Report of the Panel Appointed to Review the Temporary Absence Program for Penitentiary Inmates

March, 1992

Canada

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March 9, 1992

Hon. Doug Lewis P.C., Q.C., M.P.
Solicitor General of Canada
340 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Dear Mr. Minister:

We the undersigned, appointed pursuant to Section 14 of the Penitentiary Act, are pleased to present to you the report of our review of the federal temporary absence program.

We trust that our findings will reaffirm the value of this program in protecting the public through rehabilitation of the offender, and that our recommendations will bring further protection to the public by proposing new approaches to the consideration of temporary absences for the high risk offender.

We thank you for the opportunity to examine this most timely issue, and to consult with representatives of various affected groups across Canada.

Respectfully yours,

N. Jane Pepino, Q.C.
Chairperson

Lucie Pépin
Member

Robert J. Stewart
Member

ACKNOWLEDGEMENT

The panel wishes to acknowledge and thank those who gave the panel the benefit of their knowledge, experiences and insight. Each in a different way made it possible for the panel to discharge its mandate.

Key amongst these are Richard Zubrycki and Diane Thompson of the Ministry of the Solicitor General Secretariat. As Director General of Corrections Policy and Program Analysis, Mr. Zubrycki brought to the panel a wide knowledge of the system and keen understanding of its workings. Ms. Thompson was invaluable in the production of the report, overseeing every detail with skill and good nature.

Remi Gobeil, Assistant Deputy Commissioner, Correctional Service of Canada (CSC) and Roy Evans, Manager, National Parole Board (NPB), also ensured swift information and helpful analysis on the panel's mandate from their respective agencies. David Pisapio of CSC provided guidance during the panel's interviews in both Quebec and Ontario Regions and Lise Boutillier of CSC assisted in arrangements in the Quebec Region. Frank Porporino and particularly Dr. Brian A. Grant, of CSC undertook exhaustive analysis of sometimes difficult data in response to the panel's requests. A long list of other employees of CSC and NPB aided our work through interviews and preparation of requested data and analysis, with openness to our questions and a spirit of professionalism that was impressive.

Finally, thanks must go to the lawyers, police, representatives of volunteer agencies working with offenders, and representatives of victims' advocate groups with whom we met. Notwithstanding their different perspectives, we found in each group a willingness to listen to and understand the perspective of the other, for the common goal of better protection of the public through safe integration of an offender. Particularly, we acknowledge those women banded together as "Victims of Takahashi", and their dignity, strength and determination.

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CHAPTER 1.

INTRODUCTION

Temporary Absences, or "TAs" as they are generally called, are brief, authorized absences from custody for offenders who are serving sentences of imprisonment. TAs rarely last longer than 72 hours and are often much shorter. They are authorized in part by the Penitentiary Act and in part by the Parole Act. The Prisons and Reformatories Act authorizes the TAs in provincial institutions. However, provincial programs were not included in the review covered by this report.

A number of high-profile failures of TAs, some with tragic consequences, have raised questions about both the adequacy of TA policies and procedures and the care with which they are implemented. Questions have been raised by the public and in Parliament about the value of certain types of TAs, particularly those in the "socialization" category.

In a speech in Edmonton on November 18, 1991, the Solicitor General expressed his own questioning of some aspects of the TA program: Is it the best use of scarce correctional resources? Are some types of activities inappropriate for offenders while on TA? Are TAs equally appropriate for all types of offenders? The Temporary Absence Review panel was commissioned to report to the Solicitor General, the Commissioner of Corrections and the Chairman of the National Parole Board at the request of the Solicitor General. The panel was requested to examine questions such as these, as part of a review of the entire temporary absence program.

CONVENING ORDERS AND TERMS OF REFERENCE

Review of Temporary Absence Program of
Correctional Service of Canada and
National Parole Board

WHEREAS it is provided by section 14 of the Penitentiary Act that the Commissioner of Corrections May appoint a person to investigate and report upon the operation of the Service; and

WHEREAS the Solicitor General of Canada has requested that a Temporary Absence Review be conducted as set out in this Convening Order; and

WHEREAS the Chairman of the National Parole Board has been consulted and is in agreement with the terms of reference of this Convening Order;

NOW THEREFORE, I, Ole Ingstrup, Commissioner of Corrections, do hereby appoint by virtue of section 14 of the Penitentiary Act, Ms. Jane Pepino, as Chairperson, Mme Lucie Pepin, and Mr. Bob Stewart, as members of the Review Panel.

I DIRECT THAT the Review Panel inquire into the program of temporary absences, escorted and unescorted, as it has operated in recent years and assess any weaknesses and problems that have arisen.

I FURTHER DIRECT THAT the Panel report to the Solicitor General, to me and to the Chairman of the Parole Board, by March 1, 1992, or as otherwise directed, with its findings and recommendations on the regulations, rules or procedures that will be required to ensure that the revised temporary absence program as set out in the proposed Corrections and Conditional Release Act will have as its paramount consideration the protection of the public while providing effective correctional programming leading to the integration of offenders into the community as law-abiding citizens.

IN PURSUIT OF its inquiries the Review Panel shall have all of the powers and authority set out in section 14 of the Penitentiary Act.

Given under my hand at the City of Ottawa, in the Province of Ontario, this 6th day of December, 1991.

Ole Ingstrup
Commissioner of Corrections

CHAPTER 2

INTRODUCTION TO TEMPORARY ABSENCES

TAs may be escorted or unescorted. Escorted TAs (ETAs) are, with certain important exceptions, under the authority of the Correctional Service of Canada (CSC) and, more specifically, the institutional head (Warden). Unescorted TAs (UTAs) generally fall within the authority of the National Parole Board (NPB).

Temporary absences should not be confused with day parole. The latter is a form of conditional release granted by the National Parole Board for periods of up to six months at a time. While shorter than full parole, day parole is granted for significantly longer periods than TAs and can be used to undertake activities requiring continuous involvement. Over the years, however, there has been a degree of uncertainty as to how these two forms of relatively short release should fit within the gradual (or conditional) release process to which the entire corrections and parole systems are directed.

Escorted Temporary Absence is usually the first type of conditional release received by an inmate. This often (though not always) represents the beginning of a gradual release process which, if successful at each stage, may lead to release on full parole. The usual progression would move from ETAs to UTAs, then to day parole and finally to full parole. Each phase in theory should be part of a correctional plan individually devised with and for each offender.

However, significant contradiction exists in the policies surrounding TAs. These policies stress not only that TAs should be granted as part of a correctional plan (CSC Case Management Manual, Section 2, p. 3,2.13), but also that UTAs should be used only for "occasional" or "intermittent" release. NPB and other CSC policies point out that "releases of an ongoing nature which are oriented towards a conditional release are more appropriately considered in the context of a day parole". (NPB Policies & Procedures Manual VIII, A, 1.1 and CSC Case Management Manual, Section 4, para 7).

CSC and NPB policies set out four categories of reasons for which TAs may be authorized: medical, compassionate, rehabilitative and administrative. "Medical" reasons can refer to emergency situations and, more frequently, to foreseeable procedures that cannot be dealt with adequately within the institution. "Compassionate" reasons include visits to immediate relatives who are terminally ill, attendance at family funerals, or at times of severe family hardship.

"Rehabilitative" TAs are granted for purposes which are widely varied. They cover everything from attending psychiatric treatment programs to maintaining family relationships through routine visits or attendance at significant family occasions such as the graduation of a child, or weddings. TAs have also been granted under this category to simply participate in ordinary community activities such as shopping, restaurant dining or recreation such as hockey or swimming, to help maintain social skills or offset the institutionalizing effects of long-term imprisonment or

to combat the serious psychological results of incarceration developed by some inmates. "Administrative" reasons are also quite varied and have included such activities as attendance at court (where attendance is not demanded by the court) or assisting with an outside work detail.

However, compassionate, rehabilitative and administrative purposes are sometimes referred to together by the NPB as "humanitarian". For reasons which are not clear to the panel, the NPB decision policies refer to them as "Humanitarian A", "Humanitarian B" and "Humanitarian C" purposes.

Recent CSC policy calls for the correctional plan to begin immediately following sentencing with a thorough case analysis which identifies social and psychological factors which have contributed to the offender's criminal behaviour. These "criminogenic factors" are to be addressed by the offender while under sentence, first through institutionally-based programs and later, while on conditional release to the community. It is consistent with the objective of risk reduction through rehabilitation therefore, to require that conditional release of a discretionary type should always be oriented to advancing the correctional plan whether or not the TAs are part of a "release" plan. With regard to TAs, this is especially true for those that are discretionary, being "rehabilitative" (or "humanitarian") in nature. In contrast, most "medical", "compassionate" and "administrative" TAs arise due to external, unforeseen and unpredictable factors (non-discretionary factors) rather than a correctional plan.

CHAPTER 3

HISTORICAL SUMMARY

A brief historical outline of the major milestones in the development of today's conditional release system is set out in Appendix "B". The concept of conditional release began over one hundred years ago as a reward and incentive for good institutional behaviour and law abiding conduct following release. Over time the mechanisms for granting conditional release expanded as the concept came to include more and more the notion that since almost all inmates eventually return to the community, the safest way for them to do so is gradually, with aid and assistance but under supervision and control. This would provide both a testing period and a gradual assisted transition from custody to the community.

As early as 1898 with the introduction of the Ticket-of-Leave Act,

> ...the Prime Minister of the day, Sir Wilfrid Laurier, in speaking to the new bill, recognized the problem of readjustment to the free community which faces an inmate of a penal institution when he is discharged. Conditional liberation was viewed as a method of bridging the gap between the control and restraints of institutional life and the freedom and responsibilities of community life. (The Ouimet report, p. 332)

In 1956, the Fauteux Committee argued for a more extensive and progressive system of parole in much the same terms:

> Parole....is a procedure whereby an inmate of an institution may be released, before the expiration of his sentence, so that he may serve the balance of his sentence at large in society, but under appropriate social restraints designed to ensure, as far as possible, that he will live a law-abiding life in society. It is a transitional step between close confinement in an institution and absolute freedom in society. (The Fauteaux Report, p. 51)

However, the Fauteux Committee recognized that the gradual release process should begin well in advance of the ultimate release on parole. It recommended pre-release programs in prisons that would provide greater privileges, more relaxed surroundings and openness to outside influences. The Committee did not, however, explicitly recommend that temporary absences be used for this purpose. They wrote at a time when the penitentiary system was comparatively barren of such opportunities and they therefore anticipated pre-release activities inside institutions. Temporary absences developed later as a logical extension of the Committee's approach, and came to be seen as an additional tool to be used early in the gradual release process prior to full release on parole.

At the time of the Fauteux Committee, the Canadian Penitentiary Service was comprised of only nine penitentiaries. All but two were Bastille-like maximum security institutions between 45 and 120 years old. During the next 15 years the penitentiary system expanded to a modernized collection of over 30 institutions (there are over 60 today) in five

administrative regions. Many of the new institutions were at the then new medium and minimum security levels and some were specialized for the treatment of drug addiction, mental illness, and relatively young first offenders. Included in these reforms were the creation of the National Parole Board in 1959 and a new Parole Act (to replace the Ticket-of-Leave Act) and, in 1961, an amended Penitentiary Act.

Although temporary absences were formally recognized for the first time in the 1961 Penitentiary Act, they were not new. It had always been necessary to remove inmates from custody for short periods of time for medical reasons, court attendance and the like. The prison industries of the 19th and early 20th centuries had long required large numbers of inmates to work outside the prison walls. Over one hundred years ago it was common in the village of Portsmouth (now incorporated into the City of Kingston) for gangs of inmates to be seen on their way to and from work in a nearby quarry; in Laval at one time up to half of the population of St. Vincent de Paul Penitentiary worked outside the wall in prison agriculture.

Confirming in law the implicit authority of the Warden to remove inmates from the penitentiary in the custody of an officer was therefore little more than a formality. However the concept of TAs for rehabilitative purposes, and the concept of unescorted absences were significant innovations in the spirit of Fauteux and his colleagues.

During the 1960s the use of temporary absences grew and became an integral part of the gradual release

process. Temporary absence data was not systematically collected until the mid-1970s so it is difficult to describe the growth of their use with accuracy. Nonetheless, it is clear that they were used creatively and enthusiastically, often for groups of inmates to participate in community service activities and sporting events. By granting TAs "back-to-back", longer periods were often created to permit inmate participation for specific work projects or other activities requiring more than the time allowed by a single pass.

The Parole Board also recognized the value of short, intermittent releases. The Board quickly developed several variations of such short releases:

> Short Parole: Usually for less than 30 days, to assist in the rehabilitation of the inmate by obtaining steady employment. ...
>
> Parole with Gradual: Is the permission given to an inmate to leave the institution, with or without escort, for short periods prior to his final release on parole, to assist in his readjustment to life in the community.
>
> Temporary Parole: Is an authority given as above, under similar conditions and for similar reasons, while the grant of an ordinary parole is not contemplated. (NPB Annual Report, 1961.)

Not surprisingly, confusion and conflict arose during the 1960s between the Canadian Penitentiary Service (as the CSC was then known) and the National Parole Board as to the purpose and role of the various forms of release and, indeed, of the two agencies themselves. The Board argued that TAs granted by the Penitentiary Service that were too lengthy and/or too frequent comprised a de facto conditional release program that then made it difficult for the Board to apply its independent judgement about the appropriateness of release. The Penitentiary Service countered that it could not predict if a course of TA releases would or would not meet with Parole Board approval since the Board refused to endorse a case plan in advance for fear of prejudicing its ability to take a completely unbiased release decision at a later date.

The confusion was cleared up to some extent in 1969 when the Parole Act was amended to create day parole. Also, in 1973, back-to-back TAs were ruled to exceed the authority of the Penitentiary Act and were prohibited in the federal system. Day parole was used instead to consolidate the former short forms of parole and the longer rehabilitative types of TAs. Between 1972 and 1973, for example, day paroles increased from 300 to 1000, probably representing the absorbtion of TAs into the new form of parole.

In 1977, as part of a "Peace and Security" legislative package, additional limitations were applied to TAs. Unescorted TAs were brought under the authority of the Parole Board (this authority was immediately delegated back to the Penitentiary Service for sentences of less than five years) and an

ineligibility period equal to that for day parole (the lesser of six months or one-sixth of the sentence) was instituted. Eligibility for escorted TAs remained unchanged, being from the first day of the sentence.

CHAPTER 4

CURRENT FRAMEWORK OF LAW AND PROCESS

The statutory framework for escorted temporary absences is set out in Sections 28, 29 and 31 of the Penitentiary Act and, for unescorted temporary absences, in Sections 12, 23, 24, and 25.2 of the Parole Act and Section 12 of the Parole Regulations. Special provisions for offenders serving a life sentence as a minimum penalty (for first or second degree murder) are set out in Section 747(2) of the Criminal Code of Canada. The statutory provisions are further elaborated upon in Sections III and VIII of the National Parole Board Policies and Procedures Manual, the Correctional Service of Canada Commissioner's Directive 790 and Section 4 of the CSC Case Management Manual.

Authority for granting and regulating temporary absences is shared between CSC and NPB with the former responsible except in special cases for ETAs and the latter in all cases for UTAs. Section 28 of the Penitentiary Act provides that the Commissioner of Corrections or officer in charge of a penitentiary may grant escorted temporary absences when in their opinion it is "...considered necessary or desirable..." for:

- medical reasons;
- humanitarian reasons; or
- "...to assist in the rehabilitation of the inmate...".

The Commissioner may authorize medical ETAs for an unlimited period of time, and humanitarian and rehabilitative ETAs for up to 15 days. The officer in charge of the penitentiary (i.e., the Warden) may grant them for up to 15 and five days respectively. In rare cases where a penitentiary inmate has been transferred to a provincial institution (typically a mental health facility) the Warden may delegate his or her ETA authority to the officer in charge of that facility.

The authority of the Commissioner and Warden is normally subject to no time limits and can be exercised from the first day of an inmate's sentence. Section 747(2) of the Criminal Code provides that offenders serving a life sentence as a minimum penalty must have Parole Board approval for ETAs until three years before full parole eligibility (25 years for first degree murder and from 10 to 25 years for second degree) and NPB and CSC policy requires that the recommendation of the NPB be sought by CSC for the first ETA after that.

Where the NPB recommendation does not concur with that of the Warden, the Regional Deputy Commissioner and Commissioner of Corrections must review the case and the Commissioner's authority is required for the absence to be granted. Where the ETA is not recommended by the Warden it is not forwarded to the Parole Board in the first instance.

In the case of offenders serving a life sentence as a maximum penalty, or indeterminate sentences (e.g., Habitual Offenders, Dangerous Sexual Offenders, Dangerous Offenders) the recommendation of the Parole Board must also be obtained. All first ETAs approved

or recommended by NPB must be accompanied by "security escorts", that is, by members of the CSC who have been trained in security procedures and the escorting of prisoners including the proper use of restraint equipment and where the primary task is to maintain secure custody of the offender.

Section 25.2 of the Parole Act provides that unescorted temporary absences may be granted when, in the opinion of the Board, it is necessary or desirable:

- for medical reasons - for an unlimited period;
- for humanitarian reasons - for up to 15 days;
- to assist in the rehabilitation of the inmate - for up to 15 days.

