

Sociology 3395: Criminal Justice & Corrections
Lecture 25: Community Reintegration

While many would like society to lock criminals away and throw away the key, the fact is that over 90% are ultimately released - on some form of conditional release program like parole. Beliefs about such programs have changed dramatically - while once seen as “not working,” they are now viewed as an essential component in reintegrating offenders back into the community.

Today we will look at the history of such programs, and how their underlying philosophies have changed from one of rehabilitation to a more risk-prediction/ reintegrative approach. We will spend some time outlining this reintegration model and key issues in that regard, followed by a discussion of the National parole Board and the CCRA. Finally, we will close with a review of the different types of conditional release programs and the recidivism rates of participants.

All of this is important, since millions of dollars have been claimed in at least 20 lawsuits against the Parole Board and CSC, typically alleging that officials should have kept offenders locked up since it would have made the community safer from offenders who, upon release, committed heinous crimes. Of course, the federal government claims that it cannot be held financially liable for crimes committed by parolees, yet damages have been awarded (e.g. to a woman assaulted by a sex-killer who had escaped from a minimum security institution). Such decisions by judges have, however, been rare since the government prefers to settle such claims quietly out of court.

Community Release Under Attack:

Given such cases, it isn't surprising that, starting in the 1970's, all forms of community sanctions, especially parole, came under attack from an outraged public as “soft on criminals.” As a result, policy changes were implemented to remove or reduce the discretionary aspects of community sanctions and to protect the due process rights of offenders. Critics then argued that the ideal of rehabilitation and its related treatment programs were misplaced. As a result, parole was abolished in 11 American states by 1984. The Canadian Sentencing Commission in 1987 also recommended the elimination of parole, but this was never implemented.

Then, in 1974, Robert Martinson published an influential article entitled “What works?” This questioned the very existence of rehabilitation. Drawn from a larger work that assessed 231 evaluation studies of treatment programs between 1945-1967, Martinson concluded that “with few and isolated exceptions the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.” Yet, in his last section - “Does Nothing Work?” - Martinson pointed out that many of these studies were methodologically flawed, which lead to the inability to find any significant treatment success. He reasoned that this rendered it almost impossible for researchers to detect either the positive effects of, or the problems with, these programs. All the same, he wrote that it may be impossible for rehabilitation based programs to overcome or reduce

“the powerful tendencies of offenders to continue in criminal behavior.”

Most who read Martinson’s piece failed to pick up on his acknowledgment that there may indeed be positive effects of rehabilitation if properly studied. Instead, the phrase “nothing works” was seized upon by critics and exerted enormous influence on both popular and professional thinking. Indeed, 5 years later Martinson himself changed his views, on the basis of his subsequent research, asserting that some treatment programs do have an appreciable effect on recidivism. Unfortunately, his second piece has been virtually ignored. By the time it appeared, the critique of rehabilitation had become too powerful and entrenched. Indeed, Martinson admitted that parole had, at best, only a delaying effect on recidivism - leading to questions about whether parole should even be grounded in rehabilitation.

Discretion and Disparity:

Another issue subject to criticism was the immense discretionary power held by parole boards. This was not only a matter of arbitrariness, but the inability of boards to develop criteria that could help them predict which offenders were ready to be released. They were accused of knowing little about criminal personality and of making contradictory decisions.

Because boards often shortened offenders sentences by releasing them on parole, they became, in effect, the main sentencing agent in the CJS. The Canadian Sentencing Commission, after reviewing statistics on judges’ sentences and subsequent parole board decisions, concluded that “there is a substantial difference between the sentence a judge hands down and the length of time an offender actually serves in prison.” Critics argued that the discretion to do so led to disparity in the time served by offenders - particularly when “offenders serving longer sentences are more likely to get released on parole than are offenders sentenced to shorter terms.” Harman and Hann (1986) also found that in manslaughter cases between 1975-6 and 1981-2 offenders only served between 51-64% of their sentence. Moreover, more manslaughter offenders got parole than did those convicted of B+E.

Conditional Release Programs in Canada:

There are many types of conditional release programs used in Canada. Most face demands for tighter control of offenders in the community, and this has led correctional officials to tighten up definitions of who gets to participate.

