctional Service if provided in time, and establishing deadlines for the Correctional Investigator to disclose proposed adverse comments; and
- broadening the authority to make particular regulations under the *Corrections and Conditional Release Act*.

BACKGROUND

A. The *Corrections and Conditional Release Act* and Corrections System

The *Corrections and Conditional Release Act* (CCRA)[2] was enacted in 1992, replacing the *Penitentiary Act* and *Parole Act*.[3] One of its underlying objectives is to balance the protection of society, which is stated to be the paramount concern in the corrections process,

(2) *Corrections and Conditional Release Act*, S.C. 1992, c. 20; unofficial version available at: http://laws.justice.gc.ca/en/c-44.6/text.html.

(3) *Penitentiary Act*, R.S.C. 1985, c. P-5, repealed by S.C. 1992, c. 20, s. 214; and *Parole Act*, R.S.C. 1985, c. P-2, repealed by S.C. 1992, c. 20, s. 213.

and the rights and interests of offenders, who are entitled to the least restrictive measures consistent with the protection of others, and retain all of the rights and privileges in society except those necessarily restricted as a result of a sentence of imprisonment.(4)

The CCRA sets out the purpose and principles of the correctional system, the functions of the Correctional Service of Canada (CSC) and aspects governing its operations (Part I – Institutional and Community Corrections). It is also the legislative framework for the National Parole Board (NPB) and the conditional release system (Part II – Conditional Release, Detention and Long-term Supervision). Finally, the CCRA formally established the Office of the Correctional Investigator (Part III – Correctional Investigator). The CCRA is supplemented by the *Corrections and Conditional Release Regulations* (CCRR).(5)

The CSC is responsible for offenders serving prison terms in excess of two years and who are therefore in a federal penitentiary.(6) It is headed by the Commissioner of Corrections, who reports to the Minister of Public Safety and Emergency Preparedness.(7) The NPB, first created in 1959,(8) is an independent administrative tribunal that has exclusive authority to make parole decisions, based on hearings that it conducts and/or information provided by the CSC. The NPB also makes conditional release decisions for offenders in provinces and territories that do not have their own parole boards.(9)

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(4) CCRA, s. 4 (principles that guide the Correctional Service) and s. 101 (principles that guide parole boards). For a history of the development of the CCRA and corrections in Canada generally, see Correctional Service of Canada, Human Rights Division, *50 Years of Human Rights Development in Federal Corrections, Commemorating the 50th Anniversary of the United Nations Universal Declaration of Human Rights*, Ottawa, August 1998; available at: http://www.csc-scc.gc.ca/text/pblct/rights/50yrs/toc_e.shtml; and Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons*, Douglas & McIntyre, Vancouver, 2002.

(5) *Corrections and Conditional Release Regulations*, SOR/92-620; unofficial version available at: http://laws.justice.gc.ca/en/c-44.6/sor-92-620/text.html.

(6) Persons serving terms of imprisonment of more than two years normally do so in a federal penitentiary, and those serving two years or less do so in a provincial institution: *Criminal Code*, R.S.C. 1985, c. C-46, s. 743.1. There may, however, be exchange of service agreements: CCRA, s. 16.

(7) See the Web site of the Correctional Service of Canada at: http://www.csc-scc.gc.ca/text/home_e.shtml. See also Correctional Service of Canada, *Basic Facts about the Correctional Service of Canada*, Ottawa, 2005; available at: http://www.csc-scc.gc.ca/text/pblct/basicfacts/basicfacts_e.pdf.

(8) The NPB was first created under the *Parole Act*, S.C. 1958, c. 38.

(9) See the Web site of the National Parole Board at: http://www.npb-cnlc.gc.ca/about/about_e.htm. Only British Columbia, Ontario and Quebec have their own boards, with authority to grant releases to offenders serving less than two years in prison.

The Correctional Investigator, a position first created in 1973[10] but not formalized in statute until the adoption of the CCRA in 1992, acts as an ombudsperson for federal offenders. The Office of the Correctional Investigator has the primary function of investigating and bringing resolution to individual complaints, but also has a responsibility to review and make recommendations regarding the CSC's policies and procedures to ensure that systemic areas of concern are identified and appropriately addressed.[11]

B. Types of Absences and Release

Under the CCRA, an offender may be granted an escorted temporary absence any time after being admitted to the penitentiary, and may be granted an unescorted temporary absence, day parole, full parole and statutory release after the applicable eligibility date has been reached.[12] The criteria for granting a temporary absence are that: the absence must be for an authorized purpose; the inmate will not, by reoffending, present an undue risk to society; the inmate's behaviour while under sentence does not preclude authorizing the absence; and a structured plan for the absence has been prepared.[13]

Day parole is a discretionary decision allowing offenders to participate in community-based activities to prepare for full parole or statutory release. Full parole, also discretionary, allows an offender to serve the remainder of his or her sentence under supervision in the community. Parole may be granted if the offender will not, by reoffending, present an undue risk to society before the expiration of the sentence, and the release of the offender will contribute to the protection of society by facilitating his or her reintegration into society as a law-abiding citizen.[14]

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(10) The position of Correctional Investigator was first created under the *Inquiries Act*, R.S.C. 1970, c. I-13.

(11) See the Web site of the Office of the Correctional Investigator at: http://www.oci-bec.gc.ca/index_e.asp.

(12) See "Facts: Types of Release" on the Web site of the National Parole Board, Ottawa, last revised 2 March 2005; available at: http://www.npb-cnlc.gc.ca/infocntr/factsh/release.htm. For statistical information on Canadian prison populations and the number and types of release of offenders, see Larry Motiuk, Roger Boe and Colette Cousineau, *The Safe Return of Offenders to the Community*, Statistical Overview, Correctional Service of Canada, Correctional Operations and Programs, Research Branch, Ottawa, April 2004; available at: http://www.csc-scc.gc.ca/text/faits/safe-return2004/safe-return-2004_e.pdf.

(13) CCRA, s. 17 (escorted temporary absence) and s. 116 (unescorted temporary absence).

(14) *Ibid.*, s. 102.

Statutory release is a legal requirement by which most federal inmates (but not those serving life or indeterminate sentences) must be released with supervision after serving two-thirds of their sentence. The NPB may attach special conditions to a statutory release and the offender may be re-detained if a condition is breached. The NPB may also order the continued detention of an offender who is otherwise entitled to statutory release if he or she is likely to commit, before the end of the sentence, an offence causing death or serious harm to another person, a sexual offence involving a child, or a serious drug offence. Such orders must be reviewed annually.(15)

C. Eligibility for Parole and Accelerated Parole

An offender must usually serve the first third, or the first seven years, whichever is less, of any sentence of imprisonment before being eligible to apply for full parole. Different rules apply in the case of offenders serving life sentences for murder or indeterminate sentences,(16) and when the sentencing court imposes a different eligibility period, as in the case of violent, serious drug or criminal organization offences.(17) Offenders generally become eligible for day parole six months before their full parole eligibility date if their prison term is three years or more, and three years before their full parole eligibility date if they are serving a life sentence. For offenders serving terms of two to three years, and under two years, day parole eligibility arrives after six months and one-sixth of the sentence, respectively.(18)

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(15) *Ibid.*, ss. 127 to 132.