The Board can delegate its full authority to the Commissioner of Corrections or to the officer in charge of the institution for up to 15 days for medical reasons and three days for humanitarian and rehabilitative reasons subject to any conditions it may set "...if it has determined that an inmate or a class of inmates is one for whom or which temporary absence without escort is appropriate...". In practice, the Parole Board delegates its authority to Wardens for all cases serving sentences of under five years. Parole Board authority may also be delegated to the officer in charge of a mental hospital where the offender is committed during the period he or she is serving a penitentiary sentence except in cases of life

sentences, indeterminate sentences, commuted death penalty cases, where charges or an appeal are pending, and in cases designated to be high-profile by the Board.

Section 12 of the Parole Regulations establishes the ineligibility period for UTAs in most cases as one-half the time before full parole eligibility (in other words one-sixth of the sentence) or six months (whichever is the greater). In the case of Dangerous Offenders who are serving an indeterminate sentence, they become eligible for UTAs at the same time as they become eligible for full parole - after three years. Offenders who are imprisoned for life as a maximum penalty must serve five years before they are eligible for UTAs (they are eligible for full parole after seven years). Persons serving life as a minimum penalty (first and second degree murder) are not eligible for UTAs until three years before they become eligible for full parole consideration (i.e., between 10 and 25 years for second degree and 25 years for first degree murder).

The policy of the Parole Board is that it decides on UTAs only when an application is submitted by offenders who are entitled to do so but no more frequently than once every six months. The review is conducted only "on paper" (i.e., without an in-person hearing) except where it is the first such release for an offender serving a sentence of more than six years for an offence on the Schedule to the Parole Act (offences involving violence) or it is otherwise

desirable to do so in the opinion of the Senior Parole Board Member of the region where the case is being considered.

Section VIII of the National Parole Board's Policy and Procedures Manual establishes four types of UTAs:

- Medical: for procedures that cannot be done in the institution;
- Humanitarian A: for occasions of a family death, severe illness or undue hardship (also referred to as "compassionate reasons");
- Humanitarian B: for family and community contact (sometimes called "socialization" reasons but also referred to in the Parole Act as "rehabilitation");
- Humanitarian C: for "administrative" reasons such as non-mandatory court attendance or an interview at a halfway house. Administrative reasons are not specifically mentioned in the legislation but would normally be considered on the basis that they would be contributing to the rehabilitation of the offender, by assisting him or her to plan for his or her release on day parole, full parole, or mandatory supervision.

If an offender has been detained pursuant to the detention provisions of Bill C-67 (enacted in 1986) at his or her MS date, he or she remains eligible for UTAs, but they seldom are granted.

Parole Regulations also establish the maximum duration of Humanitarian UTAs. Offenders classified as maximum security may be granted TAs for time up to 48 hours per month, and medium and minimum security inmates may be granted up to 72 hours each month. Several passes may be granted during a single month as long as together they do not exceed these time limits. "Back-to-back" UTAs (i.e., a second UTA following immediately upon another) may not be granted. At Christmas and New Years, Wardens may issue special UTAs of up to 72 hours duration (plus travel time where necessary) where a prior UTA has been granted, provided that the monthly time limits are not exceeded.

Where the UTA is granted by the Board, it may establish general and special conditions for UTAs which may not be altered or added to by the Warden who implements the pass. All offenders are required to carry a copy of their TA certificate and identification papers showing their picture and to produce these for inspection by police if requested. The Board may also impose a condition that an offender be accompanied by a specific person for some portion of the time he or she is in the community on a UTA. Wardens may refuse to implement or may cancel UTA's that are under way where there is cause to do so, and report their reasons to the Parole Board for a further decision.

All temporary absence decisions made by the Board and by Wardens or the Commissioner are meant to be based on an assessment of risk and granted only upon conclusion that "undue risk" will not be posed to the community by the release of the offender with or without escort. To prepare this assessment, case

management staff in the institution prepare a written assessment of the case which is also intended to consider information from an assessment in the community of the offender and the offender's plans for the requested TA. This report makes a recommendation to the decision-maker for or against the specific TA and/or a program of TAs that is being applied for. Post-TA reports are called for so that progress can be monitored. This is particularly important where a series of TAs have been approved in advance. Where undesirable incidents occur, they are meant to be brought to the attention of the decision-maker with a re-assessment of the case.

Case preparation begins with an assessment of the inmate upon reception in the institution and the development of a correctional plan with and for the offender. It includes collection and a review of information about the offender's background, his or her criminal career, factors contributing to the offence and offence history, psychological and, where indicated, psychiatric information. Community information is also collected and reported in the form of a Community Assessment which is to be updated with regard to the specific activity that is being proposed. A statistical assessment tool known as the SIR (Statistical Information on Recidivism) scale is also used throughout this process to predict the probability of recidivism of a particular offender by comparing him to a group of similar offenders whose recidivism rate is known. This is only one factor in release decisions and is not considered to accurately predict the risk posed by an individual offender. In addition, it has not been sufficiently validated to be considered

reliable for aboriginal and women offenders and therefore is not applied to them at this time. With regard to sexual offenders it measures only the risk of general recidivism, not of repeat sexual offences.

The correctional plan is meant to map out a program that will help the offender deal with factors relevant to his or her criminal behaviour. This plan is ultimately intended to become a release plan which will gradually extend the rehabilitation process into the community on various forms of conditional release. Proposals for temporary absences are assessed within the context of this plan and are intended to be consistent with its objectives as well as posing no undue risk to the community based on all of the information at hand.

Since each offender's background, personal circumstances, needs and abilities are unique, each plan, and any release decisions, must be individualized. Therefore a wide variety of activities have been considered appropriate during release on temporary absence, although some will only be appropriate in certain cases while others will not.

A large group of TAs (both ETA and UTA) are granted for discretionary purposes, and are categorized variously as "socialization", "community contact" and/or "maintenance of family relationships". These TAs cover a wide variety of social activities from shopping trips, attending or playing in sporting events, attending community cultural activities, visiting family, and the like. This type of TA appears to be less clearly connected to specific treatment

goals or programs than others, although the panel was advised that sometimes they are used to test an offender's ability to handle slight increases of responsibility. They are also used to offset the debilitating effects of long periods of incarceration. However, less appropriately, sometimes they are described as being applied for - and granted - to provide an offender with "credibility for his day parole application".

The most common reason given for granting TAs is to maintain family ties and community contact. About 95% of unescorted TAs and 71% of escorted TAs have been granted for this purpose. The majority of medical and administrative TAs are conducted under escort. Most group TAs (usually for work, community service or recreational activities) are conducted under escort. Where escorts are provided for security reasons (security escorts) they must be trained security officers who use physical restraint equipment as deemed necessary. Escorts designated "non-security" or "resocialization" may be non-security CSC personnel or community representatives such as voluntary agency personnel, volunteers, friends or relatives.

Temporary absences have become an important and integral part of the correctional programming of federal institutions and are considered by both CSC and NPB to maintain and improve the social adjustment of offenders in preparation for release, either conditional or statutory. They have also come to be used as an important first step in the gradual release process. The framework of laws and rules that control their use has evolved and has become more stringent as

has the caution with which they are used. The supporters of the existing system point to the published data as establishing that "success" rates are so high, and "failure" rates so low, as to make further significant improvements difficult to conceive.

However, the apparently high rate of success of TAs has been measured only in terms of lack of failure to return to custody and the absence of new charges. Existing data indicates little, by itself, about the achievement of program objectives and rehabilitative impact. Moreover, the serious consequences of even a small number of failures have been sufficient to call into question the value of the program.

CHAPTER 5

OBSERVATIONS AND FINDINGS

A. ARE TA'S SUCCESSFUL?

I. What is the failure rate?

The answer most often given to the question as to whether TA's are successful is based on statistics. The TA program is, on the numbers, one which has a high participation rate, and an extremely low failure rate. The program issued something in the order of 50,000 permits for TAs in 1990-91, to over 7,000 of the almost 13,000 inmates incarcerated. It has had a failure rate of less than 0.5% over the past 16 years, and has maintained a failure rate of less than 0.3% in the last five years. Without doubt, CSC and NPB can take justifiable pride in the results.

However the definition of "failure" and hence, the assumption of success of a TA causes some concern to the panel. "Failures" according to the data that are kept, are only those times when an offender fails to return and is declared unlawfully at large. Of the 68 failures in 1990-91, 52 were declared unlawfully at large, 10 were detained by the police and six were terminated by the NPB because of a violation of conditions or other concerns about the behaviour of the offender.

TAs are classified as successful simply because the offender returns to the institution: the offender may return late, be granted an extension due to unforeseen circumstances, or indeed return in a state

bearing clear evidence of breach of conditions (e.g., showing signs of impairment) but statistically at least these are not counted as failures. Those inmates who have breached conditions almost invariably suffer suspension or cancellation of their approved TA program, but this is not considered a statistical failure. Moreover, a post-TA report filed by an escort or a post-TA report from a community assessment following a UTA for a family visit might also identify serious concerns about offender behaviour while on the temporary absence, but not be noted as a failure.

Detailed Completion Information for All TAs
Time Period 1990-91

Type of Completion	%	Number
Successes:		
- On Time	94.4	48,959
- Extension	1.8	958
- Late	3.7	1,921
Failures (detailed below)	.1	68
Total:	100.0	51,906
Failures:	%	Number
Unlawfully at large	76.5	52
Detained by Police	14.7	10
Terminated by NPB	8.8	6
Total	100.0	68

RECOMMENDATION #1

That the definition of failure should be broadened to properly identify and capture problems occurring on a TA, including breach of conditions and unacceptable lateness, and that these definitions be utilized in the data collection process.

II: What is the consequence of failure?

The panel also believes it important to formalize the practice whereby those who fail to meet the conditions of their temporary absence have any future approved TAs automatically suspended and reviewed by the body granting the TA. This would reinforce the commitment to public protection as well as clearly bringing to the offender's attention his or her obligation to meet the standards or lose privileges. In addition, any individual who has "failed" through being declared unlawfully at large, being detained by police, behaving in a way that results in new charges being laid, or having a TA terminated by the NPB for cause should have all future TAs cancelled. Further this offender should be permitted to reapply for any temporary absence in the future only after an investigation into the circumstances surrounding this failure is complete and the results of such investigation placed on the inmate's file. The panel notes that the Correctional Investigator appears presently to have the necessary legislative mandate to undertake such investigations, as do CSC audit teams, or others authorized to enquire under the Penitentiary Act.

There is a need to impress upon offenders that early release in any form is a privilege and is given to assist in successful reintegration even though the Service and the public are aware of the potential risk. The trust being placed in an inmate must be recognized by the inmate and not violated if we are to modify behaviour and protect society.

RECOMMENDATION #2

That any breach of conditions of a TA should lead to an automatic suspension of any future previously approved TAs, to be reinstated only after review by the decision-maker who first granted the TA.

RECOMMENDATION #3

That any "failure to return" of a TA which includes detention by police, any behaviour which results in new charges being laid or cancellation of a TA for cause, should result in automatic cancellation of any future previously approved TAs, an investigation into the circumstances surrounding the event completed by an appropriate investigating body and the results of the investigation placed on the inmate's file to be taken into consideration when he or she is reviewed again for any form of conditional release.

III: Are enough TAs granted?

The panel also concludes that if the thrust of the program is to reduce long term risk to the public

by equipping an offender with the skills that will allow him or her to again live in the community without committing further crime, it would seem logical that the issuance of TAs for that purpose should increase, for all offenders save those who present too much risk for community supervision.

In addition the speedy reintegration to community supervision of those offenders who present little risk of reoffending violently will likely not only remove them from the criminal influences and values which permeate a prison, but also have significant cost savings: in times of fiscal restraint, more resources must be directed at treating the high risk offender.

Finally, NPB decision-makers prefer a track record of successfully completed TAs, as a consideration in granting day or full parole. Again, if a goal is to hasten the safe reintegration into the community of offenders who present low risk, they should be assisted in qualifying for parole.

However, the long term data showed a decline in the number of TAs granted over the past decade, relative to the number of inmates, which decline was only reversed in 1990-91, and then only in some categories and some regions (Correctional Investigator Annual Report 1990/91).

The data does not exist to explain the decline in the numbers of TAs granted, but it is reasonable to believe that some of the relevant factors include increased use of day parole, and a reluctance of

decision-makers to grant TAs after a sensational failure. As well, the characteristics of the population may be changing with more higher risk inmates who could not sensibly be considered for TAs, or not until further into their sentences. Finally, scarce resources sometimes make it difficult to dedicate a sufficiently large number of CSC employees to the task of escort.

Care must be taken, however, in attempting to increase the numbers of temporary absences, to not override the consideration of whether the offender presents unacceptable risk to the public. This fundamental premise cannot be overstated.

RECOMMENDATION #4

That the CSC undertake a complete analysis on an institution by institution basis to ascertain the rates of grants of ETAs and UTAs over the past five years, to ascertain any statistical decline, and the reasons therefore. In addition, CSC should develop a comprehensive data base to track variances in the rate of granting TAs and an appropriate framework for analysis on an institution by institution basis of information such as the population profile, when a TA occurs in the offender's sentence and whether a TA is completed successfully.

IV: What is the ratio of ETAs to UTAs granted?

If one assumes that TAs are part of a progression from correctional plan (treatment and programming) to a release plan (programming and supervision in the community), then it would be reasonable to expect slowly increasing levels of responsibility given to the appropriately selected inmate, through gradual reduction in the amount of supervision. Therefore, the expected progression would be single ETAs (perhaps with a security escort) to group ETAs (perhaps with a citizen escort) to a UTA (with supervision conditions) to a UTA (with no special supervision conditions).

In fact, however, a review of the data[1] since 1975/76 shows that the percentage of unescorted temporary absences has declined significantly from those years, to a constant level of about 15% of all TAs granted, over the past four years. Although the decline in the early years of this period again may be attributable to the increase in the granting of day parole, it is unclear as to what might have lead to the most recent experience. It does suggest, however, that further investigation should be had with regard to the decline.

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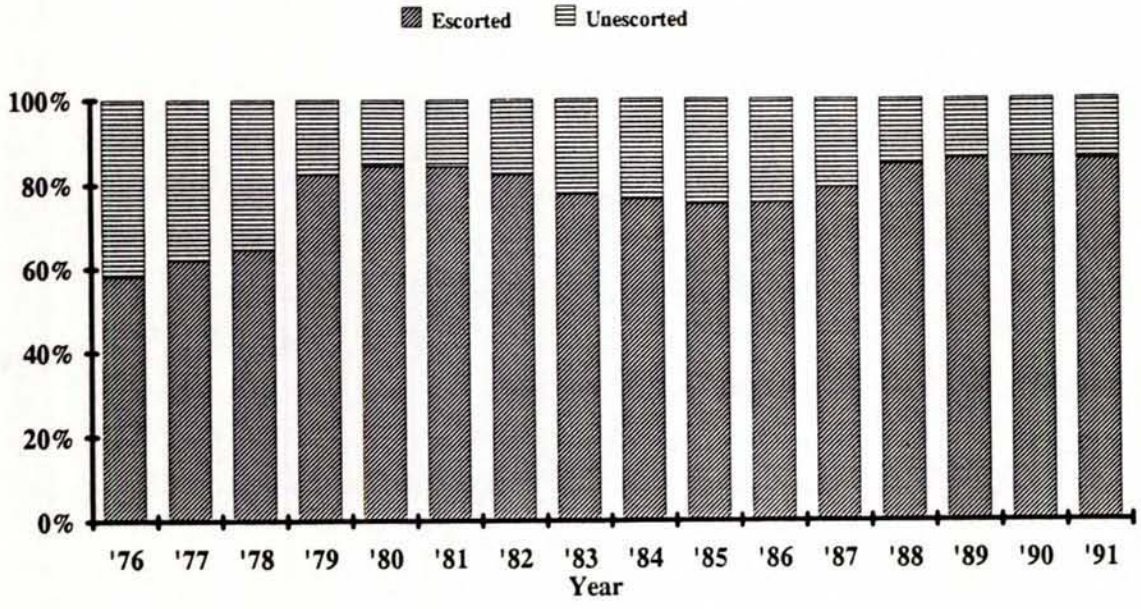
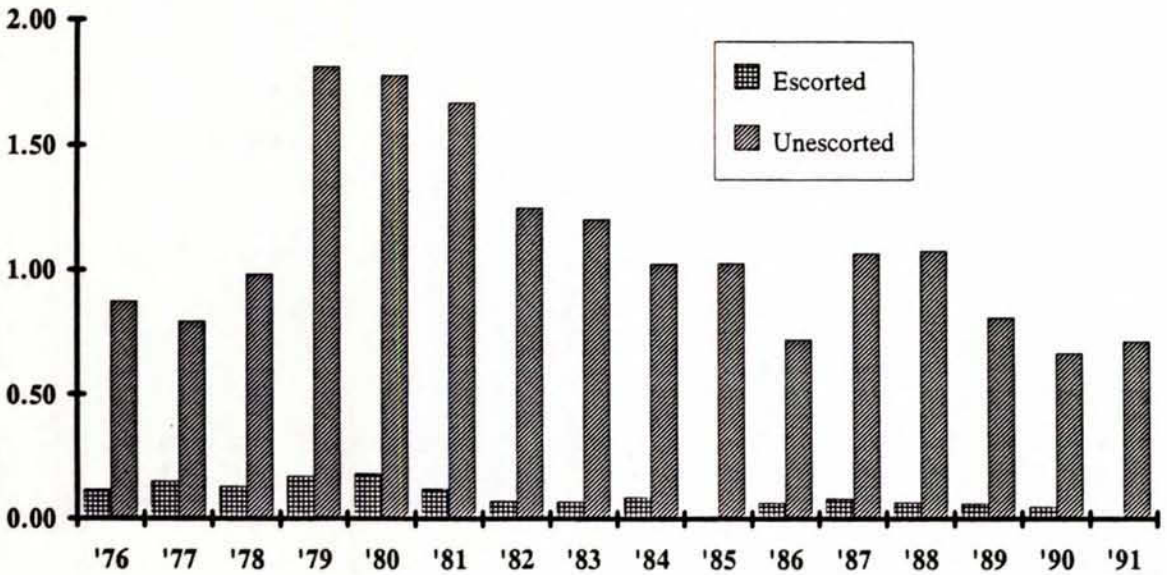
[1]Unless otherwise indicated, the Correctional Service of Canada is the source of all data, charts and tables in this report, particularly the January 20, 1992 report "An Analysis of Temporary Absences and the People Who Receive Them".

