

Fact Sheet: Parole and Conditional Release

Parole eligibility is a legislated right under the *Corrections and Conditional Release Act*. If granted by the Parole Board of Canada, parole allows federal prisoners to serve a portion of their sentence in the community. However, despite the overwhelming evidence that individuals released on parole do not re-offend, it is chronically underutilized, discriminatorily withheld, and increasingly stringent. This sheet provides an overview of the parole and conditional release system in Canada, as well as CAEFS' recommendations for expanding all avenues of release to the greatest extent possible.

Parole eligibility is a legislated right under the *Corrections and Conditional Release Act (CCRA)* for prisoners serving federal sentences

- The *CCRA* requires that all prisoners serving federal sentences be routinely considered for some form of conditional release during their sentence, including parole.¹ There are three types of parole under the *CCRA*. Each type of parole which carries with it different conditions and federal prisoners are eligible for each type at different points in their sentence:
 - **Day parole** allows a prisoner to be released into a community-based residential facility or halfway house, which they must return to nightly. Day parole is considered preparation for full parole or statutory release.

Prisoners are eligible for day parole 6 months before their full parole eligibility date or 6 months into the sentence, whichever is greater.² Prisoners serving life sentences are eligible for day parole 3 years before their full parole eligibility date.³
 - **Full parole** normally follows the successful completion of day parole and allows a prisoner to serve part of their sentence in the community under supervision and specific conditions. Prisoners on full parole typically reside in a private residence.

Prisoners are eligible for full parole at 1/3 of sentence, or after 7 years, whichever is less.⁴ However, for prisoners serving a life sentence, parole eligibility is set by the Court at the time of sentencing. For first degree murder, eligibility is automatically set at 25 years, and for second degree murder, eligibility may be set at between 10 to 25 years.⁵
 - **Parole by Exception** under section 121 of the *CCRA* allows the Parole Board to grant release to a prisoner:
 - a. who is terminally ill;
 - b. whose physical or mental health is likely to suffer serious damage if the offender continues to be held in confinement;
 - c. for whom continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time the offender was sentenced;
 - d. who is the subject of an order of surrender under the Extradition Act and who is to be detained until surrendered.⁶

Parole is distinct from the two other forms of conditional releases legislated under the *CCRA*: Temporary Absences and Statutory Release

- **Temporary absences** are a type of limited release authorized for various reasons, including work in community service projects, contact with family, personal development, and medical reasons. They can be escorted or unescorted.
- **Statutory release** is a presumptive release at law into the community after a prisoner serves 2/3s of their sentence.⁷ Unlike parole, which must be granted by the Parole Board, statutory release is automatic.⁸ Prisoners under statutory release must still follow standard conditions which include reporting to a parole officer, remaining within geographic boundaries, and obeying the law and keeping the peace. CSC can recommend that the Parole Board impose additional conditions on prisoners on statutory release or even recommend that the Parole Board detain the prisoner until the end of their sentence.⁹

The decision of whether to grant eligible prisoners parole is made by the Parole Board of Canada

- According to section 102 of the *CCRA*, the Parole Board of Canada will grant parole to eligible prisoners where the board deems that:
 - (a) the offender will not, by reoffending, present an undue risk to society before the expiration according to law of the sentence the offender is serving; and
 - (b) the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen.¹⁰

While the *CCRA* acknowledges that “(t)he protection of society is the paramount consideration for the Board...”,¹¹ it is required by law “to make the least restrictive determinations that are consistent with the protection of society.”¹²

The Parole Board considers a variety of other factors when granting parole

- The factors that the parole board considers include:
 - The prisoners social and criminal history, any systemic or background factors that may have contributed to the offender's involvement with the criminal justice system, the reasons for and type of offence(s) including the offender's understanding of the offence and any past offences;
 - Any progress made by the prisoner through participation in programs, their behaviour in the institution and while on previous conditional release(s);
 - Actuarial assessments and risk assessment tools;
 - Any victim statements;
 - The prisoner's release plan and community supports.¹³

Decisions by the Parole Board of Canada often rely on subjective criteria outside prisoners' control

- A 2009 study on parole in Canada found that despite the stated criteria of the Parole Board, the factors that appear to consistently influence parole decisions are:
 - Gender, with women being released more often;
 - Type of crime, with sex offenders released more often than those convicted of domestic violence;
 - Ethnicity, with Indigenous prisoners less likely to be granted parole;
 - and static risk assessment reports.¹⁴
- This has led some commentators to note that parole decisions often rely on subjective criteria and factors often outside the prisoner's control, such as the completion of programming.¹⁵ Many prisoners report being unable to access programming, despite this being a key element of the Parole Board's assessment.¹⁶
- Further, people convicted of murder have the highest rate of successful parole completion, despite only 20% of prisoners serving a life sentence being granted parole on their first application.¹⁷ These prisoners also must wait years to apply because of the lack of sentencing discretion for parole ineligibility under the *Criminal Code*.