A Brief History of Conditional Release in Canada:

The earliest form of conditional release in this country was “remission.” It was included in the first Penitentiary Act (1868). This involved a point system that allowed offenders to obtain an early release (accumulating at 6 days per month max) for good behavior. Merit and demerit points were awarded for good behavior and attitude as well as for industrious work. This was later amended to allow an inmate to receive a bonus of up to 10 days remission upon earning 72

days under the original scheme. This scheme, which potentially enabled offenders to leave after serving 3/4 of their sentence, remained in force until 1961.

The Ticket of Leave Act (1899) was the first legislation involving parole. This specified that inmates could obtain “clemency” independent of earned remission. This enabled the Governor-General the power to release an inmate early under certain conditions. In effect, this introduced a system of administrative discretion to release offenders - reducing time served to a greater extent than remission. Under this scheme, the first parole officer was appointed in 1905, and the Remission Service of Canada created in 1913 under the control of the federal Department of Justice.

From the early 1900's to 1958, this ticket of leave program gradually evolved into a modern parole system. In 1958 the Parole Act was proclaimed and the power to grant release and to issue revocation orders was transferred to the new National Parole Board. This operated on the basis of written information collected from a variety of sources (not direct encounters between the Board and inmates). Yet, little guidance was given in the act regarding the criteria that the board should consider when reviewing applications. All the same, the legislation did set a statutory term of parole supervision in the community prior to an offender completing his sentence. As well, temporary absences were introduced for the first time.

Over the following decades, numerous studies and reports were commissioned, most recommending increasing the conditional release system. Hence, new policies, such as mandatory supervision and day parole, were introduced. Most significantly, the Ouimet Committee (1969) recommended that parole be expanded in order to assist offenders to reintegrate back into the community. In the late 1980's, however, the Canadian Sentencing Commission recommended that the system of full parole be abolished, but that a system of earned remission be retained. Then, in 1988, the Daubney Committee proposed that the conditional release system be expanded but that the system of earned remission be abolished. The Daubney Committee's recommendations carried the day.

The Reintegration Approach:

Today, CSC has expanded the conditional release system such that most, though not all, inmates are released into the community prior to the expiry of their sentence. This is based on 2 factors: (1) the belief that only the most serious offenders should be incarcerated in the federal system; and (2) that the use of alternative sanctions, such as conditional sentences, be maximized. Underlying this is a belief in reintegration, “a broad correctional ideology stressing the acquisition of legitimate skills and opportunities by criminal offenders, and the creation of supervised opportunities for testing, using, and refining those skills, particularly in community settings.”

This approach takes the view that the major predictors of recidivism are known and that each individual offender has to be assessed in these terms in order to develop programs that will

enhance his reintegration to society. These predictors are claimed to be: (1) antisocial/pro-criminal attitudes, values, beliefs, and cognitive-emotional states; (2) pro-criminal associates and isolation from anti-criminal others; and (3) anti-social personality orientations such as low self-control, impulsiveness, risk-taking and egocentrism. Recidivism is also said to be predicted by a history of antisocial conduct, poor childhood training, support and supervision, and low levels of personal educational, vocational and financial achievement, including an unstable employment record. Some of these things are set, but some may be changed. These changeable factors are called “criminogenic needs.”

To assess the chances of an offender recidivating, his risks and needs are assessed upon entering a correctional facility. This then leads to the selection of an appropriate response. CSC has practiced this approach for over a decade under the authority of the CCRA. During the offender intake assessment, much information is collected, including criminal record, propensity for violence, and the nature of the offender’s most recent offence. A criminal risk assessment and an identification of his case needs is developed by parole officers. These form the basis of the Correction Plan Overview evaluating the total case record of an offender (usually updated every 6 months). These records become the basis of the Custody Rating Scale, which is used to determine the security classification of the offender.

These risk assessment and management processes are based upon the risk and needs of each offender. A risk assessment identifies those individuals most likely to re-offend and their needs so that correctional officials can develop a personalized plan to assist them during incarceration. This strategy was implemented for inmates beginning in 1986, and the vast majority of inmates are so assessed.

The Theory of Risk Management:

The theory of risk management underlying these procedures focuses on the social psychology of criminal behavior, stating that individual and social/situational factors combine to create in offenders values, cognitions, and personality contexts that facilitate criminal behavior. These are largely learned and reinforced, ultimately leading to individual differences in criminal actions.