Relative Frequency of Escorted and Unescorted Temporary Absences



It should be noted that escorted TAs (the majority) have an extremely low "failure" rate (less than 0.1%) while UTAs result in a higher (but still low) "failure" rate of less than 1%, in the year 1989-91.

Percentage of Failures for Escorted and Unescorted Temporary Absences



Obviously, this shift in the type of TA, by reducing the number of the type that has the higher failure rate (UTAs) also contributes to the extremely low "failure" rate. Finally, it bears noting that the high number of TAs completed without incident can also be attributed to the high level of motivation of an inmate at this stage of his or her sentence. TAs represent the first time a prisoner is permitted to taste even a small slice of life outside the institution, and as a result, few do anything to risk its loss. Moreover, failure on a TA usually jeopardizes future assessments on "releasability" and few will risk being denied further TAs, or, more importantly, day or full parole. Again, the statistics bear this out. Although "failure" rates for TAs are extremely low, they are higher when offenders move on to other forms of conditional release. In 1989, a Parole Board follow-up study of releases found that, after five years, 25.4% released on full parole and 45.5% of those released on mandatory supervision had been returned to custody before the end of their sentence (warrant expiry date). In addition, during the follow-up period another 6.4% of the former parolees and 17.4% of those released on mandatory supervision were returned to custody with a new offence after the warrant expiry date (Solicitor General Canada, 1990).

V: Is lack of failure a success?

Notwithstanding the very positive numbers outlined in the previous Section, the panel finds it impossible to advise whether or not TAs are successful, not simply in having an offender return to the institution from that particular pass, but in actually gaining skills and responsibility to permit eventual successful reintegration as a law-abiding citizen.

No data exists that permits such an examination. For example, the data to compare an individual's record of types and frequency of TAs to his or her eventual success in the community, is simply not recorded.

RECOMMENDATION #5

That the data base be modified to provide for the collection of information that will permit analysis to establish the effect of TAs on an offender's long term recidivism.

VI: Are TAs cost-effective?

Finally, the panel supports better data gathering, to allow sensible cost and resource allocation decisions to be made on what programs and approaches are most effective and should be expanded. These could then be compared to those which are of relatively less effect in assisting an offender to be safely integrated into the community, with the minimum risk of reoffending. As well, cost savings can be

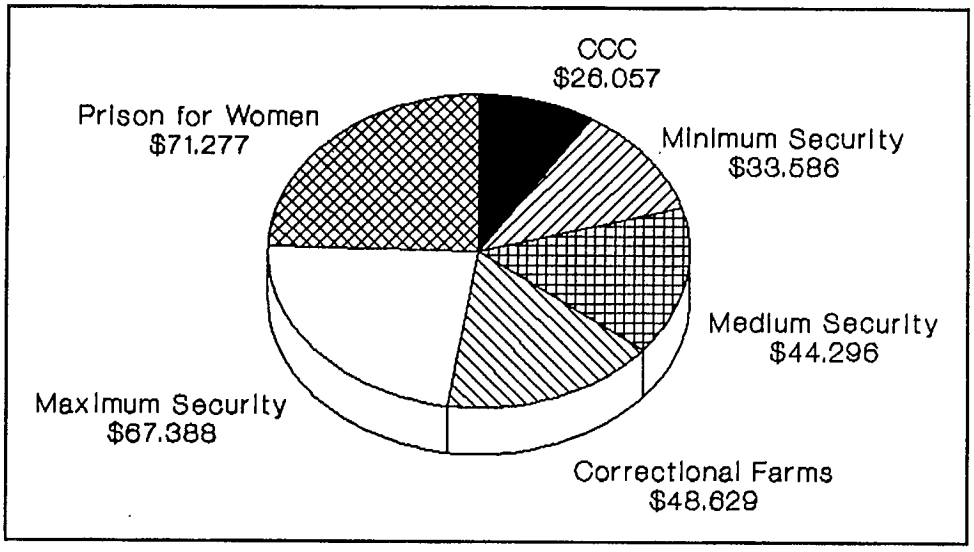
realized if TAs accelerate the movement of offenders from incarceration to the community.

The CSC publication entitled "Basic Facts about Corrections in Canada 1991" shows, at p. 51, the average annual cost of keeping an inmate in a federal penitentiary as $51,047 for 1989-90. These costs varied with the type of facility in which the offender was housed, as shown below, and reflected only the costs such as salaries, programs, security, health care and costs associated with the maintenance of the facility, and not administration, parole or other "soft" costs.

The average annual cost of incarceration by security level - 1989-90:

Security Level	Number of offenders	Average annual cost per offender
Maximum Security	3,632	$67,388
Prison for Women	122	$71,277
Medium Security	6,180	$44,296
Minimum Security	681	$33,586
Correctional Farms	525	$48,629
CCC	277	$26,057
Total	11,416*	$51,047**

* Does not include offenders on leave, at large, etc.
** Community Correctional Centres (CCC) primarily house offenders on day parole and are designated as minimum security institutions. The average annual cost per offender includes those costs associated with the running of the institution only and does not include parole-related costs, staff training or headquarters costs.



CSC Cost of Maintaining Offenders, 1989-90.
(Source: CSC - Basic Facts about Corrections in Canada, 1991)

In comparison, the cost of supervising an offender on parole or mandatory supervision was, in the same period, given as $7,916.00, although the basis on which that figure was calculated is not set out.

No cost figures could be produced that set out the cost of a single temporary absence, or even of all TAs granted. For example, although some institutions have one person who is trained and functions as "the escort", it is unclear how many CSC person hours were dedicated to providing either security or "resocialization" escorts for temporary absences. Some institutions, particularly the minimum security institutions, have a full-time TA Clerk to process all the applications and permits, but again, no cost figures were available for these "indirect" costs.

The panel did learn that the direct cost of TAs was generally very low; the inmate is expected to bear the direct costs of an absence, such as meals, admission, transportation and lodging. In fact, we heard that some inmates do not apply for the temporary absences because they cannot afford the attendant costs. CSC attempts to keep costs of social and recreational outings within the price range of the average inmate, particularly since such outings are intended to educate an inmate about leisure activities within his price range after release. Occasionally, however, some inmates have sufficient resources to afford more, or institutions are the beneficiaries of donated tickets, passes and the like.

CSC pays direct costs only when an inmate's financial circumstances cannot support the costs of an absence granted for compassionate reasons: for want of a bus ticket, an inmate will not be denied attendance at his/her mother's funeral, for example. The table below was provided to the panel by CSC, setting out "direct" costs expended from 1988 to 1991. These expenditures are modest, indeed.

TEMPORARY ABSENCE EXPENDITURES

Region	1990/91	1989/90	1988/89
Atlantic	27,922	17,361	12,953
Quebec	56,668	100,111	37,246
Ontario	4,472	4,974	3,114
Prairie	3,137	3,338	3,178
Pacific	4,341	3,078	1,699
	96,540	128,862	58,190

(Source: CSC Note, December 2, 1992)

RECOMMENDATION #6

That a data base be designed and maintained that collects information on the cost of TAs, and would permit cost-benefit analyses of TAs, in relation to recidivism rates.

B. HOW ARE TAs DEFINED AND USED?

I. What does the terminology mean?

The panel observed that a variety of overlapping and sometimes confusing terminology is used to describe the types and purposes of TAs. This lack of precision complicates the development of a common understanding of the primary objectives of the TA program, and how it should be administered. There are, for example, significant variations between Regions in the rate with which TAs are granted (during 1990-91, Quebec Region with 26.9% of the offender population granted only 18.6% of all TAs while British Columbia with 13.6% of the offender population granted 33% of all TAs that year).

In the current legislation both the Penitentiary and Parole Acts define only three purposes for TAs:

- medical;
- humanitarian; and
- rehabilitation.

Parole Board policy re-defines these purposes as:

- medical;
- Humanitarian "A" (compassionate);
- Humanitarian "B" (family and community contact); and
- Humanitarian "C" (administrative).

CSC follows the same categorization as NPB but often uses different terminology:

- medical;
- compassionate (or humanitarian);
- family and community contact (or resocialization or socialization); and
- administrative.

It is of interest to note that the administrative category is not specifically authorized by statute although the validity of many of its uses is hard to deny (e.g., attendance at court, to accommodate release dates that would fall during a weekend and similar unforeseen matters that do not or cannot be included in a correctional plan).

Needless to say, this confusion of terminology also makes efficient data capture very difficult and statistical reliability open to question and precludes meaningful analysis.

II. Will Bill C-36 clarify the terminology?

Proposed legislation in Bill C-36 attempts to clarify the current situation by better differentiating between the various purposes of TAs by setting out six types:

- medical
- administrative
- community service

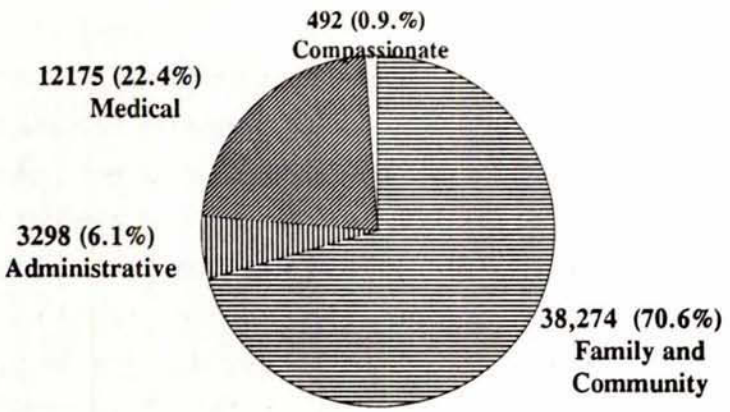
- socialization
- personal development
- humanitarian

This new structure holds some promise of clarifying the purposes and uses of TAs. However, without better definition and description of each category than is found in Bill C-36 confusion could in fact be exacerbated. It is not clear, for example, what are the proper limits of humanitarian (i.e., compassionate) or administrative TAs in comparison to those granted for socialization or personal development purposes. Moreover, at the present time the NPB uses the term "humanitarian" to describe all TAs except those granted for medical reasons. Without careful redefinition, using these same terms with somewhat different meanings will import and possibly worsen the lack of clarity that now exists.

Certain "community service" and "personal development" activities would today be covered by TAs granted for "rehabilitative" purposes ("Humanitarian 'B'" in NPB terms and "resocialization" in those of CSC). However, under the Bill C-36 provisions, TAs for these purposes could be granted for significantly lengthier periods of release, and therefore are clearly meant to be different than those granted under the current regime. These differences must be set out more clearly if TAs granted under the new legislation are to be understood, implemented and monitored in a consistent fashion.

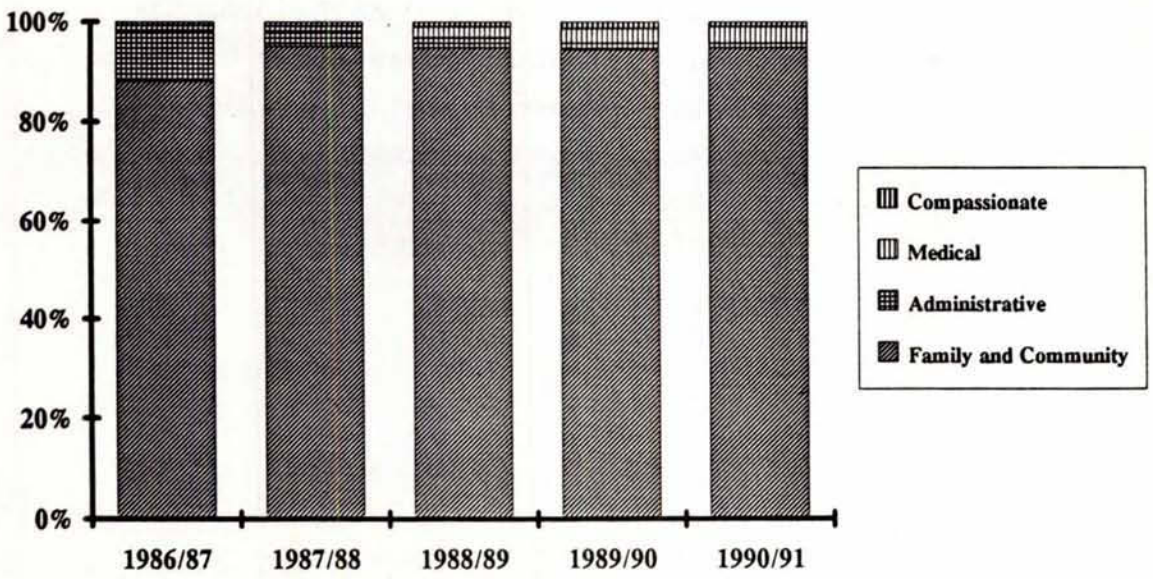
The term "socialization" is also problematic in that it currently is used in such an inclusive fashion to appear to be a catch-all category that is almost meaningless for policy or program evaluation purposes. As displayed in the following charts, over 70% of all TAs are for socialization purposes ("family and community contact") and about 95% of all UTAs are for this purpose.

Reasons for Temporary Absences*



*Average percentages over 5 years (1986/87-1990/91)

Relative Percentage of Reasons for Unescorted Temporary Absences



This single category may include a wide variety of disparate activities such as attending a therapy program, a weekend family visit, a shopping trip, or bowling. Arguably these and the many other activities covered by this category serve somewhat different purposes and are of different value in achieving the objectives of the correctional plan in specific cases. More differentiation between the purposes that these activities serve would be desirable for evaluating the effectiveness of both individual TAs and the TA program in general.

At the very least, the category of "socialization" TAs should be broken into its major constituent parts: family contact and community contact. The latter component might be broken down yet further into activities that are recreational and those where the objective is simply association with the free community - the latter being closer to the apparent meaning of the term "socialization".

Activities that are considered rehabilitative in the broadest meaning of that term (education, employment, social skills) might be included in a separate category as well, unless clearly included under the category of "personal development". However, the panel has concerns that "personal development" is so vague as to be unhelpful, and so broad as to be open to confusion and misuse.

III. How can Bill C-36 definitions be improved?

The following terminology, if used in the legislation, might provide better definition of the purposes of TAs:

- medical
- compassionate
- administrative
- community service
- rehabilitative
- therapeutic
- family contact
- community contact

Definitions should also be included in Bill C-36 itself or its Regulations along the following lines:

Medical:
To undergo medical procedures that cannot be provided in the institution. In emergency situations where no assessment of risk is possible a security escort should always be utilized. Where the medical need is foreseen and where an assessment of risk has been undertaken and remains valid, the appropriate level of escort should be utilized.

Compassionate:
To attend to unforeseen events which have befallen members of the immediate family such as a serious accident or illness, a death, or other family crisis.

Administrative:
To attend to unforeseen but essential business and legal matters and for purposes related to administration of the sentence (i.e., to attend judicial proceedings where it is not by order of the court, to sign legal documents or to accommodate release dates which fall during a weekend or statutory holiday).

Community Service:
To undertake voluntary activity at the request of or in collaboration with an outside non-profit community institution, organization or agency aimed at assisting or benefiting that entity and/or the broader community.

Therapeutic:
To participate in specific treatment activities aimed at improving psychological health and social adjustment with the goal of reducing criminogenic factors and risk (i.e., Alcoholics Anonymous, Substance Abuse Treatment program, Sex Offender Treatment program, Family Violence counselling).

Rehabilitative:
To participate in activities of a general rehabilitative character such as the development of work skills and improving educational level with the goal of better equipping offenders to adopt a law-abiding lifestyle (i.e., general or specialized education, technical training, etc.).

Family contact:
To maintain and strengthen family ties as a support while in custody and as a resource upon release.

Community Contact:
To associate with members of the general community in a range of every-day activities such as shopping, recreational, arts and cultural pursuits, with the goal of providing appropriate models for behaviour and equipping offenders with the social and leisure skills to maintain a law-abiding lifestyle.

IV. What levels of security and supervision should be assigned?

Adding to the confusion is the sometimes interchangeable use of some terms to describe a type of escort as well as a type of TA. In Commissioner's Directives 790 and 545, escorts are described simply as:

- security, or
- resocialization.

However, the latter term is also used to describe the level of supervision by an escort even where the TA may not itself be a "resocialization" TA.

Therefore, the type of person acting as escort for any of the foregoing activities should be specified more clearly as:

security: a CSC staff member or peace officer trained as a security escort;

non-security: a CSC staff member who may or may not have security training;

community volunteer: anyone screened and trained by CSC for this purpose.

Furthermore, the panel suggests that the type of security or supervision to be provided during a TA should be classified as follows:

escorted: a) security restraints mandatory,
b) security restraints optional,
c) non-security,
d) community volunteer;

accompanied: the escort is not required to remain with the offender at all times; normally used on group absences;

unescorted - supervised: the offender must report to a CSC or contract supervisor during the absence as directed;

unescorted: the offender is solely responsible for his or her conduct and return from the TA on time.