(16) Persons convicted of first degree murder are not eligible to be considered for full parole for 25 years, and persons convicted of second degree murder are eligible for consideration for parole after 10 to 25 years, as set by the sentencing judge: *Criminal Code*, s. 745. If the parole eligibility date is beyond 15 years, an offender may, after serving that amount of time, apply to have the eligibility date reduced: *ibid.*, s. 745.6. A person sentenced to indeterminate detention on 15 October 1977 or later is entitled to parole review after seven years and every two years after that, and a person who received an indeterminate sentence before that date is entitled to parole review every year: *ibid.*, s. 761.

(17) In these cases, the court may specify that the portion of the sentence that must be served before parole eligibility is one-half or 10 years, whichever is less: *ibid.*, s. 743.6.

(18) For more information, see “Parole Eligibility” on the Web site of the National Parole Board, Ottawa, last revised 2 March 2005; available at: http://www.npb-cnlc.gc.ca/infocntr/parolec/pparele.htm.

Accelerated parole review allows certain federal offenders, primarily those who are serving their first term in a penitentiary for a non-violent offence, to have their cases automatically reviewed and to be released on full parole after they have served one-third of their sentence. These offenders must be released on full parole unless the NPB determines that the offender is likely to commit an offence involving violence before the end of the sentence. Accelerated day parole is possible for eligible offenders after they have served six months or one-sixth of their sentence, whichever is longer.

D. Parliamentary Review of the CCRA

The CCRA required a parliamentary review of its operation and provisions,[19] and in May 2000, the House of Commons subcommittee responsible for the review released its report containing 53 recommendations.[20] The Government of Canada responded in November 2000.[21] The government had also conducted its own public consultation regarding the CCRA in 1998,[22] culminating in a separate report on possible changes.[23] The CCRA has been amended in only a few respects since its enactment in 1992.[24]

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(19) CCRA, s. 233.

(20) 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; available at: http://www.parl.gc.ca/InfocomDoc/36/2/just/studies/reports/just01/07-toc-e.html.

(21) 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).

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

(23) Solicitor General Canada, *Towards a Just, Peaceful and Safe Society, Report on Consultations, The Corrections and Conditional Release Act Five Years Later*, Ottawa, 1998.

(24) 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 Acts: e.g., *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24 and *Youth Criminal Justice Act*, S.C. 2002, c. 1.

DESCRIPTION AND ANALYSIS

A. Definitions and Principles (Clauses 1 to 3, 15 and 54)

Subclause 1(1) amends the definition of "victim" to include anyone responsible for the custody, care or support of a dependant of the primary victim, if the primary victim is dead, ill or incapacitated.(25) The rest of clause 1, and clauses 15 and 54, make non-substantive changes to other definitions in the CCRA.(26) Clause 2 adds a reference to "long-term supervision," which already exists(27) but is being expressly included as one of the contexts where offenders are expected to obey rules and conditions (one of the principles to guide the CSC). Clause 3 makes clerical changes.(28)

B. Escorted Temporary Absences and Repeal of Work Release (Clauses 4, 5, 7 and 11)

Clause 4 amends s. 17 of the CCRA, which sets out the circumstances where the CSC may permit an inmate to be absent from the penitentiary, provided that he or she is escorted by a staff member or other authorized person. These already include medical, administrative or compassionate reasons, parental responsibilities, community service, family contact, and personal development for rehabilitative purposes.(29) Clause 4 adds participation in a structured program of work in the community (currently treated as work release), an educational, occupational or life skills training program (new), or a group activity that fosters the offender's

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(25) "Victim" already means the person harmed by the offender, and if that person is dead, ill or incapacitated, it includes a married or cohabiting spouse, relative or dependant, or anyone legally or factually responsible for the custody, care or support of the person: CCRA, s. 1.

(26) Subclause 1(2) removes a reference to "work release" from the definition of "inmate," as the concept of work release is repealed. Subclause 1(3) adds or incorporates definitions from Part II of the CCRA for "provincial parole board," "unescorted temporary absence" and "working day" into Part I, as those terms are found in both Parts. As the definition for "working day" has been moved from Part II to Part I, it is cross-referenced in clause 15. Clause 54 incorporates into Part III of the CCRA a definition for "statutory release" taken from Part II.

(27) *Criminal Code*, ss. 753.1 and 753.2; CCRA, ss. 134.1 to 135.1. The long-term supervision order, created in 1997, allows a court to extend the length of time that the CSC may supervise and support a sex offender in the community beyond the completion of his or her regular sentence, up to a maximum of 10 years.

(28) There is a minor linguistic change and a section number of the *Criminal Code* is corrected.

(29) The grounds for each authorized purpose of an escorted temporary absence are further set out in s. 9 of the CCRR.

socialization (new). It also clarifies that the institutional head may alone authorize an absence of any length for medical reasons, and an absence of up to 5 days for other reasons. Non-medical absences of 6 to 15 days may be granted with the approval of the Commissioner of Corrections.

Clause 5 repeals s. 18 of the CCRA to remove the concept of work release. Under Bill C-46, work in the community is treated as an escorted temporary absence (see clause 4) or an unescorted temporary absence (see clause 20). Clauses 7 and 11 remove references to work release from other sections of the CCRA.(30)

C. Disclosure to Victims by the CSC (Clause 6)

Clause 6 amends a provision allowing disclosure of particular information to victims by the CSC.(31) Where the victim's interest clearly outweighs the offender's right to privacy, the victim may now also know the reasons for the offender's transfer to another penitentiary and the new location, the reasons for a transfer to a minimum security institution and the new location (and this, where possible, before the transfer), and the programs in which the offender has participated to address his or her needs and contribute to his or her successful integration into the community.(32)

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(30) Clause 7 removes a reference to work release from s. 55 of the CCRA, which allows a demand for a urinalysis following the breach of a condition of release. Clause 7 also clarifies that a urinalysis may be demanded both at once, where there are reasonable grounds to suspect a breach of a condition to abstain from drugs or alcohol, and at regular intervals to monitor general compliance. Clause 11 removes a reference to work release from s. 88 of the CCRA, which prohibits treatment of an inmate without his or her voluntary informed consent, but states that treatment is not involuntary merely because it is a requirement for temporary absence or parole.

(31) CCRA, s. 26. See also clause 47, amending s. 142 of the CCRA, a provision allowing the NPB (as opposed to the CSC) to disclose information to victims. Both ss. 26 and 142 already entitle a victim to know, on request, the offender's name, offence, convicting court, start and length of sentence, and eligibility and review dates for temporary absences and parole. Where the victim's interest clearly outweighs the offender's right to privacy, the victim may also know the offender's age, the location of the penitentiary, dates of temporary or permanent release, conditions attached to a release, the offender's destination, whether he or she will be in the vicinity of the victim, dates of review hearings, and whether the offender is in custody and if not, the reason. In the case of the NPB, a victim may also know whether a decision of the NPB has been appealed and the outcome.

(32) Subclauses 6(1) and (2) also remove references to work release, as that concept is repealed.