The 3 key principles of risk assessment are risk, need, and responsivity. The risk principle asserts that higher levels of service should be allocated to the higher risk cases (despite the fact there is a persistent institutional belief that treatment services most benefit low-risk offenders, resulting in resources being placed where they will do less good, confused research finding about program benefits, etc.) Thus, it is essential to have a correct determination of risk to match the offender with the type of program from which he will most benefit.

The essential component of the risk assessment is the determination of which risks are considered static and which dynamic. Static (i.e. unchangeable) factors include prior record and prior history. Dynamic, changeable, factors, on the other hand, include an offender’s education,

level and type of cognitive thinking skills, occupational and interpersonal skills.

The second principle, need, asserts that if correctional treatment services are to reduce criminal recidivism, the criminogenic needs of offenders must be targeted. Some that may be dealt with by programming include changes to anti-social attitudes, feelings, and peer associations, promotion of affection, communication, formal monitoring and supervision, promotion of identification with anti-criminal role models, and increasing self-control, self-management, and problem-solving skills.

The third principle, responsivity, deals with the selection of appropriate targets for change and styles of service. These involve individual targets that affect the treatment goals. Two ideas are central to success: (1) providing the styles or types of service that work for offenders; and (2) within offender groups, any special responsivity considerations. Essentially, responsivity addresses effective correctional supervision and counseling, assuming that all offenders are different. Characteristics such as verbal skills, communication style, and social skills are not only important in classifying offenders, but also for the ways in which they respond to efforts to change their behaviors, thoughts and attitudes.

Research in this area has shown that the typical response involves consideration of many risk factors, in order that offenders receive appropriate training in pro-social attitudes. Offenders must be carefully matched to parole officers' characteristics. Indeed, parole officers who score higher on interpersonal sensitivity and awareness of social rules receive higher scores from their clients, and were also more likely to display pro-social behavior and disapprove of anti-social behavior.

The Case management Process:

Case management is a systematic process by which identified needs and strengths of offenders are matched with selected services and resources in corrections. Objectives are to: (1) provide for the systematic monitoring of an offender during confinement; (2) facilitate the graduated release of an offender back into the community; and (3) prevent an offender from re-offending thereafter. Keeping these goals in mind, the system attempts to establish a program for each inmate that: (1) provides for a level of structure in order that any needs are dealt with; (2) balances the protection of the community with the need for offender rehabilitation; (3) prepares an inmate for successful reintegration back into the community; and (4) assists in the effective supervision while an offender is serving his conditional release program.

The National Parole Board:

The National Parole Board plays a major role in the conditional release of inmates into the community. Whereas it once held significant discretion in this regard, it gradually changed its approach due to concerns about the lack of due process guarantees and procedural safeguards for inmates during parole hearings, such as those articulated in the Report on the Task Force on the

Release of Inmates (1973). This revealed that nobody could articulate the criteria for release with any clarity, recommended that inmates be allowed to appear before the board, required reasons for any decision to be written down and provided to the inmate, and enabled the inmate to be granted a parole hearing when requested/ written reasons for rejection. In addition the NPB (1981) published a list of factors that board members could consider during a hearing. These include: (1) criminal record, kinds and pattern of offences, and the length of crime free periods between convictions; (2) the nature/seriousness of the current offence; (3) the understanding the inmate has of the situation and what he has done about it; (4) the inmate's effort to take training and programs in prison; (5) the inmate's institutional behavior and offences; (6) previous parole violations, if any; and (7) plans the inmate has for employment or training, including how definite they are.

“Schedule offences” under the CCRA are those that have been prosecuted by way of indictment. Schedule 1 include generally serious violent crimes in which the result was severe harm or death. Schedule 2 offences generally involve drug offences that have been prosecuted by way of indictment. Both types of schedule offences influence the classification of offenders, the types of programming, the need for a psychiatric assessment, and whether they will be considered for a conditional release program.

Currently, before offenders leave a federal correctional facility on a conditional release program, they agree to a correctional plan developed by the NPB with the assistance of correctional officials. This outlines an individualized risk management strategy specifying those interventions and monitoring techniques required to address the risks associated with each offender. It commonly involves the placing of certain restrictions on his movement and activities, and specifies certain constructive activities such as jobs and counseling.

The assumption behind this approach is that people get into crime because of problems in their lives like poor employment opportunities, lack of job training and skills, substance abuse, anger management problems, etc. The correctional plan, based on CSC risk assessment information, attempts to address these.