- Prior to 2011, individuals serving a life sentence could apply under the 'faint hope clause' to reduce the parole ineligibility to a minimum of fifteen years. However, in passing Bill S-6, the federal legislature abolished the 'faint hope clause' for all prisoners sentenced after December 2, 2011.¹⁸

The Parole Board's approach is unresponsive to women offenders' unique barriers to re-entry

- Although women are granted parole more regularly and have high parole completion rates, women are a disadvantaged subsection of the federal population, and face more barriers to re-entry than men offenders.¹⁹
- Women offenders often have a history of trauma²⁰ and, compared with men, have higher rates of co-occurring disorders, in particular substance dependencies linked to trauma and/or mental health issues.²¹ Further, they are more likely to have caregiver obligations or be acting as single parents.²²
- However, despite this reality, the Parole Board's approach to women offenders is rooted in formal rather than substantive equality, preferring gender-neutral approaches, which do not reflect the reasons women come into conflict with the law.²³
- In a 2019 report, the Parole Board of Canada's Women Offenders Working Group made seven key recommendations to the Parole Board to implement gender- and trauma-informed practices that would improve parole processes for women offenders and remove some barriers to re-entry.²⁴ These recommendations have yet to be implemented.

Indigenous prisoners can request Elder-assisted or community-assisted parole hearings

- Prisoners can also request Elder-assisted or community-assisted parole hearings. Elder-assisted hearings involve an Indigenous Elder or advisor and are held in a circle format. Community-assisted hearings also include an Indigenous Elder or advisor, but are usually held in the community where the individual plans to live.²⁵
- Some Indigenous prisoners believe that Elder-assisted hearings give them a better chance at being granted parole, as Elders are able to provide more context and information on their rehabilitation.²⁶
- In 2018-19, 41.8% (681) of all federal hearings with Indigenous prisoners were Elder-Assisted Hearings.²⁷ During COVID-19, the Parole Board suspended Elder-assisted hearings,²⁸ however they have since resumed.²⁹

Parole decisions broadly discriminate against Indigenous prisoners

- Indigenous prisoners are overincarcerated and overclassified at every step of the conditional release process. In its 2018-2019 Annual Report, the Office of the Correctional Investigator reported that:
 - In 2018-19 statutory release was by far the most likely release type for Indigenous prisoners, comprising 69.1% of releases for compared to 18% who were released on day parole.³⁰
 - In 2016-17, compared to non-Indigenous offenders, Indigenous offenders served a higher proportion of their sentence in prison before being released on their first day parole (40.8% vs. 49.0%) and full parole (36.2% vs. 45.3%).³¹
 - The revocation rate for Indigenous offenders was significantly higher than for the overall population (39% vs. 32%).³²
- Scholarly research on parole decisions in Canada has found that static classifications of risk based on prior criminal history has little predictive value for the actual security risk posed by Indigenous inmates.³³ Further, the combination of discriminatory security ratings and chronic lack of access to Indigenous programming results in Indigenous prisoners being denied parole at a systemic level:

Given their higher security designation and the resulting challenges of accessing programming, it is unsurprising that Indigenous individuals in custody are less likely to cascade downwards in security levels and to be released on

*parole, leaving them more likely to be released at their statutory release date-release at the two-thirds point of their fixed sentence with supervision for the remainder of their sentence-with little preparation for life on the outside.*³⁴

- These findings are consistent with the overrepresentation of Indigenous prisoners across the federal system with Indigenous people making up over 30% of the prison population despite comprising only 5% of the Canadian population.³⁵ Since April 2010 the Indigenous inmate population has increased by 43.4% (or 1,265), whereas the non-Indigenous incarcerated population has declined over the same period by 13.7% (or 1,549).³⁶

Parole is underutilized even though there is demonstrable evidence that prisoners on conditional release are extremely unlikely to reoffend