D. Vehicle Searches and Contact With Inmates (Clauses 8 and 9)

Clause 8 allows an institutional head to authorize, in writing, the search of vehicles at the penitentiary. The institutional head must have reasonable grounds to believe that there is a clear and substantial danger to security, life or safety due to the presence of contraband, or a planned or committed criminal offence at the penitentiary. A second requirement is that it must be necessary to search the vehicles to locate the contraband or evidence, or to avert the danger.

Clause 9 amends a provision allowing reasonable contact between inmates and persons outside the penitentiary, subject to reasonable limits based on the safety of persons and the security of the penitentiary.(33) It adds that limits to contact may also be for the purpose of preventing the planning or commission of a criminal offence.

E. Release of Certain Inmates and Date of Release (Clauses 10, 12 and 13)

Clause 10 amends a section of the CCRA providing for notice to an Aboriginal community so that it may propose a plan for an inmate's release and integration, where the inmate wishes to be released into the Aboriginal community and has consented to the notice.(34) Whereas only release on parole is currently contemplated, clause 10 also contemplates working with the Aboriginal community for the purpose of statutory release.

Subclause 12(1) amends the French version of a subsection of the CCRA so that it accords with the English.(35) Subclause 12(2) repeals a subsection dealing with the date of release of an inmate on full parole, because the subsection is no longer necessary.(36)

Clause 13 makes an amendment so that an institutional head may allow a person to remain temporarily in the penitentiary if he or she is entitled to parole, and not just if he or she has actually been released on parole (or statutory release).(37) As is already the case, further stays in the penitentiary are possible to assist the person's rehabilitation but may not go beyond the expiration of the sentence.

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(33) CCRA, s. 71.

(34) *Ibid.*, s. 84.

(35) *Ibid.*, subsection 93(2), which allows an inmate's release up to five days earlier than the date for statutory release or the expiration of the sentence. The current French version suggests that this may be greater than five days earlier.

(36) Amendments to the provisions on accelerated parole review will apparently give the NPB sufficient flexibility to determine the date of release.

(37) CCRA, s. 94.

F. Authority to Make Regulations (Clause 14)

Subclause 14(1) amends the French version of a provision so that it accords with the English.(38) The remainder of clause 14 expands some of the powers to make regulations under s. 96 of the CCRA. With respect to publications, video and audio materials, films and computer programs, subclause 14(2) provides for regulations regarding the removal of material (not just its entry and use), and allows the authority to limit or prohibit material to be given to an institutional head or designated staff member in prescribed circumstances.

Subclause 14(3) amends the regulation-making authority regarding penitentiary industry so that individuals may be appointed to advisory boards and reimbursed for travel and living expenses. The existing advisory board in this area of CSC operations is the CORCAN Advisory Board.(39) Subclause 14(4) authorizes regulations for the payment of transportation, funeral, cremation and burial expenses for a deceased inmate.

Subclause 14(5) amends the regulation-making authority regarding the monitoring and interception of communications between an inmate and another person, so that the authority may be given to an institutional head or designated staff member in prescribed circumstances. It also broadens the authority by allowing the prevention of communications and by removing the requirement that communications may be regulated where reasonable for protecting the security of the penitentiary or the safety of persons.(40) Finally, subclause 14(5) amends the regulation-making authority regarding escorted temporary absences by removing a reference to the repealed concept of work release and by contemplating regulations that set out the circumstances where an escorted temporary absence may be authorized by an institutional head.

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(38) CCRA, subparagraph 96(c)(i), which allows regulations governing compensation that may be paid to an offender for death or disability attributable to participation in an approved program.

(39) CORCAN is a key rehabilitation program of the CSC, providing employment training and employability skills to offenders so that they may become productive citizens when they return to the community. It operates shops in 36 sites across Canada in a variety of business lines, such as agribusiness, textiles, manufacturing, construction, maintenance and services: see “CORCAN” on the Web site of the Correctional Service of Canada at: http://www.csc-scc.gc.ca/text/prgrm/corcan/home_e.shtml.

(40) The broadened authority may be intended to prevent communications at the request of a party.

G. Membership and Jurisdiction of the NPB (Clauses 16 to 18)

Clause 16 makes an amendment to increase the possible number of full-time members of the NPB from 45 to 60 (the possible number of part-time members remains any number).(41) Clauses 16 and 17 change the title of "Executive Vice-Chairperson" of the Board to just "Vice-Chairperson."(42)

Clause 18 makes an amendment regarding the jurisdiction of the NPB. While the Board will continue to have the authority to grant or cancel unescorted temporary absences for offenders serving an indeterminate or life sentence, it will no longer have such authority for other offenders.(43) Unescorted temporary absences for such offenders will become the responsibility of the CSC.(44)

H. Unescorted Temporary Absences (Clauses 19 to 22)

Clause 19 makes a non-substantive change to a provision of the CCRA.(45) Subclause 20(1) expands and clarifies the reasons for which an inmate may be granted an unescorted temporary absence.(46) In particular, an inmate may now also be absent for a structured program of work in the community (currently treated as work release) or an educational, occupational or life skills training program (new).(47) Subclause 20(2) adds that supervision is a necessary part of the structured plan for an unescorted temporary absence.

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(41) CCRA, s. 103.

(42) *Ibid.*, ss. 104 and 105. The title change occurs because the regions will no longer have the position of Vice-Chairperson, but rather Senior Board Member (see clauses 50 and 51).

(43) The NPB currently has authority over the unescorted temporary absences of offenders convicted of specific offences set out in Schedules to the CCRA: *ibid.*, s. 107.

(44) The Commissioner of Corrections or institutional head has the authority to grant unescorted temporary absences for those offenders not requiring an authorization from the NPB: *ibid.*, subsection 116(2). With respect to escorted absences, the CSC has authority over all inmates under Bill C-46: see clauses 4 and 62.

(45) CCRA, paragraph 115(1)(c), which sets out the eligibility date for an unescorted temporary absence for certain offenders.

(46) *Ibid.*, subsection 116(1). The grounds for each authorized purpose of an unescorted temporary absence are further set out in s. 155 of the CCRR.

(47) These additions mirror those added for the purpose of an escorted temporary absence (see clause 4). Of note, however, is that a group activity that fosters the offender's socialization, added in clause 4, is not included in clause 20, meaning that an absence for a group social activity must always be escorted. Both clauses 4 and 20 also clarify that the purpose for family contact is to maintain and strengthen it. Further, carrying out parental responsibilities is now linked to family contact rather than compassionate reasons.

Subclause 20(3) indicates that an unescorted temporary absence for a work program or specified personal development program may be for up to 60 days, subject to one or more extensions of up to 60 days each, provided that the absence is for no more than 120 days per calendar year. Currently, there is no overall cap on the duration of a work release or personal development program. Subclause 20(3) also clarifies that whereas an initial absence must be authorized by the NPB, Commissioner of Corrections or institutional head, depending on the type of sentence, a renewal may be authorized by the NPB (for offenders serving life or indeterminate sentences), or the Commissioner or a person designated by the Commissioner (for offenders serving other sentences).