The release of an offender into the community involves supervision, programming and community involvement. Supervision is the direct monitoring of and communication with released offenders by parole officers and trained volunteers - though not all offenders are adequately supervised or supervised with the required frequency. Because supervision alone is insufficient, it is combined with “programming” required to meet the offenders' needs. These programs are located in the community, with the rationale that they will therefore assist in the reintegration of the offender.

Contemporary Community Sanctions in Canada:

While the law specifies that offenders must receive penalties for their crimes, it also allows for the mitigation of sentences. While some go to jail, the majority remain in the

community under the supervision of probation or parole officers. During 2000-01, over 151,000 adults were under the jurisdiction of federal and provincial correctional authorities, but 80% were serving some type of community sanction.

In conditional release programs, offenders complete their sentence in the community after serving time in a correctional institution. Unlike probation, which is a sentence imposed by a court, conditional release is a decision made by correctional authorities or a parole board after an offender has served part of his sentence in a correctional institution.

Conditional release programs were introduced due to dissatisfaction with the role of prisons. Prisons are expensive, have harmful effects, disrupt family relationships, and have success rates about the same as probation and conditional release programs - which operate far more cheaply. In addition, community sanctions are thought to mitigate the harmful effects of incarceration on people (i.e. the violence, lack of employment skills and life in a controlled environment have led many to argue that prisons do more harm than good). But community sanctions allow offenders to maintain ties to society, work, be in supportive relationships, and take advantage of community resources. Finally, since many who receive community sanctions are low risk, putting them in jail would only make things worse.

Risk of Recidivism:

Despite the many changes introduced, the NPB came under increasing public criticism for its parole decisions, particularly following a series of homicides in 1987-88 by offenders on conditional release programs. Yet, studies of inmates placed into community release programs found that recidivism rates related to the type of program offenders were placed on. For example, there were substantial difference between the recidivism rates of offenders on full parole and those on mandatory supervision (30 vs. 58%).

The majority of offenders returned to prison for violating terms of their release did so within a year. Within 2 years 81% of all offenders who failed on full parole or mandatory supervision were readmitted. After that time, the risk of returning to jail dramatically declined to 2% and below. Also, for offenders on mandatory supervision, the critical point for readmission was 6 months, while those on full parole faced the toughest time between 6-12 months.

Due to concerns over recidivism rates, CSC instructed the NPB to shift its focus to risk factors as the prime consideration when considering the release of offenders. In 1986 the NPB identified its primary purpose as the protection of society. To achieve this, it made risk assessment of future crimes by offenders after release its major focus. In 1988 it also released its policy on pre-release detention, which was intended to identify the criteria for NPB decisions.

These policies were based on 3 key assumptions: (1) that risk to society is a fundamental consideration; (2) that restrictions on the offender's freedom in the community be limited to those necessary for the reasonable protection of society and the safe reintegration of the offender;

and (3) that supervised release increases the likelihood of reintegration/ contributes to the long term protection of society.

In 1992 the CCRA replaced the Parole Act . This included goals designed to increase the commitment to conditional release programs. It also identified the fundamental principles guiding corrections in the changing social and legal context of our society. CSC is now guided by a statement of principles that the purpose of the correctional system is to maintain a “just, peaceful and safe society.” This is to be achieved by: (1) carrying out court-imposed sentences through the safe and humane custody and supervision of offenders; and (2) assisting the rehabilitation of offenders and their reintegration into the community as law abiding citizens through the provision of programs in penitentiaries and the community. As well, there is now improved guidance for the NPB as it carried out its mandate, with the hope that it would become more consistent and straightforward in its functioning.

To achieve this, the CCRA authorizes the disclosure of all relevant information to offenders (subject to limited exceptions) when a decision adversely affects their conditional release application. It also allows for the disclosure of some information to victims (to “lead to greater awareness of the legitimate reasons behind decisions that may appear arbitrary, inappropriate or even unfair”). The CCRA also requires the release of all information to the NPB about the offender’s background that could affect a conditional release decision (i.e. the nature of offences, police and prosecution files and sentencing information).

Risk Assessment:

The CCRA requires the NPB to distinguish different types of offenders on the basis of risk factors. Board members are required to specifically assess whether an offender will commit an offence, especially a violent offence, while on conditional release. Further, they are required to have training in risk assessment and knowledge of the relevant research.