RECOMMENDATION #7

That Bill C-36 and the Regulations thereto define the various types of TAs by incorporating a statement of the purposes for which the TAs may be granted that is sufficient to make clear the differences in the approved purposes, and to allow the collection of data to permit evaluation of the program.

The same terminology should then be used by both CSC and NPB in Regulations and policy that supplement the statute.

RECOMMENDATION #8

That the levels of supervision and type of escort as outlined by the panel be set out in clear terms on each TA permit that is approved.

RECOMMENDATION #9

That no matter the value of a particular TA to the rehabilitation of an offender, protection of the public and the risk posed to the community by that offender must always be the highest priority and the most important criteria to be considered by the decision-maker.

C. HOW IS RISK MANAGED?

I. How well is risk addressed in decision-making?

The panel heard widespread agreement that TAs should fit within the framework of an individualized correctional plan for each offender. Nor would anyone disagree that TAs should be used only when the risk is acceptable (i.e., it is low and/or can be controlled), for authorized purposes, and when they will help achieve the objectives of the offender's correctional plan. In the panel's view, this is clearly the right

order: risk is the first consideration, achievement of treatment objectives must remain secondary.

However, the panel had reason to conclude that the paramountcy of risk - a paramountcy that is to be legislated by inclusion in Bill C-36 (Sections 4(a) and 101(a)) - was not always being given sufficient emphasis in correctional planning and TA decision-making. Moreover, it was not always evident that there was a connection between an over-arching correctional plan and individual TA decisions. In a few cases of those that the panel observed being presented for decision to institutional TA Boards, there was virtually no mention of elementary indicators of risk such as the nature of the admitting offence, criminal history, length of sentence, or time served. Nor was there, in many cases, reference made to long-term correctional objectives and how the TA under consideration could contribute to them.

In fairness to the TA Boards of which the panel is critical, it may be that those participating felt it redundant to discuss many of these factors amongst officials who knew the offenders well and had reviewed their cases on paper in preparation for the Board. Nonetheless, in a few cases it was obvious that the offender was not well known to all present and critical information was not immediately at hand. Seldom if ever were the long term objectives of the case discussed in relation to the TA under consideration.

II. Do eligibility dates improperly influence decision-making?

The reason for some TA applications was given as "...to develop credibility for day parole...". This struck the panel as contrary to the principles set out earlier in this Section. Surely the objective of TAs should not be simply to reach the next step of the conditional release process.

The panel was advised that information as to the eligibility dates for privileges such as early release in the form of temporary absence, day parole, full parole and mandatory supervision are provided to the offender soon after entering into the correctional system. This information coming at the early stages of incarceration must raise expectations in the minds of both the inmate and his or her keeper, the expectation being the consideration of release dates as an automatic right as opposed to a privilege to be considered on an individual case by case basis.

It is not surprising that activities meant to be privileges such as "earned" remission over time tend to become mandatory or a right not to be taken away. The concept of "earned remission" has been converted to an almost automatic right, which leads to the release of an offender at 2/3 of his or her judicially sanctioned sentence unless CSC and NPB satisfy the onus of having him detained. Even then, the legislation provides for "one-chance" mandatory supervision.

In summary, the panel had the impression that the inevitability of release and the presumed inevitability of early release sometimes had the effect of creating a "release bias" in the minds of case managers, therapists and decision-makers. Particularly, the panel was told that the automatic establishment of eligibility dates for conditional release creates a high degree of pressure on correctional officials to prepare offenders for release when the custodial portion of the sentence is relatively short. In such circumstances modest progress in a treatment program or the relative merits of one form of release over another may come to be seen as paramount rather than a consideration of the absolute level of risk in both the short and long term. A bias towards release can confound the best risk assessment, treatment and correctional planning process that can be devised.

We need to remember that if an inmate has an 80% risk of violently reoffending, and treatment halves it, it is still a 40% risk.
(A Forensic Psychologist)

III. Does an offender's security level improperly influence decision-making?

A good inmate does not necessarily make a good citizen.
(A Warden)

The panel was introduced to a new term, "cascading", which is used to indicate moving an inmate from one level of security to another. Within CSC there are maximum, medium and minimum security levels with certain institutions containing only one level while others may contain two or more. These latter are

classed as multi-level. It is fairly common during the term of sentence for an individual to be reclassified in terms of "institutional" risk and moved up or down the scale. Indeed, inmates have a right to request reclassification. The majority of movement is, however, downward, hence the term "cascading".

It is common to find inmates serving sentences of varying lengths in the same facility, because security classifications are based on reviews of an inmate's institutional risk and program needs. In the initial stages of incarceration, assessments are conducted to determine initial or direct placement.

Correctional programs are also developed and arrangements made for participation which could lead to treatment as well. It should also be recognized that the lower the level of institutional risk and therefore security classification, the better the opportunity for temporary absence in terms of availability, frequency and duration. The Service must be mindful that an inmate's "institutional" risk classification and placement due to program availability cannot override the community risk factor when considering temporary absence.

That having been said, it is also important to state that the panel was impressed with the professionalism, dedication and expertise that exists within the CSC and NPB. CSC's procedures for assessment of cases, correctional planning and implementing rehabilitative programs are competent and progressive. Both CSC and the NPB are constantly exploring ways to improve their practices and

techniques. However, as will be discussed later, they need not only to assess long-term risk more effectively (as they are trying to do) particularly with violent and sexual offenders, but they must also consider high-risk categories more thoroughly when granting TAs. Since TAs clearly do lead to other forms of release, they should be seen in this light, and not be viewed merely in terms of the probability of success for a particular TA.

It is also important to ensure that any decisions taken on early release recognize the public's concern regarding crime and the public interest in its subsequent punishment, as being fundamental to the reputation of the criminal justice system. Simply stated, the system must operate in a way to engender faith in the system, by ensuring the first principle is the protection of the public.

The panel recognizes that sentence lengths are today determined without input from CSC as to what length of time would be necessary and desirable for appropriate treatment of an offender's risk. Until the work of the Sentencing Commission is brought forward and acted upon, no fundamental change is possible. In the interim, however, the panel has made Recommendations 12, 28 and particularly 22 in an attempt to better link sentencing to risk reduction.

Temporary absences should be driven by offender readiness, not impending dates.

IV. Do escort provisions reduce risk?

In order to reduce risk, a security escort is assigned to those offenders who are granted TAs, who pose the greatest risk. In addition, they are assigned to high risk offenders who receive TAs for non-discretionary purposes such as emergency medical treatment.

Those offenders who pose the greatest risk are permitted TAs only with a security escort. A security escort is described as an assigned and trained correctional officer. The panel is concerned that escapes from escorts, whether security escorts or otherwise, while being small in number in relation to the total of escorted absences, have created a very real risk in the community.

The escapes from escorts during the period 1987 to 1991 are reported by CSC as follows:

	1987-1991	91/04/01 to 91/11/30		
Maximum Security	15	2	=	17
Medium Security	46	10	=	56
Minimum Security	31	2	=	33
Total	92	14		106

(Source: CSC Note, "Institutional Operations", 1991.12.09)

The following is taken from the CSC Commissioner's Directive #545 entitled Escorts, dated 90/02/01:

Policy Objective

1. To ensure the protection of the public by escorting inmates in a safe and secure manner.

Security Measures

2. It is important to bear in mind that all inmates under escort present a potential escape risk. Therefore security measures shall take into account the potential escape risk posed by each inmate and shall be sufficient to ensure safe and secure custody.

The escort can be conducted with or without restraints to the degree deemed appropriate by CSC and in a manner as described in the Security Manual.

Returning to the Commissioner's Directive #545:

Training and Briefing of Escorting Officers

6. Members of the Service shall be eligible to perform the duties of an escorting officer only after having received training in escort policy and procedures.

The panel reviewed the training manual provided by CSC entitled Correctional Officer Training Program Module 39. The course training standard, teaching aids and handouts cover a wide range of information which is allocated .5 day duration. Given the importance of this activity in terms of risk to the public safety and that of the officer, it is the view of the panel that this Training Module should be reviewed by the staff training personnel to determine if the training objective is being properly met or requires additional training time being allocated.

RECOMMENDATION #10

That CSC review the sufficiency of the training of Security Escorts.

The Escort Briefing Form CSC/SEC 753 was also reviewed by the panel and was found to be very thorough and concise in outlining the responsibilities of the escort.

The escorting of all offenders of all levels of risk, particularly those of high risk must never become routine, as each and every escort is a challenge to the Correctional Service that must be met in order to protect the community from risks.

V. How do CSC and NPB view the Correctional Plan?

Although CSC's ability to assess offenders and plan individualized long-term correctional programs has had significant recent improvements, the panel was advised by the NPB that the Board was not always prepared to adopt the CSC-developed plan once the offender reached eligibility for parole. Moreover, in cases where a series of ETAs and perhaps UTAs had already been granted by the Warden, pursuant to the institution's correctional plan, the Board then found it more difficult to rationalize a decision not to grant release based on its own assessment of risk. Conversely, the Board feels itself in a dilemma, as it has been consistent in saying it could not endorse a correctional plan early in a sentence since to do so might imply a pre-commitment to release. This in turn

presents a dilemma for CSC: it cannot ensure NPB support for the correctional plans it develops, while NPB complains that these plans do not take into account the views of the Board.

RECOMMENDATION #11

That when considering applications for TAs the absolute level of risk over the long term should be considered. Where there is uncertainty that a high level of risk is or can be reduced sufficiently for further conditional releases of longer duration, the TA should not be granted, rather than encourage expectations of further releases. This is particularly applicable to cases of violent, repeat and sex offenders.

RECOMMENDATION #12

That the Parole Board and CSC should develop a process to harmonize their views on correctional plans in certain types of cases, particularly those posing the highest risk. CSC should seek the views of the Board with regard to the viability of the correctional plans CSC prepares for the offender, in those cases of high risk, violent, repeat and sex offenders.

D. ARE TAs ADEQUATELY ADMINISTERED?

I. Have standards been maintained?

The panel has heard from interested parties within the justice system as well as from citizen

groups and victim advocates that many of the problems surrounding TAs are not linked to the program itself, but to the non-compliance of those responsible for its administration. It is worthy to note that past enquiries into sensational incidents stemming from failed TAs support this conclusion. The panel examined a recent draft report prepared by the Audit and Investigations Sector of CSC, numbered as #378-1-040 and dated January, 1992. (This report is a follow-up to Internal Audit Report 378-1-026 conducted in late 1990.) The following is an extract from #378-1-040:

> In the autumn of 1990, the Audit and Investigations Sector conducted an audit of the temporary absence program in all regions. Institutions and parole offices were visited in each, as were all regional offices of the National Parole Board. The audit team's overall impression of CSC's temporary absence program was positive. While there had previously been a number of sensational incidents related to TAs, it must be noted that these were truly the exception, not the rule. The audit team found that there was strong support throughout CSC for the program and general agreement on its objectives. Indeed, there was a broad commitment to the policy objectives for TAs as stated in CD 790. One of the strengths of the program was that all institutions visited had in place a formal board to review and make recommendations on TA applications. In addition, applications for TAs were generally processed in an expeditious fashion.
>
> Although the audit team considered that the TA program was generally working well, a number of deficiencies were noted at the time of the 1990 audit, including clerical/administrative inconsistencies and difficulties at some institutions with respect to the processing of TA's. In terms of addressing the specific deficiencies noted in the audit, the audit team formulated the following recommendations:

RECOMMENDATION #1
That the regions reassess the level of participation of the Correctional Officer II in the Temporary Absence process.

RECOMMENDATION #2

That the regions ensure that Temporary Absence decisions are shared in writing with inmates as per CSC policy.

RECOMMENDATION #3

Regions should ensure that institutions improve their practices pertaining to the notification of UTA releases to supervising parole offices.

RECOMMENDATION #4

Regions should ensure that an up to date photograph and Duty Officer Standard Profile be distributed to the supervising office in all cases of inmates released on UTA programs.

RECOMMENDATION #5

That all regions seriously consider the use and benefit of citizen escort programs.

RECOMMENDATION #6

That regions review their policies and practices to ensure that briefings of CSC and citizen escorts are comprehensive.

RECOMMENDATION #7

That regions ensure that there is, at their institutions, congruence between policy and practice with respect to degree of discretion in the use of restraint equipment on temporary absence.

RECOMMENDATION #8

That regions improve their practices in terms of temporary absence supervision and reporting.A follow-up to the Temporary Absence Program audit was requested in mid December 1991. The purpose of this follow-up was to review any corrective action taken on the 1990 audit's eight recommendations. The on-site portion of the follow-up which was conducted

between January 13 and 24, 1992, visited institutions and parole offices in all five regions. Staff from the Audit and Investigations Sector were assisted by regional staff during these on-site visits.

The selection of the sites visited for this follow up was determined through a review of the statistical information of UTAs for the months of October to December 1991 maintained by the Research and Statistics Branch. The parole offices with the greatest numbers of UTA's in their areas were selected in the final sample of sites for this follow up. Furthermore, attention was placed on attempting to prevent the same inmate from being included more than once in the sample of UTAs studied.

A methodological issue for consideration in the 1990 audit was the 10 day notification time frame used to analyze the data collected. Although no national standard was in effect at the time of the 1990 audit, the 10 day notification was generally perceived to be reasonable. However, subsequently CSC adopted a national standard with respect to UTA notification, which requires five days notification for an unsupervised UTA and 10 days for a supervised UTA. This policy, dated September 30, 1991, did not reach the operational units until shortly before this follow up commenced. In view of this, the results had to be analyzed against the most practical yet feasible available standard, that being notification prior to the commencement of the UTA. In consideration of this, the audit team selected "up to the day prior" to the commencement of the UTA as constituting the definition of on-time notification. However, since the five and ten day national notification standard is now in effect, the audit team also analyzed the data as per this policy. Furthermore, problems were also encountered during the follow-up with respect to the lack of TA documentation at the parole offices and lack of such a policy which frequently served to frustrate the collection of data.

The audit of the Temporary Absence Program conducted in 1990 found that although the program itself was working well, significant action was being called for to address improvements. The above noted findings with respect to the action taken on the eight recommendations of the 1990 audit, indicate

that improvements have been made since the audit. Although more still needs to be done with respect to the recommendations, the other concerns revealed by this follow-up to the audit also deserve to be given attention. These concerns are as follows:

i) the lack of information or the ad hoc methods of maintaining information in many parole offices and institutions with respect to TAs, results from a lack of a registered file bank for the TA program and consequently a problem monitoring the program;

ii) the lack of a definition of what constitutes a UTA notification;

iii) the TA permit [form] needs to be revised to properly reflect factors such as supervision requirements, reporting office and emergency contacts;

iv) the absence of supervision guidelines for UTAs serves to hamper the accountability of ensuring supervision is appropriate;

v) content guidelines for post UTA evaluation reports would assist in those situations where UTA reports are lacking in substance and/or detail;

vi) the current policy of five and ten days notification for supervised and unsupervised UTAs would warrant a review, considering the perception of operational staff to the effect that these are excessive time frames;

vii) the need for some post ETA evaluation reports should be reviewed in light of their usefulness.

With respect to the action taken to date on the eight recommendations of the 1990 audit, the audit team concluded that further action still needs to be taken to rectify the problems designed to be corrected by recommendations 1,2,3,4 and 8. At the same time the audit team wishes to note, with respect to recommendation 4 that:

a) as noted in the body of this report, the time may now be appropriate to review the necessity of having photographs on hand for all UTAs; as well as,

b) to review what technological improvements might be made with respect to transmitting photos electronically.

These two considerations may well serve to address a more sympathetic understanding with respect to the necessity and the utility which photographs have with respect to the UTA program.

In conclusion, the audit team would recommend that all of these concerns that were not corrected as per the 1990 audit and those identified during this follow-up, be carefully considered, actioned and re-audited in approximately six months time (i.e., late summer or early autumn 1992).

It is clear that certain portions of the temporary absence program policies and practices as identified in the autumn 1990 audit and addressed again in January 1992 require continued attention. The panel finds that the Audit findings and recommendations echo some of the concerns identified by the panel on its comparatively quick review. In light of our review of the detailed work of the audit, the panel finds no reason to disagree with the findings of the Audit and Investigations Sector as outlined above and therefore supports the recommendation that a further follow up audit be conducted in the Fall of 1992.

RECOMMENDATION #13

That an audit be conducted by CSC in the Fall of 1992 to follow-up on those matters identified in the January 1992 audit as requiring further action.

II. Do drugs in prison affect TAs?

The incidence of drugs in the offender population has always been a concern for corrections officials. Police officers will be quick to echo reports of the high incidence of drug use among the criminal element. Some reports indicate as high as 60 - 70% of all offenders entering the corrections system are substance abusers. In the past, drug interdiction has been hampered by a court ruling which had questioned and delayed the right of CSC to require mandatory urinalysis to check an inmate for drug use. As a result, CSC had difficulty proving an inmate was using drugs. The panel firmly believes that a practice that is illegal in the community should not be allowed to go unchallenged or flourish inside a correctional institution. In this regard the panel was told of a program of interdiction that commenced in the Fall of 1989 and involves a joint effort by the CSC and the RCMP. The project has achieved significant results in the amount of seizures, arrests and charges against both citizen visitors and inmates.