Subclause 20(3) indicates that the maximum duration of an unescorted absence is 48 hours per month for a medium security offender and 72 hours per month for a minimum security offender, unless the purpose is for medical reasons (which may be for an unlimited duration), a work or personal development program (discussed in the preceding paragraph), or community service or personal development short of a specified program (which may be for up to 15 days three times a year for a medium security offender and up to 15 days four times a year for a minimum security offender).[48]

Subclause 21(1) repeals a subsection allowing the NPB to delegate the authority to grant unescorted temporary absences for certain offenders to the CSC.[49] Under Bill C-46, the NPB will have jurisdiction to grant unescorted absences for offenders serving life or indeterminate sentences, and the Commissioner of Corrections or institutional head will have jurisdiction to grant unescorted absences for offenders serving determinate sentences (see clause 18). Subclauses 21(2) and (3) and clause 22 make consequential or technical amendments.[50]

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(48) The effect of this amendment is to include work programs in the group of absences that may be for more that 48 or 72 hours per month. The types of absences that may not be for more than 48 or 72 hours are those for administrative or compassionate reasons, an educational, occupational or life skills training program, and family contact or parental responsibilities. Maximum security offenders are not entitled to unescorted temporary absences: CCRA, subsection 115(3).

(49) *Ibid.*, subsection 117(1).

(50) Subclause 21(2) removes a reference to the repealed subsection 117(1) from subsection 117(3), which allows an absence to be suspended on the basis of information previously unknown. Subclause 21(3) adds, to subsection 117(4) of the English version only, a reference to subsection 117(3). Clause 22 removes a reference to the repealed subsection 117(1) from s. 118, which requires a warrant to be issued for the apprehension of an offender whose absence has been suspended or cancelled.

I. Eligibility for Parole and Accelerated Parole (Clauses 23 to 26 and 30)

Offenders are not automatically paroled at a certain time in their sentence. Rather, they may apply for parole review, or may become entitled to an (automatic) accelerated parole review. Under the CCRA, most offenders become eligible for full parole review after serving one-third of the sentence, or seven years, whichever is less.(51) They may apply for parole, or become eligible for accelerated parole review (no application required) after a shorter period. Assuming that an offender is eligible for accelerated parole review given the nature of the offence or sentence (see clause 26), the eligibility date for accelerated day parole is set under s. 119.1 of the CCRA. It is currently after the offender has served the longer of six months or one-sixth of his or her sentence.

Clause 23 amends the eligibility date under s. 119.1.(52) It provides for accelerated day parole review after six months, or one-half of the period before the offender is eligible for full parole (which will be the same as one-sixth of the sentence in most cases), or one year before the offender is eligible for full parole, whichever is longest. The effect of this amendment is to extend the date for accelerated day parole review for offenders serving more than six years, as they will become eligible one year before their full parole eligibility date, rather than at the halfway point of becoming eligible for full parole.(53)

Clause 23 also adds a new section to clarify that for the purpose of determining eligibility for parole review, a sentence is not one that is the result of two or more sentences being merged (see clause 44), unless the context requires otherwise. Rather, the rules for determining eligibility dates for offenders serving more than one sentence are set out in ss. 120.1

(51) CCRA, s. 120(1). There are longer periods of parole ineligibility in the case of life sentences for certain murders and intentional killings: *Criminal Code*, ss. 746.1 and 761; *National Defence Act*, R.S.C. 1985, c. N-5, subsection 140.3(2); and *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, subsection 15(2).

(52) Clause 23 also amends a section reference in s. 119.1, as Bill C-46 lists the offenders not eligible for accelerated day parole review in s. 121.1, rather than the current ss. 125 and 126.

(53) By way of an example, an offender sentenced to 18 years in prison becomes eligible for full parole after six years (one-third of the sentence). Under Bill C-46, he or she will become eligible for accelerated day parole review after serving five years (one year before six) rather than three years (one-sixth of the sentence).

to 120.3. Clause 24 replaces these sections of the CCRA, but the amendments are for clarification only and make no substantive changes.(54)

Subclause 25(1) allows the parole of a terminally ill inmate otherwise ineligible for parole, even though he or she is serving a minimum life sentence or an indeterminate sentence. Subclause 25(2) maintains the restriction by which these offenders are not entitled to exceptional early parole for other reasons.(55)

Clause 26 adds a new s. 121.1 to the CCRA, indicating which offenders are entitled to accelerated day parole review. It is analogous to the current s. 125, which will be repealed.(56) An offender who is transferred or committed to a penitentiary for the first time(57) is eligible for accelerated day parole review, unless he or she is serving a life sentence imposed otherwise than as a minimum punishment,(58) or a sentence for the following offences: murder, a

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(54) The rules regarding parole eligibility for offenders serving more than one sentence apply to the following: an offender not currently serving a sentence who is sentenced to two or more terms on the same day; an offender who receives a sentence to be served consecutively to an existing sentence; an offender who receives a sentence to be served consecutively to a portion of an existing merged sentence; an offender who receives a sentence to be served concurrently with an existing sentence; an offender who receives a determinate sentence to be served in conjunction with an existing life or indeterminate sentence; an offender who has obtained a reduction in the period of parole ineligibility for a life or indeterminate sentence, and who receives a determinate sentence to be served in conjunction with the existing sentence; and the maximum period of ineligibility for full parole (which is 15 years from the date of the latest imposed sentence, unless a court has set a longer period of parole ineligibility in the case of murder or intentional killing).

(55) Offenders not serving minimum life or indeterminate sentences may obtain early parole on the basis that their physical or mental health is likely to suffer serious damage with continued confinement, continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time the offender was sentenced, or the offender is the subject of an order of surrender under the *Extradition Act*, S.C. 1999, c. 18, and is to be detained until surrendered: CCRA, s. 121.

(56) Note, however, that unlike under the current subsection 125(c) of the CCRA, clause 26 does not preclude a person whose day parole has been revoked from having an accelerated parole review. This is presumably as a result of a relevant court decision: see the reference to *Illes* v. *Kent Institution* in footnote 78.

(57) However, accelerated parole review is not available to offenders who have been sentenced to less than two years in prison, and would therefore not normally be in a federal penitentiary, but who are in one through an exchange of service agreement with a province: CCRA, paragraph 16(1)(b). These offenders are subject to parole under the applicable provincial legislation. For greater certainty, clause 26, like the current s. 125 of the CCRA, indicates that accelerated day parole review is available to an offender who commits an additional offence (for which accelerated parole review is possible) prior to being sentenced or placed in a penitentiary, but not to one who commits any additional offence afterwards.

(58) Offenders serving a life sentence imposed otherwise than as a minimum punishment are not eligible for full parole for at least seven years: CCRA, subsection 120(2). They presumably are not entitled to accelerated day parole because if a life sentence was imposed, the circumstances of the offence were too serious. Section 121.1 does not expressly state that offenders serving life or indeterminate sentences are ineligible for accelerated day parole, presumably because such offenders will have committed one of the enumerated offences.