NPB decisions are thus made on the basis of risk assessment, risk prediction, and risk reduction. They are based on a general knowledge of the social-psychological perspective on criminal conduct, including the idea that criminal behavior is generally learned. When making decisions, NPB members assess 5 areas of an offender’s situation: (1) behavioral history; (2) the immediate situation; (3) mental and emotional outlook favorable to criminal activity; (4) pro-criminal social supports; and (5) other personal factors (e.g. development, self-regulation, problem-solving, impulsivity, and callousness).

The Task Force on Reintegration of Offenders formed by CSC in 1997 reports that the service is legally mandated to use the least restrictive measures consistent with protecting the public. Hence, it recommended implementing a risk-related differentiation process that places offenders into 1 of 3 categories on the basis of a risks/needs rating during the intake process. These levels are: (1) release-oriented intervention for low-risk offenders; (2) institutional and community intervention for moderate-risk offenders; and (3) high-intensity intervention for high-

risk offenders.

Studies have been done to assess this approach. Brown and O'Brien (1993) looked at psychiatric assessments of randomly selected, violent offenders in the forensic unit of a Canadian prison hospital. Looking at 15 recidivism risk factors, on the basis of risk scores 26 offenders were identified as "good risks" for release, and all were successful in completing their terms on parole. In this study, at least, recidivism risk factors assisted in releasing these high risk offenders on parole. However, it was also found that the success of these offenders on parole was in large part due to treatment services delivered in the context of risk principles in the community.

Conditional Release Programs:

Conditional release programs include full parole, day parole, statutory release and temporary absences. Full parole allows offenders to serve a portion of their sentence in the community until it has expired. Most federal inmates can apply for this after the 1/3 point of their sentence or 7 years, whichever is shorter (except those serving life or in preventative detention). Offenders in provincial facilities can apply at the 1/3 point (Ontario and Quebec are the only provincial boards; the feds operate everywhere else). Once offenders are released on full parole they are placed under the supervision of parole or probation officers and required to follow conditions similar to those facing probationers. Offenders can be sent back to jail if they fail to comply or break the law.

Day parole differs in that it is granted only for short periods of time, up to a maximum of 4 months (renewable up to 1 year). Most offenders become eligible 6 months before eligible for full parole.

Temporary absences are granted to offenders for medical, compassionate, administrative and family-contact purposes. They can last from a few hours to up to 15 days. These can be either escorted or unescorted. Escorted (guarded) TA's can be granted at any time, and are the responsibility of the superintendent of the correctional institution.

Those federal offenders not granted parole may, under statutory release, be released into the community before the expiration of their sentence. Though provincial inmates can gain early release for earned remission (good behavior) and not be supervised, federal offenders released on statutory release are supervised in the community as if they were on parole. Yet, before being so released, they must have their cases reviewed by the NPB. The CCRA enables the board to detain an offender on statutory supervision beyond and up to the normal release date. As well, it has the power to specify that an offender so released live in a community residential facility if felt that he would be a threat to the community or will commit a crime before the end of his sentence.

The NPB doesn't grant parole to every applicant. In fact, in most years less than 50% of applications are successful (41% of male federal/provincial applicants in 2000-01, though women did much better at 75%). The number of inmates on parole has also declined since the

mid 1990's.

It's possible that an inmate will never be released on a conditional release program. In such cases, the inmate is detained until his warrant expiry date. Such detainees fall into 3 categories: (1) those convicted of Schedule 1 offences thought likely to commit another offence causing death or serious injury if released; (2) sex offenders, particularly those likely to victimize children; and (3) those convicted of Schedule II (serious drug) offences. NPB statistics indicate that the number of inmates so detained increased from 1991-92 (184) to 1995-96 (484), then dropped off steadily to 2000-01 (215).

The Effectiveness of Conditional Release Programs:

There is much debate over the effectiveness of conditional release programs, much of it focusing on the operation and administration of parole. Roberts (1988) found that 2/3 of Canadians felt the NPB was too lenient. The Canadian Criminal Justice Association also found that most members of the public felt the board released too many offenders. Adams (1990) found most Canadians expressed negative attitudes towards parole.