- By all accounts, prisoners released on parole are highly unlikely to commit an offence before their statutory release. The most recently conducted Performance Monitoring Report from the Parole Board of Canada found that in 2017/2018:
 - 99.1% of federal day parole supervision periods completed without reoffending, a 0.3 percentage point increase compared to 2016/17. The rate of violent reoffending on federal day parole supervision periods was only 0.1%.
 - 98.3% of federal full parole supervision periods (for offenders serving determinate sentences) completed without reoffending. The rate of violent reoffending on federal full parole supervision periods was 0.2%.³⁷
- Comparatively, the report found that while reoffending rates on statutory release were still quite low, they were significantly higher when prisoners were denied parole and released on statutory. 91.8% of statutory release supervision periods completed without reoffending and the rate of violent reoffending on statutory release supervision periods was 0.9%.³⁸
- Indeed, between 2007 and 2017, offenders on statutory release were 11 and a half times more likely to commit a violent offence during their supervision periods than offenders on full parole, and 4 and a half times more likely to commit a violent offence than offenders on day parole.³⁹ Within this period, convictions for violent offences on statutory release accounted for 85% of all convictions by offenders on federal conditional release.⁴⁰
- Evidently, many incarcerated people benefit from initial periods of supervision in the community under day or full parole, rather than remaining in prison until their statutory release date. At the minimum, the Parole Board of Canada's analysis at parole hearings with respect to the protection of society should acknowledge the increased risk of waiting until a prisoner's statutory release.
- Given the overwhelming evidence that prisoners released on parole do not reoffend, parole appears to be chronically underutilized in Canadian corrections. As of 2019, only 38% of the total offender population were released on day parole and only 2.8% of the offender population were released on full parole.⁴¹
- Further, in 2014, the Office of the Correctional Investigator reported that parole grant rates were declining in Canadian institutions.⁴² While this trend appears to have been reversed with increasingly more prisoners released on parole before their statutory release,⁴³ there remains a troubling underuse of parole in Canadian corrections.

Parole by exception is often inaccessible to those who need it and a poor substitute for a system of Compassionate Release

- In November 2017, CSC reported that between 2009 and 2016, 254 inmates died of natural causes in custody.⁴⁴ Despite federal institutions being inappropriate for elderly, palliative and end-of-life care,⁴⁵ 50% of these individuals were receiving palliative care inside federal institutions.⁴⁶
- Given the number of individuals dying behind bars, the criteria for parole by exception under section 121 remains too stringent and is often inaccessible until it is too late for many prisoners.⁴⁷ Many of these prisoners have acute healthcare needs that cannot be met inside prison and also pose extremely low risk for reoffending.⁴⁸ As the Office of the Correctional Investigator wrote in 2019:

“There seems to be little purpose or value in keeping palliative individuals who pose no undue risk to public safety behind bars... CSC and the Parole Board must work together more closely to accelerate cases of dying inmates to be prepared and heard before the Parole Board in the timeliest manner possible.”⁴⁹

- Prior to recent changes in the Parole Board’s policies, prisoners applying for parole by exception were required to demonstrate a defined period of life expectancy through medical documentation, often a prohibitive barrier to release.⁵⁰ However, even with these changes there are recurring incidents of organizational inefficiencies between CSC and the Parole Board preventing timely release for palliative individuals.⁵¹
- Further, given s. 121 remains a form of parole, individuals who require outside palliative care but are serving life sentences may be unable to access it because of the 25-year parole ineligibility legislated under the *Criminal Code*. As a result, some scholars have called for a statutory mechanism within the *CCRA* for compassionate release beyond s. 121, which could be made available to all prisoners, regardless of length or type of sentence, or of the duration of time already served.⁵²

Prior to 2011, Accelerated Parole Review provided an efficient, low-risk path to reintegration but is now inaccessible to the vast majority of prisoners

- Accelerated Parole Review (APR) was a simplified parole review mechanism that was eliminated by the *Abolition of Early Parole Act (AEPA)* on March 28, 2011.⁵³ Prior to *AEPA*, APR was available to all non-violent offenders serving a first-time sentence after serving the greater of six months or one-sixth of their sentence.⁵⁴
- The test under an APR for whether to grant parole was far less stringent than the routine parole decision-making criteria.⁵⁵ In an APR, the Parole Board was only required to answer one simple question: “Are there no reasonable grounds to believe that the offender, if released, is likely to commit a violent offence?”⁵⁶ If the Parole Board found that there were no reasonable grounds to believe the prisoner would do so, they were required to grant parole.
- Further, APR-eligible prisoners were referred to the Parole Board automatically, whereas non-APR prisoners had to apply for parole hearings when their eligibility dates arose.⁵⁷
- In abolishing APR, *AEPA* was drafted to apply retroactively, denying all prisoners who would have been able to benefit from APRs immediately. However, in *Canada (Attorney General) v. Whaling*, a case that went all the way up to the Supreme Court of Canada, the court held that *AEPA* could not apply to retroactively punish prisoners. Instead, the court found that all prisoners subject to sentences imposed prior to March 28, 2011 that meet the eligibility criteria will be considered for APR.⁵⁸
- APR provided a clean and efficient mechanism to allow the release of offenders who did not pose a significant risk of committing violent offences. However, as time goes on the residual effects of APR and the Supreme Court’s decision in *Whaling* applies to fewer prisoners.