Schedule I offence prosecuted by indictment (or conspiracy to commit such an offence),[59] a Schedule II offence (serious drug offences) for which the court has delayed parole eligibility, a criminal organization offence (new),[60] certain terrorist offences,[61] accessory after the fact to murder,[62] an attempt to commit a Schedule I offence or being an accessory to such an offence after the fact,[63] and certain offences under the *National Defence Act*.[64]

As already occurs under the CCRA, clause 26 requires the CSC to automatically review the cases of offenders eligible for accelerated day parole review and provide the NPB with relevant information. Clause 26 also allows the CSC to delegate this responsibility to the provinces in respect of offenders who would normally be under its jurisdiction but are serving their sentences in a provincial correctional facility.

Clause 30 repeals sections 125 to 126.1 of the CCRA, which currently govern accelerated parole review, as Bill C-46 provides for accelerated parole review in the new or replaced sections discussed above.

J. Procedure and Factors in Conducting Parole Reviews (Clauses 27 to 29)

Clause 27 replaces provisions governing the timelines for day parole review, the possibility for adjournments, the factors to consider in granting day parole, and its duration.[65] The effect is to place matters governing both regular and accelerated day parole in the same section. As is currently the case, subclause 27(1) states that the NPB must, within the prescribed

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(59) Examples of Schedule I offences are manslaughter, attempted murder, assault, kidnapping, robbery, hijacking, and certain arson, firearm and sexual offences.

(60) *Criminal Code*, subsection 82(2) (possession of an explosive substance), s. 467.11 (participation in a criminal organization), s. 467.12 (commission of an offence for a criminal organization), s. 467.13 (instructing the commission of an offence for a criminal organization) or a serious offence committed for a criminal organization, as determined by a court under *Criminal Code*, s. 2.

(61) *Criminal Code*, s. 83.02 (providing or collecting property for certain activities), s. 83.03 (providing property or services for terrorist purposes), s. 83.04 (using or possessing property for terrorist purposes), s. 83.18 (participation in an activity of a terrorist group), s. 83.19 (facilitating a terrorist activity), s. 83.2 (commission of an offence for a terrorist group), s. 83.21 (instructing to carry out an activity for a terrorist group), s. 83.22 (instructing to carry out a terrorist activity) or s. 83.23 (harbouring or concealing a person carrying out a terrorist activity).

(62) *Criminal Code*, s. 240.

(63) *Ibid.*, s. 463, except with respect to CCRA, Schedule I, paragraph 1(q) (attempted murder).

(64) Murder, a Schedule I offence, or a Schedule II offence for which the court martial has delayed parole eligibility.

(65) CCRA, subsections 122(1), (2) (3) and (5).

time, review the case of eligible offenders who apply for regular day parole, as well as offenders who are eligible for accelerated day parole.(66) Adjournments may be granted for authorized reasons and for a reasonable period not to exceed a maximum length.(67)

In deciding whether to grant day parole, the NPB must consider whether the offender presents an undue risk to society by possibly reoffending, and whether release will facilitate his or her reintegration into society as a law-abiding citizen, thereby contributing to the protection of society. These are the criteria set out in s. 102 of the CCRA, which the NPB must now consider in all cases. Currently, in the case of accelerated parole reviews, the NPB is required to consider only whether the offender will commit a violent offence if released.(68)

Subclause 27(2) sets out the maximum duration of day parole, which is generally six months with possible six-month extensions after further reviews. In the case of an accelerated parole review, subclause 27(2) adds a subsection allowing the period of day parole to be longer so that it ends when the offender becomes eligible for full parole.

Clause 28 replaces subsections governing the timelines for full (as opposed to day) parole review, the possibility for adjournments, and the factors to consider in granting parole.(69) The objective is to make clarifications and place certain matters governing full parole in a single section. As is already the case, subclause 28(1) requires the NPB, within the prescribed time,(70) to conduct a full parole review for offenders serving two or more years who

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(66) An offender applying for (regular) day parole must do so not later than six months before the expiration of two-thirds of his or her sentence, and the NPB must generally review the case within six months: CCRR, s. 157. The NPB may also review the case of offenders serving a sentence of two years or more in a provincial correctional facility if the province does not have a day parole program for such offenders: CCRA, s. 122(2). The NPB is not required to review the case of an offender who applies for day parole if his or her sentence is less than six months (presumably because release is coming soon anyway): *ibid.*, s. 119(2). Where an offender is eligible, the NPB must conduct an accelerated day parole review not later than seven weeks before the offender's eligibility date for full parole: CCRR, s. 159.

(67) An adjournment is possible if the NPB requires more information or more time to render a decision, but may not be for more than two months: *ibid.*, subsection 157(4).

(68) CCRA, subsection 126(2).

(69) *Ibid.*, subsections 123(1), (2), (4) and (6).

(70) A review for full parole must be conducted within the six months preceding the eligibility date: CCRR, subsection 158(1). An offender serving less than two years and who is not under the jurisdiction of a provincial parole board may apply for full parole, in which case the NPB must generally review the case within six months of the application: CCRA, subsection 123(3) and CCRR, subsection 158(2). The NPB is not required to conduct a full parole review for offenders serving less than six months (presumably because release is coming soon anyway): CCRA, subsection 123(3.1).

are not subject to a provincial parole board, unless the offender waives it.[71] Subclause 28(2) requires the NPB to always consider whether the offender may reoffend generally, not just whether he or she will commit a violent offence. Following the review, the NPB may choose to grant full parole, day parole only, or adjourn the matter to obtain more information.

Subclause 28(3) amends the French version of a provision so that it accords with the English.[72] Subclause 28(4) adds a new subsection requiring further parole reviews every two years if parole has been cancelled or terminated.[73] As is the case for further reviews where parole has not been granted in the first place,[74] the two-year reviews must occur until the offender is released on full parole or statutory release, his or her sentence expires, or fewer than four months remain before the statutory release date. As is also the case where parole is denied, another application for parole may not be made for six months following a cancellation or termination of parole (unless the regulations or the NPB indicates otherwise).

Subclause 29(1) makes non-substantive changes to a provision.[75] Subclause 29(2) amends the English version of a provision so that it accords with the French.[76]

K. Statutory Release Date and Mandatory Review by the CSC (Clauses 31 to 34)

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”).[77] Clause 31 clarifies when an offender whose parole or statutory release has been revoked becomes eligible for statutory release. It is the day

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(71) Only automatic full parole reviews may be waived by the offender. There is no provision in the current CCRA or Bill C-46 indicating that automatic (accelerated) day parole reviews may be waived.

(72) CCRA, subsection 123(5), which requires a review every two years if the NPB does not grant parole or does not hold an initial review.

(73) Parole is “cancelled” where the offender has not yet been released and “terminated” if he or she has been released.

(74) CCRA, subsection 125(3).

(75) *Ibid.*, subsection 124(1), requiring parole reviews in respect of offenders unlawfully at large as soon as possible after they are returned to custody (rather than according to the usual deadlines). A reference to s. 126 is removed because it is repealed, and it is clarified that the usual timelines are prescribed by regulation rather than set out in the Act.

(76) *Ibid.*, subsection 124(3), which allows parole to be terminated or cancelled on the basis of information previously unknown.

(77) *Ibid.*, s. 127.