Since offenders commit different types of crimes and have different backgrounds, is it fair to treat all offenders on conditional release the same? In addition, offenders can have their conditional release revoked for a variety of reasons. Thus, the NPB measures the effectiveness of conditional release on the basis of 3 factors: (1) the rate of success (i.e. completion); (2) the number of charges for serious offences committed by offenders on release; and (3) post-warrant expiry recidivism.

Recidivism Rates:

A key factor here is the recidivism rate. Generally, this involves the readmission, because of a violation, of an offender to an institution. It is usually expressed as a rate between the number of re-admissions and a particular period of time (usually the period when the offender is still under supervision).

The two most common categories in which recidivism is measured are technical violations and convictions for new offences. The former occurs when an offender breaks a condition of his release (e.g. a fraud offender told to refrain from alcohol but who goes to a party and drinks).

Recidivism rates are considered the most important criteria upon which to measure the success or failure of a conditional release program. In 1996-97, the success rate of male offenders on full parole was 89.2%. Most of the revocations were for non-violent offences. Women had a higher success rate (92.7%), and very few revocations, all for non-violent offences. Rates of success for offenders on day parole were even higher (96.4 and 98.6% respectively). Offenders released on statutory release had the highest recidivism rates, though not dramatically different

from those on full parole (men 87.9%; women 85.4%).

Recidivism rates can also be measured over the different lengths of time that offenders are on a conditional release program. Short term recidivism was measured by Nouwens (1993) over a 3 year period while long term recidivism based on a 10 year period. It was found, not surprisingly, that success rates were better when measured over the shorter period (whether based on technical violations or new offences). Also, those released on mandatory supervision had the lowest success rates. Nevertheless, most offenders still did better when on some form of conditional release.

Nouwens also studied the readmission rate by type of conditional release for 1000 prisoners admitted for new offences in 1988-89. By June 1993 most had been released on some type of conditional release, and later had a readmission rate of 37.1%. Again, the highest rate of readmission was for those released on statutory supervision (44.6%) - almost double the rate for those released on full parole (25.1%).

But are different types of offenders more successful on conditional release programs than others? Edwin (1992) found that 77.5% of homicide offenders (1st and 2nd degree) released between 1975-1990 successfully completed conditional release. 13.3% were re-jailed for technical violations, 9.2% for committing another offence (largely narcotic and property offences, though there were some robberies and other Criminal Code offences thrown in). Edwin also studied the success rate of manslaughter offenders during the same period, noting that 22% released on full parole were readmitted, compared to 41% released on mandatory supervision - in each case this was more often due to technical violations than the commission of further, serious offences.

There is a lot of public concern about the release of offenders with mental disorders. Porporino and Madoc (1993) examined the recidivism rates of such offenders compared to a matched group of offenders not so designated. Both groups were released at about the same rate, but more designated with mental disorders were released on mandatory supervision rather than parole. It was also found that there was a tendency for mentally disordered offenders to serve more time before release and a greater proportion of their sentence. Nevertheless, no significant differences were found in the recidivism rates of the two groups during the first 6 months of conditional release, though after 24 months those with mental disorders were more likely to have their conditional release suspended due to concern about their potential for further violent offences. Conversely, those without mental disorders were more likely to have their release revoked for the commission of a new offence.

The NPB uses post-warrant expiry recidivism rates as indicators of long-term effectiveness. Yet, offences committed after warrant expiry are technically beyond their control. According to Larocque (1998) recidivism rates of federal offenders after warrant expiry on statutory release are 3 to 4 times as high as that of offenders who complete their sentence on full parole. Further, recidivism rates are higher for all groups of offenders who have been in the

community for longer periods, regardless of the type of conditional release they were on.

Conditional Release and Due Process:

Other critics have focused on the relative lack of explicit criteria used in decisions to grant parole. This led to confusion among inmates who wished to improve themselves and their chances of getting parole. There were also issues about the resulting fairness of parole hearings, for example, the absence of due process basics like the right to a hearing, to know the nature of complaints against you, and to be informed of the reasons for adverse decisions. These issues led to what has been referred to as the “pains of parole,” a term denoting the anxiety, fear, loss of dignity, excessively limited freedom, and uncertainty” many offenders felt about their future.