As a result, there is now a reported reluctance on the part of visitors to pursue drug-trafficking into penitentiaries due to the certainty that, if apprehended, their visiting privileges will be suspended. There is also now a reluctance on the part of many inmates to enter into "importing" drugs back to the prison when returning from temporary absence. This in turn has had the effect of increasing the number of assaults by the drug users and traffickers on the inside against those inmates who refuse to carry drugs back to the prison. The panel believes that these

pressures have resulted in the reduction of the number of temporary absences sought by some inmates, or granted by certain institutions. Another result of improving interdiction procedures has been the soliciting of model prisoners by the drug traffickers within the institution to become carriers under threat of violence thereby putting at risk their approved TA program.

The project has also resulted in joint training sessions between RCMP and CSC on searches and drug detection techniques all of which have raised CSC staff awareness and efficiencies. Despite physical searches, urinalysis and periods of quarantine for inmates suspected of carrying drugs, drugs are still a threat to the management of the institution, and to the good and welfare of the individual inmates. Illicit drugs in the institutions also detract from the probability of success of those offenders who are themselves attempting to break a substance addiction.

RECOMMENDATION #14

That the panel recommends that the joint efforts of the CSC and RCMP drug interdiction program continue to be given high priority and that this project be reported on annually to the Minister.

RECOMMENDATION #15

That CSC be supported in its attempts to ban drugs from penitentiaries, including mandatory urinalysis on the basis of reasonable grounds and the

establishment of policies for the revocation of, and disentitlement to TAs as a result of an inmate's importation of, trafficking in, and use of illicit drugs.

III. Does lack of escorts affect TAs?

The panel was alerted by Wardens with whom we met to the cost of providing security and non-security CSC staff as escorts for TAs. They attributed any reduction in the number of absences granted as partly due to staffing levels and the cost of overtime for correctional staff, and identified these issues as being constraints in future. The reduction in the number of TAs granted out of maximum and medium institutions may well be the result of tight budgets and staffing problems: offenders from those institutions would be much more likely to require an escort, or security escort, given their higher security classifications and presumed higher risk.

The majority of temporary absences (68%) occur from minimum institutions under a "resocialization" escort. In some cases a citizen volunteer is the escort. The panel supports more extensive use of citizen escorts, since a properly matched inmate with a citizen serving as escort is seen as a very simple and basic way to give examples to the offenders of community norms and law-abiding behaviour, while at the same time increasing the awareness of a citizen, and through that citizen, the community, about the correctional system. The panel believes this in turn

will lead to a greater understanding of, and confidence in, the correctional system.

Enhanced involvement of citizens as escorts would also be cost effective and allow scarce resources to be reallocated from escorts to programming and treatment especially of high risk inmates. Civilian escorts must meet criteria established by CSC and NPB to ensure that only properly motivated and well suited people will be accepted and trained.

Increased use of civilian escorts would be an excellent way to meet the needs of inmates who otherwise have qualified for TAs but who are having the opportunity delayed or denied due to lack of escorts. This concept may have a very useful application in the case of inmates with unique needs that can not be met in the normal process of assigning Correctional Service personnel as escorts. Moreover, it is critical that the public recognize that virtually every offender will be released back into the community, and that having a familiar and friendly face in that community might make the difference in that offender's ability to remain law-abiding. The public must be encouraged to take a part in ensuring its own safety, by assisting the work of corrections in this fashion. The experience of those presently involved in such programs, including Wardens, their staff and volunteers, have indicated the value of this effort.

RECOMMENDATION #16

That Wardens be encouraged to attract, train and support sufficient numbers of volunteer citizen escorts to assist in meeting the needs of their respective institution's TA program.

CHAPTER 6

ENTITLEMENT

A. SHOULD ANY CATEGORY OF OFFENDER BE DISENTITLED TO TAs?

The panel heard from a variety of groups with regard to the issue of what type of offender should be eligible for, and receive temporary absences.

I. Should Sex offenders be disentitled to TAs?

Particularly, there was concern with the fact that persons convicted of sex offences were released into the community on TAs. For example, in 1990-91, 934 of the 1603 inmates serving sentences for sex offences were granted a total of 6558 temporary absences. It bears noting that not one of those particular temporary absences resulted in a failure of the offender to return to the institution, or in new charges being laid, and that sex offenders receive fewer TAs than other offender groups (on a per capita basis). Notwithstanding these facts, the community and police perception still exists that this offender category as a whole represents an unacceptable risk, and therefore that few or no TAs should be granted to this offender category, on the basis of risk to the community.

II. Can risk be assessed and reduced?

As a result, the panel enquired extensively into the status of existing skills in diagnosing, assessing and treating sex offenders, all of which skills are being developed with an eye to being able to predict, and entirely remove, or at least reduce, the risk they present.

The panel found consensus on a number of bases amongst the psychiatrists and psychologists interviewed, all of whom were involved in assessing and treating sex offenders.

First, they agreed that the reason for which an offender is convicted does not necessarily or accurately reflect the nature of the deviance of the offender: for example, a conviction may be entered for the crime of break-and-enter, although a detailed review of the circumstances surrounding the crime leading to the conviction would make it clear that the true intent was sexual assault. Add to this the notorious level of under-reporting of sexual crimes, the difficulty in gathering sufficient evidence to support charges for the most serious crimes, and the results of plea-bargaining, and the danger of relying entirely on admitting offence at the institutions as a measure of dangerousness becomes clear.

Second, there is agreement that no reliance can be placed on length of a sentence as a measure of risk presented by an individual sex offender, due to sentence disparity. As well, during the course of the panel's review, two notorious cases in Ontario, where

serious sexual offenders received sentences so short as to place them in only provincial institutions, underscored this reality.

Third, general consensus existed with regard to the tremendous value of the many new assessment tools that have been developed in the very recent past and which continue to be developed, almost monthly.

Finally, all persons interviewed, whether victim or treating professional, agreed strongly on the need for comprehensive and individualized assessments of sex offenders as they entered federal penitentiaries, particularly since "sex offenders" cover crimes as diverse as indecent exposure, to paedophilia. Most particularly, the treating professionals described this individualized assessment as setting the stage for further assessments and treatment programs which in turn had to be particularly tailored to meet the needs of an individual offender. It is only through a formalized assessment and treatment program such as this that any decisions could be made on risk, "releasability", and "supervisability". Again, the panel heard, and was convinced, of the value in making correctional and release decisions on the basis of information about the offender, and not solely the offence, category, length of sentence or the inmate's address in the system (address meaning his institutional risk and placement at any maximum, medium, minimum or community-based correctional facility).

Specifically, the panel is greatly encouraged by the work being undertaken within CSC with regard to the

psychological assessment and treatment of sex offenders. Assessment procedures have been developed to determine not only what type of treatment program would be most effective for a particular individual, but also to identify those offenders who present the highest degree of risk to re-offend, notwithstanding treatment they may receive. Put differently, there is a growing body of knowledge regarding factors which are predictive of reoffence, and would allow the identification of offenders who have a psychological profile of the type that is now known to be a continued risk to the community, notwithstanding treatment.

> *We want to base policies on what we know about people, not what we guess about them.*
>
> *(A Psychologist)*

The following excerpt provides an excellent outline of the system:

> The factors used in the assessment are of two distinct kinds. First, there are four "empirical" factors. These assessments depend on the application of objective psychological tests or specific objective criteria in the determination of the level of risk. In addition, we have chosen the empirical factors on the basis of the research literature which indicates that the factor is predictive of reoffense among sexual offenders. These empirical factors are: offense history, criminal personality, deviant sexual arousal, and social competence.
>
> Second, there are three "subjective" factors. These assessments are subjective judgements made by the clinicians at the Warkworth Sexual Behaviour Clinic [WSBC] who have the most knowledge of the inmate's behaviour and performance in the treatment program. Most often, these judgements are discussed in the context of a case conference, and finalized

> through a process of discussion and accommodation. The three subjective factors are: motivation for treatment, degree of behaviour change achieved during treatment, and an overall assessment of the risk for reoffense.
>
> Finally, an overall level of risk is determined, usually in the context of a case conference, and always in the final instance by the director of the WSBC, with advice from WSBC staff, and considering all the other assessments of risk, both empirical and subjective. In determining a final overall risk level, greater weight is placed on the empirical factors than on the subjective factors. (Barbaree, undated.)

In each assessment of risk, the judgement is made on the basis of a five point rating scale, ranging from Low (1) through Moderate (3) to High (5).

The "History of Sexual Offending", "Criminal Personality", and "Deviant Sexual Arousal Factors" are assessed at pre-treatment. The subjective factors, together with the offender's "Social Competence", are assessed during treatment, and reported at post-treatment.

> As part of the contract between the Correctional Service of Canada and Queen's University which funds the Warkworth Sexual Behaviour Clinic, the clinic is required to conduct risk assessments on men completing the program of treatment. The risk assessments are reported in the final post-treatment report, and constitute an important source of information for case managers and the National Parole Board. (Barbaree, undated.)

It is important to remember, however, that this work is very new and that the entire area of prediction of risk is under rapid development. For example, just

two years after the Pepino Inquiry noted it had "seen little or no evidence to establish that treatment of sexual offenders is successful, or permanent", a report submitted by Dr. V. Quinsey to CSC in July 1990, stated:

> Relative to the number of sex offenders who are treated each year and the number of articles and books written about sex offender treatment, the evaluative outcome literature is astonishingly small. One is tempted to conclude that there are more authors with published opinions on the effectiveness of sex offender treatment than sex offenders in treatment outcome studies....
>
> ...it is not clear that the most effective forms of intervention have even been thought of yet. Future research must not only convincingly evaluate existing treatments but also lead to the development of new interventions.

The panel endorses this viewpoint wholeheartedly.

III. What more can CSC do?

It should also be remembered that although promising, meaningful research will require extensive follow-up, development of national standards to which both staff and contract professionals should adhere, staff and contract workers' training, and the creation of new computerized information systems to track sex offenders both during treatment, and after release.

In this regard the panel is aware that CSC has recently established a National Sex Offender Co-ordinating Committee, which is intended to play an active role in all aspects of planning and evaluating programs and services. The mandate of the Committee is to:

a) develop implementation plans for programs and services;
b) establish standards and an evaluative model for treatment programs, self-help groups and community relapse prevention services;
c) develop a protocol for intake, pre/post treatment and pre-release assessments;
d) establish an information base; and
e) prepare training packages and plans.

In addition, each of the five Regions within CSC has been requested to establish a Regional Committee with the same mandate as the National Committee.

The panel notes particularly the Front End Assessment pilot project in the Ontario Region is moving toward the establishment of a standardized assessment model, and a computerized information system to permit the tracking of an individual offender through treatment, conditional release and, hopefully, beyond warrant expiry date.

IV. What kind of information is required?

In addition to the assessment of those offenders convicted of sexual offences, preliminary assessment

should also search out details hinting at sexual deviance in those offenders sentenced for non-sexual crimes. Time and again, the panel had emphasized to it the necessity for detailed, timely, and reliable information about the offence, the offender, and his/her social and criminal antecedents including any juvenile offences. In this case, thorough, detailed police reports were singled out as extremely valuable sources of the type of information required to identify high risk offenders. Crown attorneys' reports can provide valuable information on evidence of third parties, and whether plea bargaining was involved. Victim impact statements and judge's reasons for sentence add data and dimension to the offender's profile. Liaisons with special police units such as Sexual Assault squads have also provided invaluable detail.

The panel has received in this regard unsolicited information from police officers, corrections officers, parole officers, and Parole Board members that Access to Information legislation is having a negative effect on public safety insofar as conditional release of offenders is concerned. Inmates have access to their files under this legislation, which has apparently led to some threats (either real or perceived) being made to justice systems personnel and/or their families because of negative comments placed on inmates' files. This may or may not cause reporting being subject to a "softening" of comments with the resultant effect of decreasing the utility of the information, which in turn could increase the chances of poor decisions, thereby increasing the level of risk to the public. It is important that access to

information by the individual inmate not be at the expense of the rights of the community to be protected.

RECOMMENDATION #17

That procedures be put in place to increase the accuracy and comprehensiveness of information in inmate files. In this regard, cross system information gathering and sharing projects should be reviewed and developed where required.

RECOMMENDATION #18

That all steps necessary be taken to establish access to detailed information of a federal offender's juvenile history, given that assessment is aided by information regarding the type, and age of onset of criminality or deviance.

RECOMMENDATION #19

That an offender's file information be used to establish a computerized information system to identify, and track, sex offenders in and through the correctional system.

RECOMMENDATION #20

That CSC and NPB develop a protocol to ensure the protection of the identity of persons who provide information pertinent to the inmate's file and good decision-making in order to avoid the "softening" of comments from witnesses, police, treating psychologists or staff members.

RECOMMENDATION #21

That CSC continue to develop, and widely implement an entry-level screening system to identify and classify newly-incarcerated offenders who require more detailed and extensive assessment, including phallometric testing and measurement of psychopathy, and direct those offenders to that assessment process.

V. Can sentences better reflect the offender's risk and needs?

Finally, the panel also heard from every source interviewed that sentencing disparities, even for sex offenders, led to not only wide variations in sentence lengths from Region to Region, but also from offender to offender, notwithstanding striking similarities in the offender's needs. Inadequate time to effectively treat a particular sex offender can be (and is) the result of a sentence passed in the absence of information about required treatment (and, conversely, some offenders are incarcerated much longer than their treatment needs alone would dictate). The panel believes an assessment to identify the level of risk and deviance presented by an offender, together with an outline of the treatment needed to address a particular offender's risk and deviances, would be invaluable information to a sentencing judge. Indeed at the moment many judges delay sentencing after a conviction is registered, to permit the preparation of a pre-sentence report that often contains a psychological assessment.

It would be valuable to ensure that the persons who will actually be responsible for assessment and treatment in the corrections system can provide this information to the sentencing judge. The panel therefore recommends exploration of a system to have presentence reports requested by a judge sentencing a sex offender (and, perhaps, a violent or repeat non-sex offender) prepared by, or in consultation with, the specialized front end (entry-level) and sex offender assessment systems presently in place and being further developed.

RECOMMENDATION #22

That CSC explore the possibility of a pilot project in co-operation with the courts, to provide input to pre-sentence reports for sex offenders or others who are identified as requiring specialized treatment during incarceration.

VI. How can risk best be addressed?

Both CSC and NPB have been driven to develop working procedures to deal with a flawed premise: that the length of sentence imposed by the courts accurately reflects the risk and needs presented by an offender.

One needs only to read the newspaper or scan the sheet in any correctional institution that sets out aggregate sentence and offence, to know that wide disparity exists between sentences for the same crime. Obviously, this disparity exists, in part, as a result of judicial recognition that no two people, and no two

crimes, can be exactly the same. Sentences are also intended to reflect public opprobrium for the particular offence, and the principles of general and specific deterrence.

It is indeed unfortunate that this panel and the whole review of the corrections legislation package, must be undertaken in the absence of the results of the sentencing reform initiative, and debate regarding sentencing principles and practices; many of the procedures adopted by the CSC and NPB are based on sentence lengths. For example, NPB delegated authority to Wardens for the granting of UTAs to any inmate serving a sentence of less than five years. The panel could find no reason why five years was chosen as a cut-off for this delegation. Moreover, we heard time and again that automatic eligibility dates for conditional release create pressure on CSC officials to have an offender ready to be released within a very short time. For example, an offender serving a three-year sentence is eligible for day parole and UTAs after six months, and full parole after one year. Clearly, little meaningful behavioral change can be accomplished in this time, if psychological or similar factors are at the base of that offender's criminal behaviour.

In addition, the length of an offender's sentence is considered, not unreasonably, by CSC in making decisions on when an inmate is accepted into an oversubscribed treatment program, when transferring to a different security classification, and in making a whole host of other decisions.

For all these reasons, the panel is firm in its conclusion that the arbitrary reliance on sentence length should be replaced with a process whereby decisions on treatment, security classification, eligibility for TAs and other decisions on offender management should be based on an assessment of risk of the individual offender. The tools are now at hand to allow these assessments to be made with more certainty than ever before. The goal of public safety demands that, to the extent CSC and NPB can muster, high risk offenders should be intensely treated and conditionally released only if their risk assessment safely permits, while low risk offenders can be streamed into an environment that is most conducive to addressing their particular needs. Perhaps too in this way, the Correctional Service can assist the debate on sentencing.

RECOMMENDATION #23

(1) (a) That offender assessments be standardized for CSC and contract testing, and that for those sex offenders who are assessed as highest risk and most deviant (whom the panel has termed "Red Card" cases), CSC should maintain and/or develop one or more specialized sex offender treatment programs for each Region.

(b) That any eligibility of "Red Card" offenders for TAs should be as follows:

1) for medical, compassionate and administrative reasons, with a security escort, at the discretion of the Warden;

2) for therapeutic reasons, with a security escort, at the discretion of the NPB;

3) For any other purpose related to treatment of the offender's high risk and high deviance and only at the discretion of the NPB, with appropriate recognition of the high risk nature of the offender being the primary consideration in the decision whether to grant, and in providing for escort;

(c) Upon post-treatment assessment that identifies changes in risk, a reclassification of risk may occur.

(2) (a) That for those sex offenders who are assessed as "Moderate Risk" (whom the panel has termed "Orange Card" cases), CSC should maintain and/or develop sufficient specialized sex offender programs to address their needs.

(b) Any eligibility of "Orange Card" offenders for TAs should be as follows:

1) for medical, compassionate, and administrative reasons, with a security escort, at the discretion of the Warden;

2) for other purposes, with escort provisions appropriate to the offender's risk, at the discretion of the NPB;

(c) Upon post-treatment assessment that identifies changes in risk, a reclassification of risk may occur.