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.(78) 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 new subsection requiring the CSC to review every offender's case before the statutory release date, in order to consider a referral to the NPB for continued detention or a recommendation that conditions be attached to the release. A referral for detention review may be made directly to the NPB within the prescribed time period (six months in advance of the statutory release date), or through the Commissioner if outside the prescribed time period. A recommendation as to conditions may presumably be made at any time before statutory release, but would also normally be six months in advance. Under the current CCRA, the CSC is required to review only the case of offenders who have committed serious offences (listed in Schedule I or II) for the purpose of detention review, and there is no requirement to review any case for possible special conditions. Clause 33 makes technical amendments.(79)

Subclause 34(1) requires the CSC to 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 (what is new) an offence causing death or serious harm to another person before expiry of the full sentence; or the offender committed a Schedule II drug offence and is likely to commit a similar offence before expiry of the full sentence.

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(78) This new subsection 127(5.1) of the CCRA, addressing suspension rather than revocation of release, is necessary because the automatic revocation of parole or statutory release when an offender receives an additional sentence has been found to be unconstitutional because there is no prior hearing: *Illes* v. *Kent Institution* (2001), 160 C.C.C. (3d) 307, 2001 BCSC 1465 (B.C. Sup. Ct.). Clause 38 accordingly provides for the automatic suspension rather than revocation of parole or statutory release when an offender receives an additional sentence, followed by a hearing of the NPB.

(79) Clause 33 corrects a section reference in a provision regarding the date that a sentence is deemed to be complete for the purpose of other Acts, and adds that any provision in the *Criminal Code* is superseded by a rule that offenders subject to a deportation order are ineligible for day parole or unescorted temporary absences until their eligibility date for full parole.

Subclauses 34(2) and (3) make linguistic or technical changes to a provision requiring the Commissioner of Corrections to also refer a case to the NPB, regardless of the original offence, if it is reasonably believed that an offender will commit an offence causing death or serious harm to another person, a sexual offence involving a child or a serious drug offence before expiry of the full sentence.(80) As is currently the case, the referral must normally be six months before the statutory release date, but may be later on the basis of new information, the offender's recent behaviour or a recalculation of sentence. Subclauses 34(4) and (5) add child pornography and luring a child to the list of offences that constitute a sexual offence involving a child.(81)

L. Detention Review and Conditions on Statutory Release (Clauses 35 to 37)

Clause 35 makes linguistic or technical changes to a provision requiring the NPB to inform the offender and conduct all necessary inquiries when it has received a referral for detention review.(82) Bill C-46 makes no changes to the existing procedure, which requires the offender to remain in custody until the NPB has conducted its review, permits the NPB to deny statutory release and instead order the offender not to be released from imprisonment until expiry of the full sentence, and requires ongoing annual reviews.(83) Although it expands the offences that may give rise to detention review, Bill C-46 makes no changes to the factors that the CSC and NPB must consider when reviewing a case for possible recidivism.(84)

Offenders who have been ordered to remain in custody until they have completed their full sentence may be granted only an escorted temporary absence. Subclause 35(2) adds the possibility of such an absence for administrative or compassionate reasons, in addition to medical reasons.

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(80) In subsections 129(3) and (4) of the CCRA, language is simplified and subsection references are amended.

(81) CCRA, subsection 129(9).

(82) In subsection 130(1) of the CCRA, subsection references are amended and the French and English versions are brought into conformity.

(83) CCRA, ss. 130 and 131.

(84) These include a pattern of a persistent violent behaviour, sexual behaviour involving children or involvement in drug-related crime, given the number and seriousness of past offences; medical, psychiatric or psychological evidence; reliable information that the offender is planning to reoffend; and the availability of supervision programs that would offer adequate protection to the public: CCRA, s. 132.

Clause 36 requires the CSC to provide details and relevant information to the NPB if it is recommending that special conditions be attached to an offender's statutory release. Unless relieved of them, offenders are already subject to mandatory conditions, such as to remain in Canada, report to their parole supervisor or police, advise of any changes in their place of work or home address, and carry their release certificate with them at all times.(85) The NPB may impose special conditions 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.(86) While the CCRA currently allows a residency condition only on the basis that an offender may commit a Schedule I offence, clause 37 also allows a residency condition on the basis that the offender may commit a criminal organization offence.(87)

M. Suspension, Termination or Revocation of Parole or Statutory Release (Clauses 38 to 42)

Clause 38 amends s. 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 38(1) provides for an automatic suspension where the offender receives an additional sentence, other than a conditional or intermittent sentence, which suspension takes effect the day the new sentence is imposed. The NPB, Commissioner of Corrections 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 he or she has been recommitted to another facility.

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(85) CCRA, subsection 133(2) and CCRR, subsection 161(1).

(86) CCRA, subsections 133(4) and (4.1).

(87) 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).

The automatic suspension of parole or statutory release after an additional sentence replaces automatic revocation under the current CCRA,[88] as revocation without a hearing has been found to be unconstitutional.[89] Subclauses 38(2) and 38(3) accordingly require that a suspension due to an additional sentence be referred to the NPB within the prescribed period.[90] Where a suspension of parole or statutory release is due to the breach of a condition only, the suspension may be cancelled after a review by the CSC, and needs to be referred to the NPB only if it is not cancelled.[91]

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).[92] 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.[93]

Subclause 38(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 if it 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.

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(88) CCRA, subsection 135(9.1).

(89) *Illes* v. *Kent Institution* (see footnote 78) found a violation of s. 7 (right to liberty) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

(90) 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).

(91) CCRA, subsection 135(3).

(92) *Ibid.*, subsections 135(5) and (6).

(93) *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). Despite usual deadlines, their day or full parole review may not occur for one year: *ibid.*, subsection 138(5).

Subclause 38(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. Firstly, 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. Secondly, the NPB may, before parole resumes and on the basis of new information, cancel or terminate parole. Thirdly, 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 prescribed period.(94)

Subclause 38(6) has the effect of striking existing subsections that are no longer required(95) and renumbering remaining subsections.(96) The remaining subsections allow provinces with provincial parole boards to opt into the automatic suspension scheme that replaces the automatic revocation scheme.(97) The offenders in provincial facilities to which the automatic suspension scheme always applies, and the rules where provinces do not opt in, remain the same as under the current CCRA.(98)

Clause 39 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. A redundant subparagraph is also removed.(99) Clause 40 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

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(94) The period will presumably be set by new regulation.

(95) 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 (9.3) is now addressed in subsections (6.2) to (6.4) (see clause 38(5)).

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

(97) A subsection reference is accordingly changed to (1.1), the new subsection on automatic suspension.

(98) 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 placed in the future 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).

(99) *Ibid.*, subparagraph 135.1(6)(b), which allows the NPB to attach different conditions to long-term supervision where it has decided that it may be resumed.

release has been terminated, revoked or rendered inoperative.[100] Clause 41 makes a consequential amendment.[101] Clause 42 amends a subsection reference so that it is clear that where parole or statutory release is revoked, the offender's eligibility date for statutory release is at two-thirds of the remaining sentence, rather than calculated from the start of the sentence.