In 1977, the Sub-Committee on the Penitentiary System concluded that inmates feel that the NPB doesn’t always treat them fairly. It listed many examples of inmates having their parole invoked for essentially trivial reasons. Such concerns about the NPB were supported by former chief justice Bora Laskin in the Mitchell case (1976), where he referred to the NPB’s “unprecedented tyrannical authority” where it treated inmates like “puppets on a string.” Hence, in 1978 new regulations were introduced guaranteeing federal inmates due process rights to hearings, disclosure of information, and reasons for the denial of parole. All the same, these didn’t remove the perceptions of subtle unfairness and disparity.

Indeed, confusion about NPB decisions continued among offenders. 5 years later offenders were still raising questions about fairness. Thus, reforms were recommended and legal changes made. Indeed, the Canadian Sentencing Commission felt things remained so bad it recommended abolishing parole because of its lack of proportionality, problems with uncertainty, and transferring of decision-making power away from judges. While not ultimately acted on, the Charter and CCRA certainly have helped reign in some of the worst abuses.

Today the CCRA allows for appeals within 60 days of a decision when an inmate’s application for parole is denied. Grounds for appeal include the NPB’s making a decision that fails to observe a principle of fundamental justice; an error of law; a breach or failure to apply a policy adopted to respect ethnic, cultural or linguistic differences; a failure to respond to the special needs of women and Aboriginals; a decision based on incomplete information; and the failure to act with appropriate jurisdiction. A judicial review is also possible.

The Faint Hope Clause:

When Canada abolished capital punishment in 1976, mandatory life sentences were mandated for first and second degree murder (with parole eligibility set at 25 and 10 years each). It also, however, set down that offenders be eligible for judicial review of their parole eligibility after 15 years. If successful under s.745, they could then participate in a conditional release program. Now known as the “faint hope clause,” this became very controversial once offenders became eligible to invoke it in the early 1990's.

Basically, once an offender serves 15 years and exercises his right to apply, the chief justice of the province and the justice minister begin a 2 stage process, basically involving a preliminary hearing followed by an actual hearing. In the former, issues such as the evidence to be allowed, transportation and living facilities are discussed. It is adversarial in nature and the offender is present. Basically, the jury can order no change, a reduction in the number of years of imprisonment prior to eligibility for parole, or allowing the applicant immediate eligibility for parole. Whenever the jury says that the applicant is eligible to apply, he still has to go before the NPB and get them to agree to release him as well.

The original legislation provided no clear guidelines for juries (aside from some vague issues like his character and conduct in prison). If the jury rejected the application, an appeal lay to the SCC, which may then order a new hearing. Originally, as well, only a 2/3 majority by the jury was sufficient.

In 1996 this law was revised (largely because of the controversy stirred up by Clifford Olson trying to use this section). No longer are multiple murderers able to use this section. Superior court judges have to review all applications and be convinced they have a reasonable prospect of success. As well, juries must now be unanimous in their decision to reduce parole eligibility, and pass by a 2/3 majority the recommendation as to the number of years to be served before eligibility. If no reduction is given, the applicant has to wait 2 years before applying again. Victim impact statements were also allowed. These changes were made retroactive.

Between the first judicial review and June 2000, there were 103 successful applications for a reduction in time served before parole by a jury. 81.6% led to a reduction in the time to be served by the NPB. Interestingly, however, over 80% of all possible applicants hadn't even applied - perhaps because they felt their chances weren't good to begin with.

Risk Factors for Recidivism:

Prior research has outlined characteristics that indicate an increased risk of future crime by offenders: associates with criminal tendencies or who are antisocial in character, pro-criminal attitudes, values, and beliefs, generalized difficulties or trouble in relationships, and being male. The more risk factors present, the greater the chances of re-offending. Hence, systematic risk assessment allows the identification of lower and higher risk groups - and it is these latter offenders that will be responsible for the majority of recidivistic offences.

Yet, to be honest, predictions are not always accurate. Some labeled high risk may never re-offend, while some low risk people will. To improve predictive power, risk assessment criteria have been developed on the basis of behavioral (learning) and objective (race, substance abuse, & employment) criteria. As well, studies have identified antisocial cognitions, associates, personality, and a history of anti-social behavior as significant.

Most research on success in conditional release programs compares recidivists and non-

recidivists on the following criteria: gender, race, age, marital status, and employment.

Gender: Most comparisons show differences in male and female recidivism rates, with females generally having lower rates than males. It is also the case that proper programming has a significant influence on lowering the rate of recidivism among women (e.g. substance abusers were at greater risk than others, but when given drug treatment, the rate of recidivism attenuated to one similar to non-abusers).