(3) That for those offenders who are assessed as "Low Risk" (whom the panel has termed "Green Card" cases), CSC should maintain and/or develop sufficient programs to address identified offender needs. "Green Card" offenders would be eligible for any type of TAs, under appropriate escort provisions, at the discretion of the Warden.

RECOMMENDATION #24

That to ensure the most expeditious implementation of the above, and realization of the mandate of the National Sex Offender Coordinating Committee, a Co-ordinator of Sex Offender Programs within CSC should be appointed.

VII. Should repeat or dangerous (non-sex) offenders be disentitled to TAs?

A second group of offenders that is raising concern amongst the public is the "dangerous", "violent" or "repeat" offender, who is not a sexual offender. Many offenders within this category are now being identified and diagnosed as psychopaths.

> Given the cluster of traits that define the disorder -- impulsivity, callousness, egocentricity, selfishness, lack of guilt, empathy or remorse, and so forth, it should come as no surprise that psychopathy is implicated in a disproportionate amount of the serious repetitive crime and violence in our society. (Hare, undated.)

These traits that define psychopathy are compatible with (although not always leading to) a criminal life style. To again quote Hare, "Research with adjudicated criminals clearly indicates that psychopaths are indeed more criminally active than are other criminals throughout much of the lifespan." In addition, psychopaths are more likely than other inmates to be convicted of violent offences, and to reoffend violently. They also have been found to engage in a wider variety of criminal activities (termed criminal versatility) and abuse a greater range of substances than do other criminals. These background indices also have implications for "supervisability", since the evidence indicates that psychopaths' propensity for violence and aggression is maintained while in the institution.

It is only within the very recent past that clinicians have become aware of, and felt able to put some reliance on, testing procedures that have been shown to have good predictive validity in predicting criminal or violent behaviour. Of particular note is the work of Dr. Robert Hare of the University of British Columbia, and his Psychopathy Checklist (PCL). This work has demonstrated success in predicting the risk of reoffending at significantly higher levels of reliability than existing predictors, and even more importantly, on the basis of the characteristics of the individual offender him/herself, rather than simply of a group convicted of a particular offence.

Compelling evidence is best summarized in the following excerpt from "Psychopathy and Crime: A Review.

Serin, Peters, and Barbaree (1990) administered the PCL to 93 male inmates prior to release from a federal prison on unescorted temporary absence (UTA). Six (37.5%) of the 16 psychopaths in the study, defined by a Psychopathy Checklist (PCL) score greater than 31, violated the conditions of UTA, whereas none of the 16 nonpsychopaths, defined by a score less than 17, did so. Subsequently, 77 of the 93 inmates were released on parole; follow-up data were available for 74 of these inmates, including 11 psychopaths and 13 nonpsychopaths. The failure (recommittal) rate on parole was 27% for the entire sample, 7% for the nonpsychopaths, and 33% for the psychopaths. Moreover, the mean time to failure was significantly shorter for the psychopaths (8.0 months) than it was for the nonpsychopaths (14.6 months). The PCL predicted outcome better than did a combination of criminal-history and demographic variables, and several standard actuarial risk instruments, including The Base Expectancy Scale (Gottfredson & Bonds, 1961), The Recidivism Prediction Scale (Nuffield, 1982), and the Salient Factor Score (Hoffman & Beck, 1974).

In a 5-year follow-up of the Serin et al. (1990) recidivism study, Serin (1991) reported that the overall failure rate was 67% for the 81 criminals involved in the study, 38% for the nonpsychopaths and 85% for the psychopaths.

Psychopathy appears to be predictive not only of recidivism in general, but also of violent recidivism. In a study by Serin (1991) none of the nonpsychopaths, and 25% of the psychopaths, violently recidivated. Standard actuarial instruments were not predictive of violent re-offending.

(Hare et. al., forthcoming.)

A review of CSC statistics provides further support for the proposition that repeat offenders present a greater risk of recidivism: the data suggest that multiple term offenders may be at greater risk of failing a TA than other offenders.

Term of Incarceration for Offenders Receiving TAs

	Offenders Receiving TAs		Failed TAs		Offender Population (March 31,1991)	
Term Number	Percent	Number	Percent	Number	Percent	Number
1	61.0	4393	45.6	31	58.9	7071
2	17.5	1264	17.6	12	17.2	2063
3 or more	21.5	1548	36.8	25	24.1	2865
Total	100.0	7205	100.0	68	100.2	11989

One can measure the risk of recidivism better than five or ten years ago. It's still not perfect, but it's better than chance.
(A Forensic Psychologist)

It is clear that both sex offenders and psychopaths (who are more likely to be violent offenders, repeat offenders, or both) can now be identified and assessed as to future risk to reoffend with greater accuracy than in the past. As a result, the panel believes that individual offenders identified as high risk through a detailed assessment should be permitted temporary absences, either ETA or UTA, only under special conditions that reflect both their risk to the public of reoffending, and the likelihood that treatment is least or not at all effective with these offenders.

There will always be a certain number of offenders (about 7%) who will not benefit from treatment. We end up with a residue of guys who are angry at the system and at the doctors, and who will wait until warrant expiry date.
(A treating psychologist)

Indeed, it is individual inmates such as these that should be considered, early in their sentences, as possible detention cases pursuant to Bill C-67, enacted in 1986, and have developed for them a correctional plan which incorporates the high risk, high need factors of these individuals. Particularly, TAs should not be available to these individuals in the absence of a clear therapeutic base for such activity, and a link to an individualized offender risk management plan.

In this regard, the panel considers the risk of "high risk" psychopaths to be no different from that presented by "high risk" sex offenders. Therefore, they should also be considered "Red Card" cases, and be subjected to the same restrictions.

RECOMMENDATION #25

(1) That for non-sex offenders assessed as "High Risk" they be treated as "Red Card" cases, and the provisions of Recommendation #23 (1) regarding eligibility for TAs for those offenders apply.

(2) That for non-sex offenders assessed as "Moderate Risk" they be treated as "Orange Card" cases, and the provisions of Recommendation 23 (2) regarding eligibility for TAs for those offenders apply.

(3) That for non-sex offenders assessed as "Low Risk" they be treated as "Green Card" cases, and the provisions of Recommendation #23 (3) regarding eligibility for TAs for those offenders apply.

VIII. Should immigration status affect entitlement?

One of the issues put before the panel was the question of conditional release which includes temporary absence for inmates who are known to be in a questionable status relative to the immigration laws of Canada.

There is an increasing number of offenders in the system who entered Canada under conditions that place them within the scrutiny of the Department of Employment and Immigration. The debate is whether or not a sentenced offender of this type should be kept in Canada at the Canadian public's expense for the cost of incarceration for full sentence, and then dealt with on the immigration issue, or moved to the head of the line for determination as to immigration status, which may include a decision to deport. In order to prepare a sensible correctional plan, CSC staff must know whether an inmate is going to stay in the country, or not.

One view is that an offender should serve some time in custody in this country before being deported, so as to indicate a sanction on the behaviour in question.

The other view is that early determination of immigration status and action contemplated, particularly deportation, would meet the concerns of the Canadian public both in sanction (being deported) and cost-saving.

If no action is taken, the offender of questionable immigration status will eventually be back in the community on some form of early or conditional release, or on mandatory supervision or after warranty expiry date. The panel believes this issue should be further examined in consultation with Employment and Immigration Canada.

RECOMMENDATION #26

That CSC liaise with Employment and Immigration Canada to develop a protocol to expedite determination of status for federal inmates who are of questionable immigration status.

B. SHOULD ANY PARTICULAR CATEGORY OF OFFENDER RECEIVE SPECIAL CONSIDERATION?

I. Should TAs be granted to those serving life sentences?

The question has been raised regarding TAs for lofers (offenders sentenced to life imprisonment), and whether such absences are or should be an integral part of a correctional plan for these offenders, particularly given the nature of the offence that leads to a life sentence. A significant number are serving

sentences for murder. There is also a group of inmates whose sentences are "life", and whose numbers are steadily increasing due to convictions for murder, rape and other serious violent crime. Given the fact that Canada has the third highest rate of incarceration in the world, this trend can be expected to continue.

At present, lifers do receive escorted temporary absences under humanitarian, compassionate and administrative guidelines. Unescorted temporary absences are also available to some of these inmates subject only to NPB decisions.

A review of statistics on TAs as they relate to inmates serving time for murder indicates that this group is highly successful on temporary absence programs.

Major Admitting Offence for Offenders Receiving TAs

	Offenders Receiving TAs		Failed TAs		Offender Population (Mar.31, 1991)	
Major Offence	Percent	Number	Percent	Number	Percent	Number
Murder	10.7	758	2.9	2	13.1	1573
Sexual Offences	13.2	934	0.0	0	13.4	1603
Assault,Injury	13.9	985	5.9	4	14.9	1788
Theft, Robbery	26.0	1844	39.7	27	26.2	3136
Break & Enter	14.4	1025	30.9	21	14.6	1747
Attempt, Conspiracy	6.5	460	7.4	5	4.9	588
Drug Offences	10.0	707	5.9	4	8.1	972
Other	5.5	387	7.4	5	4.9	582
Total	100.2	7100	100.1	68	100.0	11989

It must be realized that most lifers will be released sometime prior to the end of their natural life, after a court ordered parole eligibility date or statutory judicial review. Therefore, some form of program or programs dealing with reintegration must be provided. As we gain more experience with the increasing number of such inmates, appropriate research and program development should be occurring.

Particularly, the research should establish the degree of risk presented by the individual lifer: virtually every person with whom the panel consulted, including Wardens, CSC staff, psychologists and victims advocates, agreed that some lifers, particularly some of those convicted of murder, present a very low risk of reoffending. Many were described as "filled with

remorse" and having committed their crime against the only person to whom they were ever a threat. Some were convicted of what were referred to as "situational crimes". Without exception, all Wardens interviewed spoke of a portion of lifers as being "solid", and a stabilizing influence within the institution. Moreover, long incarceration with no hope of relief from the effects of institutionalization can render some individuals incapable of successful reintegration into the community when release is eventually approved. This, clearly, does not serve public safety.

RECOMMENDATION #27

That a CSC/NPB Task Force be struck to examine and make recommendations on risk assessment of, and the appropriate role of TAs in programming for, lifers, and that in the interim, subject always to risk assessment, the existing release provisions prevail.

II. Should TAs granted to Aboriginal inmates be subject to special consideration?

It taught me the value of a life: it made me realize a good life was to be respected and that a life was not to be wasted.
(A Native inmate of Stony Mountain penitentiary, speaking of the value of an ETA granted to visit his dying grandfather.)

It was brought to the attention of the panel that Aboriginal inmates were less likely to receive temporary absences than non-Aboriginals. A review of statistical information was provided by CSC, which information was collected from offenders who had described themselves as either Native, Caucasian, or

"other" racial group. As a result of how these statistics were gathered and kept, the panel will use the term "Native" to ensure consistency with the data in reaching its conclusions. Native people represent 11.8% of the offender population and, everything being equal, could be expected to receive 11.8% of all TAs. In fact, as the table below indicates, they only receive 8.4% of group TAs, and 7.7% of single TAs.

TAs by Race and Type of TA

Type of TA				
	Group		Single	
Race	Percent	Number	Percent	Number
Caucasian	83.3	23619	85.9	20862
Native	8.4	2384	7.7	1868
Other	8.3	2354	6.5	1569
Total	100	28357	100.1	24299

Further analysis suggests that the lower rate of temporary absences granted to Natives may be the result of a more serious offence profile. Concerns have been raised however that criminal behaviour, police intervention, conviction rates and sentencing patterns, which in turn lead to a more serious offence profile, may in themselves be the result of a systemic disadvantage of Natives. Unfortunately, even the very general evaluation tool, the Statistical Information on

Recidivism (SIR) scale, used by CSC for predicting general reoffending, has not been validated for use in predicting whether in fact Native offenders are more or less likely to reoffend than others. It is impossible, therefore, to be definitive about the reasons behind the difference of rates at which TAs are granted.

Based on an analysis of "Major Admitting Offence" amongst Native peoples, 27% were serving sentences for crimes of assault or ones that cause injury and 18% were serving sentences for sexual offences. By comparison, 12% of Caucasians were serving sentences for assault and 13% for sexual offences. There is very little difference in the percentage of offenders in each racial group serving time for murder. Native people were much less likely than others to be serving time for drug offences. Those from other racial groups are more likely to be serving time for these offences.

Another method of measuring the seriousness of criminal behaviour is to look at the number of times an offender has been in the federal penitentiary system. In this regard, 15.5 % of Native people who had a temporary absence were serving their 4th or more term in a federal prison compared to 11.6% of Caucasian inmates. It would seem apparent that, at least insofar as these inmates are concerned, no meaningful intervention had been provided through previous incarceration.

Offenders Receiving TAs by Number of Terms in Federal Institutions and by Race

Race						
	Caucasian		Native		Other	
Number of Terms	Percent	Number	Percent	Number	Percent	Number
1	59.5	3591	57.9	380	79.2	315
2	18.5	1118	15.1	99	10.8	43
3	10.4	625	11.4	75	6.5	26
4 or more	11.6	701	15.5	102	3.5	14
Total	100.0	6035	99.9	656	100	398

The data also indicate that Native people receive larger percentages of compassionate and administrative TAs than their representation in the offender population, but receive lower numbers of TA's for family and community contact and for medical reasons.

One reason given for fewer temporary absences being granted to Natives for family and community contacts is the distance between the institution and the offender's home community, particularly in the West and Quebec. It is obvious that "distant" escorted absences impose high cost on the system for the correctional personnel involved, and likewise on the individual who must assume his/her own travel cost. Another reason given is that some Native inmates have

simply lost touch with their families: many were taken from their families at a young age and sent to residential schools; others left the reserve at a young age, and drifted to cities. Still others were no longer permitted by the Band Council or Chief to go back to their reserve, given their past offences.

This problem is now recognized within CSC and was reflected by the various representatives of the number of Native organizations with whom the panel consulted. The introduction of Native spirituality, and Native culture programs has assisted greatly in this regard, as they can be used to fill the void created by distance from home and family, or loss of contact with the Native languages, cultures and religious beliefs.

To quote the Task Force on Aboriginal Peoples in Federal Corrections 1990-91 Implementation Report:

> Traditional spiritual practice was the first aboriginal specific activity to systematically take place in federal institutions and it has retained the intense interest of inmates. The interest and support is as strong among aboriginal inmates who have had little or no contact with traditional spiritual practice as it is among those who have. The values, ethics and principles contained within traditional teachings have resulted in its recognition by the World Council of Churches as one of the 15 major religions of the world. Spirituality is fundamental to the cultures of aboriginal peoples and it would therefore be good corrections to foster aboriginal inmates' strong interest in it.

The Service is beginning to respond to the special needs of Natives and should be complimented on recent advances in developing specialized programs.

This issue is not resolved, however, and there needs to be continuing dialogue to seek further ways to enhance the special needs of Native offenders.

RECOMMENDATION #28

That CSC continue to develop and expand programs designed to support and strengthen Native spirituality and Native culture.

RECOMMENDATION #29

That CSC give special consideration to development of programs to establish and enhance an Aboriginal offender's ties with his or her family, extended family and home community.

RECOMMENDATION #30

That TAs for "therapeutic" purposes include, for Aboriginal offenders, participation in those spiritual and cultural ceremonies unique to Aboriginal peoples.

RECOMMENDATION #31

That Native Elders be accorded the status of other clergy by CSC, and that steps be taken to ensure appropriate access to an Elder by inmates of all institutions.

RECOMMENDATION #32

That any new programs or policies directed at Aboriginal offenders be developed by CSC in consultation with Elders and representatives of Native and Aboriginal agencies serving aboriginal offenders.

III. Should special consideration be given to TAs for Women offenders?

Another group of inmates which presented special needs with regard to TAs is the approximately 300 federally sentenced women. Data and research show that federally sentenced women are a diverse group with a wide range of multifaceted needs. They tend to come from disadvantaged backgrounds, and Aboriginal women offenders are more disadvantaged as a group than other women serving federal sentences. A 1989 survey of federally sentenced women discovered that, in 1989, 82% of the women in Prison for Women had been physically or sexually abused.

Many federally sentenced women have committed very serious crimes. The 1990 Report of the Task Force on Federally Sentenced Women found that 39% had been convicted of murder or manslaughter, 27% for robbery and other less violent offences, and 33% for non-violent offences. It is to be noted, however, that many of the murder and manslaughter convictions were registered before the acceptance by the Courts of the "battered wife syndrome" as a defense.

At the same time, and in contrast to male offenders, almost half of federally sentenced women are not repeat offenders. Forty-one percent of the women are first offenders with no previous convictions, and 50% have never been in prison before. Notwithstanding the fact that for so many, the current sentence constituted their first incarceration, more than 50% were serving sentences over five years, 22% between five and nine years, and 29% ten years or more. A full 20% were serving life sentences.

However, it was also generally accepted that, although virtually all federally sentenced women are "high need", this characteristic is unrelated to sentence length or nature of offence: a large number of these women are not a danger to others and their escape and walkaway rate is lower relative to males. The risk they present is much more often to themselves than to the public. It is for this reason, therefore, that commission after task force after Committee has concluded that women are held in "over-secure" environments, and that the Prison for Women was termed by a 1977 Parliamentary Sub-Committee "unfit for bears, much less women".

Unfortunately, there is little research and few assessment tools for predicting risk comparable to those available for male offenders. Therefore, no classification of women offenders into "High, Moderate and Low" risk categories is possible at this time. The protection of the public, however, dictates that those offenders assessed to present a danger to the public be subject to special restrictions with regard to temporary absences. Those who are not dangerous,

however, should have their special needs recognized and met in a variety of ways, including TAs.