N. Merged Sentences (Clauses 43 and 44)

Clause 43 changes the heading "Multiple Sentences" to "Merged Sentences." Clause 44 clarifies the rule in s. 139 of the CCRA, which is that for the purpose of the CCRA and other Acts,[102] an offender subject to two or more sentences is deemed to have one sentence starting on the first day of the first sentence to be served and ending on the last day of the last sentence to be served.

O. NPB Hearings, Statements by Victims and Disclosure to Victims (Clauses 45 to 47)

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.[103]

Subclause 45(1) adds further mandatory hearings in the case of accelerated day parole reviews,[104] and for ongoing two-year reviews in the case of an offender whose parole has been cancelled or terminated. Subclause 45(2) requires a hearing where the NPB intends to

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(100) A warrant may be issued where parole is revoked, terminated or rendered inoperative under the new subsection 135(9.1) of the CCRA (where provinces do not opt into the automatic suspension scheme), and where statutory release is terminated or revoked under the new subsection 127(5.1) (change in statutory release date due to an additional sentence).

(101) A reference to s. 18 (work release) is removed from s. 137 of the CCRA, as s. 18 is repealed.

(102) 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.)

(103) CCRA, subsection 140(1). The NPB has the discretion to hold a hearing if one is not mandatory: *ibid.*, subsection 140(2).

(104) Accelerated day parole reviews are currently conducted without a hearing: *ibid.*, subsection 126(1), repealed by Bill C-46. Subclause 45(1) also removes a reference to a review under subsection 126(4) of the CCRA, which currently requires a decision to refuse accelerated day parole to be referred to a panel of the NPB for a hearing (as under Bill C-46, the original decision must already be by way of a hearing).

impose residency as a condition of statutory release, unless the review occurs within 45 days before release. Subclause 45(3) provides that where there is no hearing and a residency condition is imposed, within 30 days the offender may request a hearing, at which the decision must be cancelled or confirmed.

Subclause 45(4) adds subsections to the CCRA allowing victims to present statements at hearings of the NPB.(105) 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 alternate 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.(106)

Subclause 46(1) makes changes to the English version of a provision so that it accords with the French.(107) Subclause 46(2) makes an amendment to allow a designated person to postpone a review for a reasonable period if information is received too late to permit the offender or the NPB to prepare. Currently, only the NPB itself may order a postponement.(108) As is already the case, the postponement must be granted at the request of the offender, unless he or she has waived the right to receive the information altogether.

Clause 47 amends a provision allowing disclosure of particular information to victims by the NPB.(109) Subclause 47(1) adds, to the list of items a victim may obtain on request, access to a recording of the most recent NPB hearing in respect of an offender.(110) Subclause 47(2) removes a reference to disclosure of the dates of escorted temporary absences by the NPB, as these will always be granted by the CSC (see clause 62). Subclause 47(3) adds

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(105) CCRA, new subsections 140(10), (11) and (12).

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

(107) CCRA, subsection 141(2), which requires the NPB to provide the offender with the information it intends to consider in the review of a case.

(108) *Ibid.*, subsection 141(3).

(109) *Ibid.*, s. 142. See also clause 6, amending s. 26 of the CCRA, the provision allowing the CSC (as opposed to the NPB) to disclose information to victims. See footnote 31 in relation to clause 6 for information that a victim is already entitled to know under both ss. 26 and 142.

(110) It is believed that the recording is intended to be audio only, although there is no definition.

that where the victim's interest clearly outweighs the offender's right to privacy, and the matter is before the NPB, the NPB may inform a victim of the programs in which the offender has participated to address his or her needs and contribute to his or her successful integration into the community.

P. Divisions of the NPB and Members as Witnesses (Clauses 48 to 53)

Clause 48 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. Clauses 48, 49 and 51 also change the title of "Vice-Chairperson, Appeal Division" to "Senior Board Member, Appeal Division." Further, clause 48 establishes qualifications for this post, being membership in good standing of the bar of a province or the Chambre des notaries du Québec for at least five years.

Clauses 50 and 51 change the title of "Vice-Chairperson" of a regional division to "Senior Board Member" of a division.(111) Clauses 51 and 52 also change the title of "Executive Vice-Chairperson" of the Executive Committee of the NPB to simply "Vice-Chairperson."

Clause 53 adds a new section 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.

Q. Reports of the Correctional Investigator (Clauses 55 and 56)

Clause 55 extends the period during which the Correctional Investigator must submit an annual report under s. 192 of the CCRA. It must be within five months after the end of each fiscal year, rather than three months.

Clause 56 amends the provisions that apply when an aspect of a report of the Correctional Investigator may reflect adversely on any person or organization. Deadlines are added so that an adverse comment, piece of information and (now also) recommendation must be provided to the person or organization within two months after the end of the fiscal year. A

(111) The regional divisions are Atlantic, Quebec, Ontario, Prairies and Pacific.

response, for it to be included in the final report, must be received within four months after the end of the fiscal year. Rather than merely including a fair and accurate summary of the response in the final report, the Correctional Investigator must attach the actual representation, if any, of the CSC. For other organizations or persons, the Correctional Investigator has the option of attaching the actual representation or incorporating a summary.

Clause 56 makes similar changes regarding adverse comments in a special report of the Correctional Investigator under s. 193 of the CCRA, dealing with urgent or important matters that cannot wait until the next annual report. However, there is no specific deadline for disclosing the adverse comment, and a response must be attached or summarized if received "within a reasonable period."

R. Technical Amendments and Amendments to Schedules (Clauses 57 to 61)

Clause 57 repeals a transitional provision, enacted in 1992, governing the application of ss. 125 and 126 (accelerated parole review) to certain offenders.(112) Bill C-46 repeals ss. 125 and 126.

Clause 58 amends the references in the title of Schedule I to the CCRA so that they reflect the relevant subsections under Bill C-46.(113) Schedule I and II offences are those for which certain offenders are not eligible for accelerated day parole review, may be subject to continued detention rather than statutory release, or may be subject to a residency condition on statutory release.

Clause 59 adds new offences to Schedule I, or amends existing references. The offences of high treason, sexual exploitation of a person with a disability, child pornography, luring a child, causing bodily harm with intent (air gun or pistol), flight causing bodily harm or death, and torture are added. References to piratical acts, pointing a firearm, kidnapping and forcible confinement,(114) and robbery are modified. Clause 60 adds a reference to the offence of pointing a firearm, if prosecuted by indictment under a former provision of the *Criminal Code*.

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(112) CCRA, subsection 225(2).

(113) *Ibid.*, subsections 121.1(1), 129(1), 130(3) and (4), and 133(4.1). Clause 58 also adds a reference to subsection 156(3), which allows the Schedule to be amended by regulation.

(114) The addition of "forcible confinement" is relevant to the English version only, as the French version already includes the term "séquestration."

Clause 61 amends references in the title of Schedule II to the CCRA so that they reflect the relevant subsections under Bill C-46.(115)

S. Amendments to the *Criminal Code* (Clause 62)

Clause 62 repeals certain paragraphs of the *Criminal Code*(116) to remove the requirement for NPB approval of escorted temporary absences in the case of particular individuals serving life sentences whose parole eligibility date is three years or more away. The CSC will accordingly have sole authority to grant escorted temporary absences in respect of all offenders.