Race: Members of racial minorities are over-represented in the Canadian prison system, most notably Aboriginals. Moreover, Aboriginals released on conditional release programs have higher recidivism rates than Caucasians (33% for parole, 75% for mandatory supervision). The rate was also higher for Aboriginal women (44% recidivism overall for Aboriginals, 19% for non-Aboriginals). Moreover, Aboriginals were under-represented in all temporary absence programs except for compassionate absences - largely due to the fact that they were more likely to have been convicted of serious violent offences and to have a longer record.

All of these things have concerned CSC, government committees, and independent researchers. It has been expressed that Aboriginals are not as familiar with conditional release as others, may waive their rights as a result of subtle encouragement by case management officers, and the fact that certain criteria are inherently weighted against them (e.g. employment).

Aboriginals granted parole are also more likely to be returned to prison, perhaps a result of inappropriate conditions being placed on them, more stringent enforcement, and inadequate support on release. Such things have made reintegrating Aboriginals into the community under conditional release programs challenging. Culturally specific practices have been built into the treatment process in some locales in the hope that this would help (e.g. traditional healing practices involving elders, pipe ceremonies and sweat lodges). Where this was tried in Winnipeg, it reportedly made treatment more meaningful for participants - though the impact on recidivism is still unclear.

Age, Marital Status and Employment: It has been reported that recidivism may be higher among those offenders who are unemployed and unmarried. Basically, having a job or a spouse provides an offender with stakes in conformity that they do not wish to lose by re-offending.

With regard to age, the rate of recidivism basically goes down the older offenders are, but tends to be much higher for younger offenders.

Further with regard to marital status, those offenders who are married or in common law relationships at the time of the offence have lower failure rates than do those who are divorced, separated, or single.

Employment and education also show additional variations. As educational levels of offenders increase, the failure rate on conditional release goes down. Furthermore, offenders

employed at the time of their offences are much more likely to be successful on conditional release than those who were not.

How Inmates View Recidivism:

Research on recidivism as an indicator of the failure or success of correctional programs or as a predictor of future criminal behavior may be incomplete. This is because they fail to consider that institutional treatment is not a 1-way causal process, but the outcome of *interaction* between the system and offenders. When first time offenders' were interviewed by Besozzi (1993), many initially said they hated prison life and didn't want to return. Yet, their attitudes quickly changed, and soon the institution became less awful and their determination not to re-offend less resolute. Indeed, over time, the deterrent effect of prison seemed to vanish.

Besozzi also found that inmates have developed their own theories to explain why they come back again and again. One states that the very nature of the correctional facility and the parole supervision system are important causes of failure. It is felt that prison staff are not there to help, but rather to ensure that inmates fail upon release. Programs in prison are simply viewed as a way to get out sooner, not as a way to improve the odds of success on the outside. This reflects inmates' view of prison as a place to be punished, not as a place in which to be rehabilitated or to solve the problems that will likely make them re-offend on release.

Some such feelings come from the fact that prison is a negative environment, and many inmates are unsure as to how much they had changed, if at all, inside. Sometimes anger and perceived unfairness inside may make them worse when they get out. Not only that, but those who want to change can't find the appropriate resources to help themselves.

Some also indicated that they had changed, but that this largely came as a result of their own efforts, not as the result of any help from staff. Most such inmates isolated themselves from others and thought about how they would live on the outside so as not to re-offend.

Overall, however, most inmates interviewed by Besozzi had vague and ambiguous feelings about their chances of survival on the outside. Some saw themselves alternatively as law abiding citizens and criminals. Others reflected the lack of clarity in the aims of the correctional system.

Summary and Conclusion:

Conditional release programs can be traced back to 1868, and today conditional release programs consist of a variety of programs including full parole, day parole, and temporary absences. Probation, however, remains the largest conditional release program in terms of sheer numbers (though not under the jurisdiction of CSC or the NPB). As the result of increased legal rights for prisoners, all of these programs developed to allow prisoners better access to conditional release.

In recent years, prison authorities have increasingly emphasized risk factors as the most significant consideration when considering which offenders to place in these programs. Once placed, offenders must follow rules and conditions or likely be returned to jail. The courts have extended legal rights to all those applying for, or in , such programs. If not allowed to participate, he must be told why. If release is revoked, moreover, the offender has the right to a full hearing and to retain legal counsel.