One theme that was repeated in all the information gathered about women inmates was their need to feel connected to other human beings. For most women, contact with their children is crucial: about 2/3 of federal women inmates have children, many of whom are young. Particularly, many of these women were single mothers who had been the sole caregiver for their children until incarceration. From time to time, children are born to women serving a federal sentence. For those without children as part of their families, the need remains strong to maintain contact with their families.

The final fact that bears on TAs for women is the small numbers of federally sentenced women: because so few women are sentenced to penitentiary, few facilities have been provided for them. In the past, only Prison for Women (P4W) has been available, which, being located in Kingston, Ontario, removed most inmates from their home community, their provinces and their regions. Women's other option was to remain in their home provinces under Exchange of Service Agreements, which many chose in order to maintain more regular contact with their children. Unfortunately, the panel learned, some of these provincial facilities cannot accommodate all federally sentenced women who wish to remain in their province. As well, they provide little or no programming, and are not geared, physically or operationally, to deal with the women serving anything other than a short, provincial sentence.

Notwithstanding their relatively low risk, women inmates receive fewer TAs for certain purposes, especially family contact, than their low risk and heavy parental responsibilities would suggest. Moreover, women have fewer options to ease their transition to their community on release, because of the great distances involved in travelling to, and the small numbers of, community-based facilities serving women. Therefore, fewer TAs are granted for this purpose. In some cases, therefore, an offender who is a candidate for conditional release may have to choose between going to a community which is not near her home, or continuing incarceration. Clearly, the woman is not served, the safety of the public is not served, and justice is not served.

The panel therefore welcomes the announcement by the Solicitor General of the closing of P4W, and the opening of regional facilities, to permit women to serve their sentences closer to their families.

In the interim, however, and recognizing that regional facilities still will not overcome separation from family, the panel recommends as follows:

RECOMMENDATION #33

That a woman-based assessment model be developed to individually assess female offenders as to both the danger to the public they present and their individual needs, and that this assessment model be culturally sensitive to properly assess the needs of female Aboriginal offenders.

RECOMMENDATION #34

That for those women assessed as presenting a danger to the public, eligibility for TAs should be as follows:

1) for medical, compassionate and administrative purposes, with a security escort, at the discretion of the Warden;
2) for therapeutic reasons, with a security escort, at the discretion of the NPB;
3) for any other purpose related to treatment of the offender's high risk, and only at the discretion of the NPB, with appropriate recognition of the high risk nature of the offender being the primary consideration in the decision whether to grant, and in providing for escort;
4) upon post-treatment assessment that identifies changes in risk, a reclassification may occur.

RECOMMENDATION #35

That women offenders who are assessed as not presenting a danger to the public be eligible for any type of TA under appropriate escort provisions at the discretion of the Warden.

RECOMMENDATION #36

That for Aboriginal women offenders, TAs for "therapeutic" purposes include participation in those spiritual and cultural ceremonies unique to Aboriginal peoples.

RECOMMENDATION #37

That CSC should continue to develop strategies and provide funding for a variety of initiatives designed to support and strengthen a woman offender's ties to her family.

CHAPTER 7

COMMENTARY ON BILL C-36

A. WHAT PROVISIONS OF BILL C-36 AFFECT TEMPORARY ABSENCES?

I. What Sections of Bill C-36 are complementary to the panel's findings?

A review of Bill C-36 reveals a number of Sections that bear strong similarity to some of the issues and findings that have led in many instances to recommendations in the panel's report. These Sections are outlined as follows.

Sections 25 and 142 enshrine certain of those notification and information-sharing provisions which the panel believes are crucial to proper functioning of the system.

Section 26 will have the effect of placing into statute certain victims' rights in regard to participation in the corrections process. As well victims will be provided with information of real concern to them in relation to an offender's eligibility for conditional release, release decisions and conditions attached thereto, as well as the offender's destination. The panel believes this will meet most of the concerns victims expressed in our review.

Section 27(3) will address the concerns expressed in Chapter 6 regarding the quantity and quality of important decision-making information, in furtherance of Recommendations 17, 18 and 19.

In reaching decisions on any information withheld by the Commissioner pursuant to Section 27(3) or by the Board pursuant to Sections 141(4) and 144(2), the panel would reiterate its concerns as expressed in Recommendation 20.

Sections 28 and 29 describe the placement and transfers of offenders in institutions under control of the Service. This issue has been addressed by the panel in Chapter 5 and the effects of "cascading" described as an issue for important consideration in making decisions on temporary absence.

Sections 54 to 57 inclusive outline established procedures for urinalysis in the detection of substance abuse. In particular Section 55 sets out that this test may be used to confirm compliance with a condition of temporary absence. Section 96(m) permits regulations to be developed to implement the provisions of the panel's Recommendation 15 calling for policies for the revocation of and disentitlement to TAs, as a result of drug involvement by an inmate.

Sections 76 to 84 provide for "Programs for Offenders" and include those of a general therapeutic nature as well as the development of special programs for female and Aboriginal (Native) offenders in consultation with those persons, agencies and committees with special expertise. These provisions

accord with the panel's Recommendations 24, 28, 29, 30, 31 and 32.

Section 96(z.4) allows for the development of Regulations regarding the involvement of members of the community which the panel believes could include citizen escorts in accordance with its Recommendation 16.

Sections 133 and 134 cover "Conditions of Release" and include definitions of release authorities, conditions, duration and other administrative matters. The panel has addressed these matters in some detail in Chapter 5. The panel's position is contained in its Recommendation 2.

Section 168 relates to the "Function" of the Correctional Investigator and the restrictions applied to that role. In Chapter 5 the panel has identified an issue that may be appropriate to the role of the Investigator and has indicated this possibility in Recommendation 3.

These comments are made on Bill C-36 supporting the initiative of the Ministry in placing certain issues of practise into legislation and giving priority status to other supporting activities that contribute to improving the corrections and conditional release provisions within the criminal justice system.

II. What amendments to Bill C-36 would be desirable in the opinion of the panel?

The panel applauds the legislative enshrinement of the principle of the "protection of society" as the paramount consideration in the corrections process (s.4(a)) and conditional release decisions made by Parole Boards (sec. 101(a)). Equally welcome is fact that the statutory enshrinement of the principles is evidence of the agreement of CSC and NPB on a statement of goals that should, in the panel's opinion, lead to a greater harmonization of policies and procedures.

However, some concern exists that differing priorities appear to have been put on the principle of "protection of society" in the various Sections of the legislation in which it appears. For example, in Sections 17(1) and 18(2), that principle appears as Sub-Section (b), permitting the perception that Sub-Section (a) is primary, and therefore whether or not an ETA or work release is desirable for the inmate is the primary consideration in any decision to grant an ETA or work release. This is particularly so when contrasting these Sections to Section 102 regarding parole decisions, wherein the principle of risk to society is placed first, in Sub-Section (a). In addition, Section 116(1), regarding the grants of UTAs by the Board again changes the order in which the risk principle is placed. The same concern arises when considering Section 28(a), dealing with considerations affecting the placement and transfer of inmates, where the principle of risk to society is listed as the third Sub-Section. Recognizing the rule of statutory interpretation that differences in a statute are

intended to convey different meanings, the panel is concerned that an interpretation problem might arise in future. Therefore, for clarity, and in keeping with the enunciated principle of Bill C-36, the panel recommends as follows:

RECOMMENDATION #38

That each of s.17(1), 18(2), 28(a), 102 and 116(1) be amended to place the principle of risk to society first and paramount, with other considerations to follow.

Secondly, the panel notes that the draft Bill does not specifically set out the jurisdiction of the Board to delegate its powers to grant UTAs, to institutional heads (Wardens). Given that the Bill is intended to simply enshrine existing practice in this regard, it is recommended that the legislation be clarified.

RECOMMENDATION #39

That Sections 117(1) and (3) be amended to specifically include the institutional head as a person to whom the Board may delegate.

Finally, again on the assumption that the legislation is intended to enshrine existing policy, the panel is concerned that s.116(7) is drafted in a way that might be interpreted to permit only one UTA per month, and/or that the UTA must be 48 or 72 hours (dependent upon the security classification of the offender). The panel is concerned with either result.

Regarding the former, that is, that UTAs might be limited to one per month, the panel is firm in its belief that this would severely undercut the effectiveness of the TA program: it would remove the flexibility of treating professionals to design a series of passes to permit an offender to, for example, attend weekly Alcoholics Anonymous meetings in the community, without an escort.

With regard to the latter result, that is that a single UTA would be granted in a total amount of either 48 or 72 hours, the panel has grave concerns about the implications for public safety. UTAs should be part of a progression between ETAs and day parole, and as with any greater amount of freedom and responsibility granted to an inmate should, in the panel's opinion come first in small amounts: e.g., a series of four or six hour passes to go home for Sunday dinners should preceed the grant of a 72 hour weekend pass.

RECOMMENDATION #40

Sec. 116(7) should be amended to make it clear that unescorted temporary absences (other than those referred to in Sub-Sections (3), (4) and (6)) should be authorized for a maximum of 48 and 72 hours respectively in any month.

III. What amendments to Bill C-36 would be necessary to include the recommendations of this report?

The number of amendments to Bill C-36 that would be necessary to include the recommendations of this report are few.

First, the list of purposes for which ETAs and UTAs may be granted (presently found in Sections 17(1)(a) and 116(1)(a) of Bill C-36 would have to be amended to adopt the list of purposes set out in Section 5.B of this report, and spoken to in Recommendation #7.

RECOMMENDATION #41

That Sections 17 and 116 be amended to set out the purposes for which temporary absences may be authorized as follows: medical, compassionate, administrative, community service, rehabilitative, therapeutic, family contact and community contact.

Secondly, the references in sec. 116(4) and (6) to "personal development" and "specific personal development program" respectively, should be amended to substitute "therapeutic".

RECOMMENDATION #42

That the words "therapeutic" purposes be substituted for references to "personal development" in sec. 116.

Thirdly, the issue of how an inmate is classified for security purposes is discussed in the panel's report as it is determined through original assessment, and effects decisions on security classification and eligibility for temporary absences.

Bill C-36 speaks to Security Classifications of inmates in Sections 30(1) and 96(z.6) and ties certain privileges and restrictions to those security classifications in Sections 115(3), 116(4) and 116(7). The panel has made clear its belief that "security classifications" should be of the individual inmate, based on assessment, and not because of the security classification of the institution where he or she is presently lodged. It is for this reason that the panel abandoned use of the word "security classification" (as it has traditionally been used to describe buildings), and used instead "risk assessment" (which can apply only to a person).

That having been said, the recommendation of the panel can be accommodated by the existing language of Bill C-36, if the regulations passed pursuant to Section 96(z.6) and the policies flowing therefrom, incorporate the provisions of the panel's Recommendations 23(1), 25(1) and 34 regarding high risk inmates into the definition of Maximum Security; of Recommendations 23(2), and 25(2) regarding moderate risk inmates into the definitions of Medium Security, and Recommendations 23(3), 25(3) and 35 into the definition of Minimum Security. Finally, the references to Section 107(1)(e) and that Section's reference, in subparagraph (iii) to Schedule I and II may also have to be re-examined to ensure no statutory

conflict with the panel's intentions that "low risk" offenders be permitted UTAs, at the discretion of the Warden, notwithstanding the nature of the offence or the length of the sentence. Logic dictates that those who have committed serious offences will not, without treatment, meet the criteria for low risk. However, since a goal of incarceration is rehabilitation, a person who is convicted of a Schedule I or II offence may be able to be safely reclassified after treatment as low risk, and benefit from UTAs as part of his or her correctional plan.

> *If you want to have treatment pay off, we have to have offenders deal with the community.*
>
> *(A treating psychologist)*

RECOMMENDATION #43

That the policies and regulations regarding the security classification of inmates incorporate or reflect the levels of risk assessment set out in Recommendations 23, 25, 34 and 35, and that any amendments deemed necessary to give effect to the panel's intentions regarding UTAs for inmates assessed as low risk be enacted.

CHAPTER 8

CONCLUSION

A. WHAT HAVE WE LEARNED?

Public concern over police effectiveness, court decisions and sentencing, inmate management, early release and re-offending criminals has never been so high. People are quick to criticize even though they may be uninformed or misinformed as to the facts of the specific incident, or the operations of the criminal justice and corrections system generally. In this regard, however, the public is not alone.

Within the system itself there is still evidence of a lack of knowledge of procedures and the roles and responsibilities of other players, which lack of knowledge evidences the need for a cross-system approach to effectiveness. Moreover, there must be clear recognition and acceptance that the public as well are players in the system. As taxpayers and victims, or potential victims, they have a stake in how well the system performs. Police officers, court officials including judges and jurors, and corrections and parole workers, must be provided with the best possible information to ensure that the best decisions and most appropriate actions can be taken. Finally, the media in all its forms must also have a complete understanding of the workings of the justice process so that objective and balanced reporting can be provided: it is the media, after all, which has provided much of the public's information about the corrections and criminal justice systems in the past.

In this review of temporary absences, it was necessary to consider the various types of offenders according to crime committed and the sentence applied by the court. It was clear that sentencing practices vary from region to region as well as within criminal categories. In sentencing, the court should be aware of the needs of the inmate and the programs available to him or her within the corrections system so that the best possible placement and management of the offender can be accommodated, without creating undue risk to society. It cannot be overemphasized: sentencing patterns do affect the placement, risk assessment and treatment availability of and for offenders, and results in temporary absence patterns.

CSC and NPB have provided the panel with an outline of their existing and future communication plans and the panel notes that they do not constitute a fully developed public and cross-system education initiative. Given the opportunity provided to begin public education and discussion as part of the changes being proposed to the corrections legislation, the panel urges a strategic and comprehensive approach to public education. Particularly, the panel is convinced that public knowledge about the role and workings of the corrections system will engender a higher degree of public confidence and a willingness to accept the role corrections plays in a society. With understanding, the panel hopes, will come tolerance and acceptance.

RECOMMENDATION #44

That both public education and cross-system training be undertaken as a high priority and that the Ministry of the Solicitor General in conjunction with other parts of the justice system, including representatives of victims and the public, continue to give a high priority to education regarding the workings of the justice system.

The panel has concluded that temporary absences constitute an important, indeed essential part of the corrections system. Properly used, they can provide a short, structured re-introduction of an offender to the community to aid in his or her rehabilitation, or to test his or her ability to safely accept increasing amounts of responsibility. Notwithstanding the lack of extensive data, it is also the panel's conclusion that TAs can be achieved at relatively modest cost, and therefore represent a judicious use of correctional resources. However, the panel has urged better data collection in this regard to permit a cost-benefit analysis of the expense of TAs and their effectiveness.

The panel has not produced a list of "approved" or "banned" activities, since to do so would improperly restrict the flexibility required for individualized planning, treatment and decisions which the panel urges for each offender.

The panel reviewed whether or not temporary absences are available too early in a sentence to properly reflect the public denunciation of a

particular offence or type of offence. It has concluded that the existing eligibility rules and those proposed under Bill C-36 are appropriate and that balance between the controls on, and the amount of discretion provided to Wardens and the Parole Board is proper. Moreover, the panel is confident that the discretion provided will be appropriately exercised, keeping in mind the additional safeguards the panel has suggested.

In closing, we are grateful to have had the opportunity to review and make comment on this challenging issue.

APPENDIX "A"

LIST OF RECOMMENDATIONS

RECOMMENDATION #1

That the definition of failure should be broadened to properly identify and capture problems occurring on a TA, including breach of conditions and unacceptable lateness, and that these definitions be utilized in the data collection process.

RECOMMENDATION #2

That any breach of conditions of a TA should lead to an automatic suspension of any future previously approved TAs, to be reinstated only after review by the decision-maker who first granted the TA.

RECOMMENDATION #3

That any "failure to return" of a TA which includes detention by police, any behaviour which results in new charges being laid or cancellation of a TA for cause, should result in automatic cancellation of any future previously approved TAs, an investigation into the circumstances surrounding the event completed by an appropriate investigating body and the results of the investigation placed on the inmate's file to be taken into consideration when he or she is reviewed again for any form of conditional release.

RECOMMENDATION #4

That the CSC undertake a complete analysis on an institution by institution basis to ascertain the rates of grants of ETAs and UTAs over the past five years, to ascertain any statistical decline, and the reasons therefore. In addition, CSC should develop a comprehensive data base to track variances in the rate of granting TAs and an appropriate framework for analysis on an institution by institution basis of information such as the population profile, when a TA occurs in the offender's sentence and whether a TA is completed successfully.

RECOMMENDATION #5

That the data base be modified to provide for the collection of information that will permit analysis to establish the effect of TAs on an offender's long term recidivism.

RECOMMENDATION #6

That a data base be designed and maintained that collects information on the cost of TAs, and would permit cost-benefit analyses of TAs, in relation to recidivism rates.

RECOMMENDATION #7

That Bill C-36 and the Regulations thereto define the various types of TAs by incorporating a statement of the purposes for which the TAs may be granted that is sufficient to make clear the differences in the approved purposes, and to allow the collection of data to permit evaluation of the program. The same terminology should then be used by both CSC and NPB in Regulations and policy that supplement the statute.

RECOMMENDATION #8

That the levels of supervision and type of escort as outlined by the panel be set out in clear terms on each TA permit that is approved.

RECOMMENDATION #9

That no matter the value of a particular TA to the rehabilitation of an offender, protection of the public and the risk posed to the community by that offender must always be the highest priority and the most important criteria to be considered by the decision-maker.