T. Transitional Provisions and Coming Into Force (Clauses 63 to 72)

Clause 63 states that a work release under the current CCRA is to be treated as a structured program of work in the community under the CCRA as amended by Bill C-46. Clause 64 provides that unescorted temporary absences previously granted (i.e., by either the CSC or NPB) continue as though they were authorized by the appropriate authority under the amended CCRA.(117) Clause 65 provides that the new eligibility provisions and review process for accelerated day parole apply only to new federal inmates.

Clause 66 applies a new provision on recalculating an offender's statutory release date, if he or she receives an additional sentence while on parole or statutory release, only to offenders receiving additional sentences after Bill C-46 comes into force. Clause 67 allows, in the case of all inmates regardless of when they entered the penitentiary, a review by the NPB for continued detention on the new bases that they may commit an offence causing death or bodily harm, or an offence of child pornography.(118) Clause 68 states that the new scheme for automatic suspensions of parole or statutory release applies only to offenders who receive an additional sentence while on release after Bill C-46 comes into force.

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(115) *Ibid.*, subsections 121.1(1), 129(1) and (9), and 130(3) and (4). Clause 59 also adds a reference to subsection 156(3), which allows the Schedule to be amended by regulation.

(116) *Criminal Code*, paragraphs 746.1(2)(c) and 3(c).

(117) Under Bill C-46, the NPB will have jurisdiction to grant unescorted absences for offenders serving life or indeterminate sentences, and the CSC will have jurisdiction to grant unescorted absences for offenders serving determinate sentences: see clause 18.

(118) Note, however, that the additions of certain offences to the Schedules of the CCRA for the purpose of being ineligible for accelerated parole review, or being subject to continued detention or a residency condition on statutory release, do not apply retroactively. Note also that clause 67 should probably have also included a reference to the new subparagraph that mentions the offence of luring a child (see subclause 34(5)).

Clauses 69 to 71 provide that individuals holding NPB positions with new titles under the amended CCRA continue in their positions, with the new titles, for the remainder of their term.

Clause 72 states that the provisions of Bill C-46 come into force on a day or days to be fixed by order in council.

COMMENTARY

When the substance of Bill C-46 was introduced as Bill C-19 during the 3rd session of the 37th Parliament, the Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness stated that the government was "signalling its commitment to the protection of public safety."(119) She noted that the bill expanded the offences in respect of which an inmate is ineligible for accelerated parole review; removed the presumption of accelerated parole, instead requiring a deliberate decision of the NPB in all cases; delayed accelerated parole review for offenders serving sentences of more than six years; and ensured that the CSC reviews all statutory release cases to determine whether they should be referred to the NPB for possible continued detention of the offender or special release conditions.(120)

A member from the Conservative Party responded to the introduction of Bill C-19 by arguing that it would not adequately improve the justice system, as too many serious offenders are avoiding imprisonment in the first place, as a result of the use of conditional sentences for example.(121) He and another Conservative Party member called for the abolition of the presumption of statutory release at two-thirds of a sentence, as release should be based on rehabilitative efforts.(122) Greater respect for the rights of victims was also demanded by the Conservative Party.(123)

Although a member from the Bloc Québécois expressed the party's support for Bill C-19, he stated that it did not go far enough. For example, he suggested that the decision to

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(119) House of Commons, *Debates*, 20 February 2004, 10:05 (Hon. A. McLellan).

(120) *Ibid.*, 10:10.

(121) *Ibid.*, 10:15 (J. Gouk).

(122) *Ibid.*, 10:20 (J. Gouk) and 10:40 (J. Hill).

(123) House of Commons, *Debates*, 23 February 2004, 16:40 and 16:45 (R. White).

release an offender should be based less on the seriousness of the original offence, and more on successful rehabilitation and the degree of risk to the community. The member from the Bloc also raised the possibility of a more open and democratic process for the appointment of members of the NPB.(124)

A member from the New Democratic Party also found that Bill C-19 fell short, as there should be greater attention paid to the level of infectious disease and mental health concerns in prisons, the needs of Aboriginal and women offenders, the health and safety of corrections staff, and the entitlements of victims, including to fair compensation for harm caused by the offender. Among other things, he suggested measures to improve the vocational skills of inmates, more effective mechanisms to oversee the corrections system, and an automatic inquiry when an offender on release commits a crime involving serious bodily harm or death.(125)

During the only subsequent debate on Bill C-19, a member from the Liberal Party provided an example of the balance that the legislation is intended to achieve. On one hand, offenders must be given every reasonable opportunity to respond to training and educational opportunities, so that they may rejoin the community as upright citizens as expeditiously as safety dictates. On the other hand, victims must be given the chance to voice their concerns and appropriately affect the outcomes of decisions regarding corrections and conditional release.(126)

When Bill C-46 was introduced in April 2005, new program measures were also announced for victims of offenders under federal responsibility. These included financial travel assistance to attend parole hearings, a national office to provide information about victims' entitlements under the CCRA, and an avenue for complaints about federal corrections and conditional release.(127) The creation of the National Office for Victims and the Victims Fund followed in October 2005.(128)

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(124) House of Commons, *Debates*, 20 February 2004, 10:25 and 10:30 (Y. Loubier).

(125) *Ibid*., 10:45 and 10:50 (L. Nystrom).

(126) House of Commons, *Debates*, 23 February 2004, 17:05 (R. Simard).

(127) Justice Canada, News release, "Government of Canada Proposes Amendments to the Corrections and Conditional Release Act and New Measures to Benefit Victims," Ottawa, 20 April 2005; available at: http://canada.justice.gc.ca/en/news/nr/2005/doc_31456.html. See also Justice Canada, Backgrounder, "Amendments to the Corrections and Conditional Release Act and New Measures," Ottawa, 20 April 2005; available at: http://canada.justice.gc.ca/en/news/nr/2005/doc_31458.html.

(128) Justice Canada, News release, "Financial Assistance for Victims to Attend National Parole Board Hearings and Creation of a National Office for Victims," Ottawa, 20 October 2005; available at: http://canada.justice.gc.ca/en/news/nr/2005/doc_31654.html; Justice Canada, Backgrounder, "National Office for Victims," Ottawa, last updated 20 October 2005, available at: http://canada.justice.gc.ca/en/news/fs/2005/doc_31662.html; and Justice Canada, "The Victims Fund, Fact Sheet, Financial Assistance for Victims to Attend National Parole Board Hearings," Ottawa, last updated 21 October 2005; available at: http://canada.justice.gc.ca/en/ps/voc/funding/factsheet.html.

As of the dissolution of the 38th Parliament, there had been little media commentary regarding Bill C-46, although at least one newspaper had noted that it was on the legislative agenda for fall 2005.(129) In addition to introducing Bill C-46, the federal government had also asked the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness to conduct a general review of the corrections system and matters relating to parole.(130) This general review had not been undertaken at the time the 38th Parliament was dissolved.

(129) Alec Castonguay, "La session de tous les dangers; Le rapport Gomery et les baisses d'impôt aux entreprises pourraient entraîner la chute du gouvernement Martin," *Le Devoir* [Montréal], 26 September 2005.

(130) Justice Canada, News release (20 April 2005).