CAEFS Recommendations

There is overwhelming data that prisoners' release and participation in the community has the best long-term effect on the wellbeing of prisoners and on public safety. It is CAEFS' position that CSC, the Parole Board of Canada, and policy-makers in Canada should acknowledge this relationship by expanding parole and conditional release to the greatest extent possible.

- **Strike down mandatory minimum periods of parole ineligibility or, at the minimum, reinstating the 'faint hope clause'**, re-introducing sentencing discretion for first-degree and second-degree murder to continue the positive outcomes parole can have to reintegrate individuals into society.
- **Create an independent Parole oversight committee** to monitor the effects of Parole Board decisions on marginalized populations, especially Indigenous prisoners.
- **Reinstate accelerated parole review** as a way to efficiently release individuals who pose no reasonable risk of committing violent offences.
- **Reformulate the Parole Board's approach** through updated policy direction, acknowledging the extremely low likelihood of reoffending and the risk of detaining prisoners until their statutory release date.
- **Develop an inclusive approach to parole** implementing gender- and trauma-informed approaches to working with incarcerated women.
- **Introduce a robust and efficient mechanism for Compassionate Release** that ensures individuals are not dying behind bars with substandard palliative care.

¹ Sarah. Turnbull, *Parole in Canada: Gender and Diversity in the Federal System*, (2016: UBC Press), p 8.

² *Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 119(1) [CCRA].

³ *Ibid.*

⁴ *Ibid.*, s. 120(1).

⁵ *Criminal Code*, R.S.C., 1985, c. C-46, s. 745.

⁶ CCRA, s. 121.

⁷ *Ibid.*, s. 127(3).

⁸ *Ibid.*, s. 127(1).

⁹ *Ibid.*, s. 129.

¹⁰ *Ibid.*, s. 102.

¹¹ *Ibid.*, s. 100.1.

¹² *Ibid.*, s. 101(c).

¹³ Parole Board of Canada, *Decision-Making Policy Manual for Board Members* (2021), p 1-8, online: Government of Canada [https://www.canada.ca/content/dam/pbc-clcc/documents/manual-manuel/Decision-Making_Policy_Manual-2nd_Ed_No_19_\(2021-04-13\).pdf](https://www.canada.ca/content/dam/pbc-clcc/documents/manual-manuel/Decision-Making_Policy_Manual-2nd_Ed_No_19_(2021-04-13).pdf) [Decision-Making Policy Manual].

¹⁴ Renée Gobeil and Ralph C Serin, "Preliminary Evidence of Adaptive Decision Making Techniques Used by Parole Board Members" (2009) *Intl J Forensic Mental Health* 8:2 (2009), p 100–102.

¹⁵ Adelina Iftene, "The Case for a New Compassionate Release Provision", *Alberta Law Review* 54:4 (2017), p 934-935, online: Alberta Law Review <https://www.albertalawreview.com/index.php/ALR/article/view/783/775> [Iftene].

¹⁶ See Decision-Making Policy Manual, p 4-6.

¹⁷ John Howard Society, "Canada gives less parole despite excellent results" (2018), online: John Howard Society <https://johnhoward.ca/blog/less-parole-despite-excellent-results/>

¹⁸ The Canadian Criminal Justice Association, "The 'Faint Hope Clause'", online: CCJA <https://www.ccja-acjp.ca/pub/en/positions/faint-hope-clause/>.

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- ²³ Women Offenders Working Group, "*Gendered Parole: Responding to Women's Needs*" (2019), Parole Board of Canada, p 13.
- ²⁴ *Ibid*, p 25-31.
- ²⁵ Parole Board of Canada, "Elder-Assisted and Community-Assisted Hearings", online: Government of Canada <https://www.canada.ca/content/dam/pbc-clcc/documents/publications/Elder-Assisted-and-Community-Assisted-Hearings.pdf>
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- ³² *Ibid*.
- ³³ David Milward, "Sweating it Out: Facilitating Corrections and Parole in Canada Through Aboriginal Spiritual Healing", *The Windsor Yearbook Access to Justice* (2011), p 43-44, online: The Windsor Yearbook Access to Justice <https://wyaj.uwindsor.ca/index.php/wyaj/article/view/4479>
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