RECOMMENDATION #10

That CSC review the sufficiency of the training of Security Escorts.

RECOMMENDATION #11

That when considering applications for TAs the absolute level of risk over the long term should be considered. Where there is uncertainty that a high

level of risk is or can be reduced sufficiently for further conditional releases of longer duration, the TA should not be granted, rather than encourage expectations of further releases. This is particularly applicable to cases of violent, repeat and sex offenders.

RECOMMENDATION #12

That the Parole Board and CSC should develop a process to harmonize their views on correctional plans in certain types of cases, particularly those posing the highest risk. CSC should seek the views of the Board with regard to the viability of the correctional plans CSC prepares for the offender, in those cases of high risk, violent, repeat and sex offenders.

RECOMMENDATION #13

That an audit be conducted by CSC in the Fall of 1992 to follow-up on those matters identified in the January 1992 audit as requiring further action.

RECOMMENDATION #14

That the panel recommends that the joint efforts of the CSC and RCMP drug interdiction program continue to be given high priority and that this project be reported on annually to the Minister.

RECOMMENDATION #15

That CSC be supported in its attempts to ban drugs from penitentiaries, including mandatory urinalysis on the basis of reasonable grounds and the establishment of policies for the revocation of, and disentitlement to TAs as a result of an inmate's importation of, trafficking in, and use of illicit drugs.

RECOMMENDATION #16

That Wardens be encouraged to attract, train and support sufficient numbers of volunteer citizen escorts to assist in meeting the needs of their respective institution's TA program.

RECOMMENDATION #17

That procedures be put in place to increase the accuracy and comprehensiveness of information in inmate files. In this regard, cross-system information gathering and sharing projects should be reviewed and developed where required.

RECOMMENDATION #18

That all steps necessary be taken to establish access to detailed information of a federal offender's juvenile history, given that assessment is aided by information regarding the type, and age of onset of criminality or deviance.

RECOMMENDATION #19

That an offender's file information be used to establish a computerized information system to identify, and track, sex offenders in and through the correctional system.

RECOMMENDATION #20

That CSC and NPB develop a protocol to ensure the protection of the identity of persons who provide information pertinent to the inmate's file and good decision-making in order to avoid the "softening" of comments from witnesses, police, treating psychologists or staff members.

RECOMMENDATION #21

That CSC continue to develop, and widely implement an entry-level screening system to identify and classify newly-incarcerated offenders who require more detailed and extensive assessment, including phallometric testing and measurement of psychopathy, and direct those offenders to that assessment process.

RECOMMENDATION #22

That CSC explore the possibility of a pilot project in co-operation with the courts, to provide input to pre-sentence reports for sex offenders or others who are identified as requiring specialized treatment during incarceration.

RECOMMENDATION #23

(1) (a) That offender assessments be standardized for CSC and contract testing, and that for those sex offenders who are assessed as highest risk and most deviant (whom the panel has termed "Red Card" cases), CSC should maintain and/or develop one or more specialized sex offender treatment programs for each Region.

(b) That any eligibility of "Red Card" offenders for TAs should be as follows:

1) for medical, compassionate and administrative reasons, with a security escort, at the discretion of the Warden;

2) for therapeutic reasons, with a security escort, at the discretion of the NPB;

3) For any other purpose related to treatment of the offender's high risk and high deviance and only at the discretion of the NPB, with appropriate recognition of the high risk nature of the offender being the primary consideration in the decision whether to grant, and in providing for escort;

(c) Upon post-treatment assessment that identifies changes in risk, a reclassification of risk may occur.

(2) (a) That for those sex offenders who are assessed as "Moderate Risk" (whom the panel has termed "Orange Card" cases), CSC should maintain and/or develop sufficient specialized sex offender programs to address their needs.

(b) Any eligibility of "Orange Card" offenders for TAs should be as follows:

1) for medical, compassionate, and administrative reasons, with a security escort, at the discretion of the Warden;

2) for other purposes, with escort provisions appropriate to the offender's risk, at the discretion of the NPB;

(c) Upon post-treatment assessment that identifies changes in risk, a reclassification of risk may occur.

(3) That for those offenders who are assessed as "Low Risk" (whom the panel has termed "Green Card" cases), CSC should maintain and/or develop sufficient programs to address identified offender needs. "Green Card" offenders would be eligible for any type of TAs, under appropriate escort provisions, at the discretion of the Warden.

RECOMMENDATION #24

That to ensure the most expeditious implementation of the above, and realization of the mandate of the National Sex Offender Coordinating Committee, a Co-ordinator of Sex Offender Programs within CSC should be appointed.

RECOMMENDATION #25

(1) That for non-sex offenders assessed as "High Risk" they be treated as "Red Card" cases, and the provisions of Recommendation #23 (1) regarding eligibility for TAs for those offenders apply.

(2) That for non-sex offenders assessed as "Moderate Risk" they be treated as "Orange Card" cases, and the provisions of Recommendation 23 (2) regarding eligibility for TAs for those offenders apply.

(3) That for non-sex offenders assessed as "Low Risk" they be treated as "Green Card" cases, and the provisions of Recommendation #23 (3) regarding eligibility for TAs for those offenders apply.

RECOMMENDATION #26

That CSC liaise with Employment and Immigration Canada to develop a protocol to expedite determination of status for federal inmates who are of questionable immigration status.

RECOMMENDATION #27

That a CSC/NPB Task Force be struck to examine and make recommendations on risk assessment of, and the appropriate role of TAs in programming for, lifers, and that in the interim, subject always to risk assessment, the existing release provisions prevail.

RECOMMENDATION #28

That CSC continue to develop and expand programs designed to support and strengthen Native spirituality and Native culture.

RECOMMENDATION #29

That CSC give special consideration to development of programs to establish and enhance an aboriginal offender's ties with his or her family, extended family and home community.

RECOMMENDATION #30

That TAs for "therapeutic" purposes include, for Aboriginal offenders, participation in those spiritual and cultural ceremonies unique to Aboriginal peoples.

RECOMMENDATION #31

That Native Elders be accorded the status of other clergy by CSC, and that steps be taken to ensure appropriate access to an Elder by inmates of all institutions.

RECOMMENDATION #32

That any new programs or policies directed at Aboriginal offenders be developed by CSC in consultation with Elders and representatives of Native and Aboriginal agencies serving Aboriginal offenders.

RECOMMENDATION #33

That a woman-based assessment model be developed to individually assess female offenders as to both the danger to the public they present and their individual needs, and that this assessment model be culturally sensitive to properly assess the needs of female Aboriginal offenders.

RECOMMENDATION #34

That for those women assessed as presenting a danger to the public, eligibility for TAs should be as follows:

1) for medical, compassionate and administrative purposes, with a security escort, at the discretion of the Warden;

2) for therapeutic reasons, with a security escort, at the discretion of the NPB;
3) for any other purpose related to treatment of the offender's high risk, and only at the discretion of the NPB, with appropriate recognition of the high risk nature of the offender being the primary consideration in the decision whether to grant, and in providing for escort;
4) upon post-treatment assessment that identifies changes in risk, a reclassification may occur.

RECOMMENDATION #35

That women offenders who are assessed as not presenting a danger to the public be eligible for any type of TA under appropriate escort provisions at the discretion of the Warden.

RECOMMENDATION #36

That for Aboriginal women offenders, TAs for "therapeutic" purposes include participation in those spiritual and cultural ceremonies unique to Aboriginal peoples.

RECOMMENDATION #37

That CSC should continue to develop strategies and provide funding for a variety of initiatives designed to support and strengthen a woman offender's ties to her family.

RECOMMENDATION #38

That in Bill C-36 each of Sections 17(1), 18(2), 28(a), 102 and 116(1) be amended to place the principle of risk to society first and paramount, with other considerations to follow.

RECOMMENDATION #39

That Sections 117(1) and (3) be amended to specifically include the institutional head as a person to whom the Board may delegate.

RECOMMENDATION #40

Section 116(7) should be amended to make it clear that unescorted temporary absences (other than those referred to in Sub-Sections (3), (4) and (6))

should be authorized for a maximum of 48 and 72 hours respectively in any month.

RECOMMENDATION #41

That Sections 17 and 116 be amended to set out the purposes for which temporary absences may be authorized as follows: medical, compassionate, administrative, community service, rehabilitative, therapeutic, family contact and community contact.

RECOMMENDATION #42

That the words "therapeutic" purposes be substituted for references to "personal development" in sec. 116.

RECOMMENDATION #43

That the policies and regulations regarding the security classification of inmates incorporate or reflect the levels of risk assessment set out in Recommendations 23, 25, 34 and 35, and that any amendments deemed necessary to give effect to the panel's intentions regarding UTAs for inmates assessed as low risk be enacted.

RECOMMENDATION #44

That both public education and cross-system training be undertaken as a high priority and that the Ministry of the Solicitor General in conjunction with other parts of the justice system, including representatives of victims and the public, continue to give a high priority to education regarding the workings of the justice system.

APPENDIX "B"

A BRIEF HISTORY OF FEDERAL RELEASE PROGRAMS

In Canada, as in other Western nations, programs of release from penitentiary before the full sentence had been served were founded in the late 19th century as a reward and incentive for industrious and law-abiding behaviour. In Canada, the most significant of these programs have been Earned Remission (1868), Ticket-of-Leave (1899), Parole (1959) and Mandatory Supervision (1970).

The first of these programs - remission - was introduced in the first Penitentiary Act in 1868. It offered the possibility of early release to all inmates (a maximum of 6 days per month could be earned when first introduced). Merit and demerit points were awarded for cooperative behaviour and attitude, and for industrious work habits. The Act was later amended to allow up to 10 days remission to be earned every month once 72 days had been earned at the original rate. This formula, which could amount to almost a quarter of the original sentence, remained virtually unchanged until 1961.

In 1899, the Ticket-of-Leave Act introduced the possibility of early release independent of earned remission, based on more general considerations such as age, criminal history, nature of the crime, and similar factors used to judge the inmate's character and probability of "relapse". This form of release placed greater emphasis on administrative discretion and could shorten imprisonment more dramatically than remission. The Ticket-of-Leave Act was also meant to be a rehabilitative tool but with clear considerations of clemency.

With the remission and ticket-of-leave systems in place at the turn of the century, the early release system changed little over the next 60 years. Early records show that almost all inmates leaving penitentiary benefited from remission to some degree, and the use of tickets-of-leave gradually increased.

In 1905, the first Dominion Parole Officer was appointed and, in 1913, the Remission Service was created in the Department of Justice. Both measures indicated a more systematic approach to conditional release.

By the second quarter of the century, up to 30% of penitentiary releases were by way of ticket-of-leave; most others, through remission. However, these early releases were not subject to the level of support and control that is provided today. Conditions of supervision were limited to the requirement of reporting to the local police and voluntary contact with the few existing after care agencies.

Until 1958, the emphasis was on the proper selection of potentially successful candidates for release. Since then, increasing attention has been given to the provision of support and controls for inmates during the portion of their sentence served in the community.

In 1959, the Ticket-of-Leave Act was replaced by the Parole Act which created the National Parole Board as had been recommended by the Fauteux Committee in 1956. The National Parole Board was to exercise statutory and regulatory powers to grant, and to set conditions for, the release of persons incarcerated in federal penitentiaries, and to be responsible for conditional release of inmates in provincial and territorial institutions. The National Parole Service was created to investigate and prepare cases for the Board and to arrange or provide supervision.

In 1961, the Penitentiary Act was revised and two types of remission distinguished: statutory and earned. Statutory remission provided that one-quarter of the sentence would be credited to the inmate at the outset, and that this benefit could be lost as a punishment for unacceptable behaviour. In addition, three days remission could be earned each month for good conduct and could not be lost once earned. In total, almost one-third of the sentence could be remitted.

The new Penitentiary Act also introduced Temporary Absences which could be used by the Penitentiary Service to grant brief furloughs, with or without escort, for humanitarian, rehabilitative or medical purposes.

In 1964, the Parole Board introduced a category of conditional release known as "Minimum Parole". Any inmates who had not received parole could apply for Minimum Parole prior to release due to remission, provided they did not fall into a specifically excluded category. Minimum Parole could be granted for a period equal to one month for every year in custody up to a maximum of six months in addition to statutory

remission. Release on Minimum Parole proved to be virtually automatic for those who applied. Inmates on Minimum Parole were to remain under supervision for the remainder of their sentence, including the portion that otherwise would have been remitted and served in the community without supervision.

In 1970, following the recommendation of the Ouimet Committee the year before, the Parole Act was changed to provide that all inmates being released due to earned or statutory remission of more than 60 days would be under the supervision of the National Parole Board. The Board was also given authority to establish conditions to be met by the offender during this mandatory supervision period and, as in the case of full parole, to suspend and revoke the release if conditions were not met. In effect, this innovation meant that an additional 70% of inmates being released from penitentiary would be subject to the authority of the National Parole Board and would be under the supervision of the National Parole Service until sentence (warrant) expiry. The amendment also introduced Day Parole, a new form of short-term parole release to allow inmates to participate in work, education or prerelease projects, returning periodically to the institution. Shortly thereafter, Minimum Parole was discontinued.

In 1978, the Penitentiary Act was again amended with the abolition of statutory crediting of remission. The amendment provided that up to 15 days remission could be earned for every month served (one-third of the total sentence). In the same year, time on conditional release became equivalent to time served. Previously, "street time" had not been applied to sentence when release was revoked. In addition, inmates could now choose to remain incarcerated until sentence expiry rather than accepting a release under mandatory supervision. At this time the National Parole Service was incorporated into the Canadian Penitentiary Service which became known as the Correctional Service of Canada. Unescorted Temporary Absences were brought under the authority of the National Parole Board. Eventually, Board policy was developed that delegated authority for most Unescorted Temporary Absences to the Correctional Service where the aggregate sentence is less than five years. In other instances, delegation may take place on a case-by-case basis.

Bill S-32 and Bill C-35 which proposed amendments to the Penitentiary Act and the Parole Act respecting

mandatory supervision, were introduced in the period 1982-84 but died on the order paper.

Similar legislation, which was introduced in the House of Commons in 1985, was adopted in July 1986. Bill C-67, as it was commonly known, authorized the National Parole Board, in accordance with criteria and procedures established by the Bill, to detain in custody until warrant expiry those inmates eligible for mandatory supervision who are considered likely to commit an offence causing death or serious harm to another person before the end of their sentence. Cases are identified for review by the Correctional Service and referred to the Parole Board. The Board has the option of specifying that certain inmates may have only one chance in the community, and, if their releases are revoked, will be detained until warrant expiry. In addition, offenders who are subject to a detention hearing may be placed under strict residential conditions upon their eligibility for release under mandatory supervision. In sum, these new provisions allow greater control over the release of offenders with a demonstrable potential for violence.

Bill C-67 also prescribes the mandatory, in-person review of cases when federal inmates first become eligible for day parole, usually after one-sixth of their sentences have been served. Previously inmates had to apply for such a hearing, and this measure rationalizes the process by ensuring that equal opportunity is afforded to all eligible offenders serving determinate sentences. Even when conditional release is not forthcoming immediately after the initial review, the inmate will be provided direction as to how best to prepare for subsequent hearings and eventual release.

In 1987 the Canadian Sentencing Commission released its report: Sentencing Reform: A Canadian Approach. A report entitled Taking Responsibility (1988) issued from a study of sentencing and conditional release conducted by the Parliamentary Standing Committee on Justice and Solicitor General. In July 1990, in response to the recommendations for reforming the criminal justice system, the federal government put forward a comprehensive consultation package called Directions for Reform: Sentencing, Corrections and Conditional Release.

Among the proposals are three separate legislated statements of purpose and principles of sentencing,

corrections and conditional release. The statements would clarify practices in law, make these practices more understandable to the public and ensure that the major components of the system function effectively together. A Sentencing and Parole Commission would be established to develop sentencing guidelines and review parole policies. Also proposed is the establishment of sentencing procedures in the Criminal Code and the creation of a new Corrections Act to govern federal penitentiaries.

Proposed changes to parole would establish longer minimum incarceration periods, including later parole eligibility dates, to be determined by the sentencing judge, for certain violent and serious drug offenders. The changes would also include streamlining the review process for low-risk, non-violent offenders. Amendments to the Parole Act would explicitly make the risk of reoffending and public safety the paramount consideration in all conditional release decisions.

APPENDIX "C"

GLOSSARY

CSC	The Correctional Service of Canada (also the Service)
ETA	Escorted Temporary Absence
NPB	National Parole Board (also the Board)
PCL	Psychopathy Checklist
RCMP	Royal Canadian Mounted Police
TA	Temporary Absence
UTA	Unescorted Temporary Absence
WSBC	Warkworth Sexual Behaviour Clinic

APPENDIX "D"

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APPENDIX "E"

LIST OF WITNESSES AND SUBMISSIONS

Aboriginal Legal Services of Toronto:

Cliff T. Summers, Executive Director
Ken Oliver, Native Inmate Liaison Worker
James Mason, Native Inmate Liaison Worker

Alberta District Parole Office:

Jeff Christensen, District Director

Alberta Solicitor General's Department:

Mike Clark, Alberta Temporary Absence Coordinator
Guy Ferris, Parole Officer, Parole-Police Liaison

Allied Indian and Métis Society, Vancouver:

Marjory White, Executive Director

Archambault Institution

Jacques Dyotte, Warden

Association des services de réhabilitation sociale du Québec:

Joanne Vallée, directrice

Bath Institution:

Sam Brazeau, Warden
Dave MacDonnall, Deputy Warden
Joe Hadacin, Chief Case Management
R. Stanford, Case Management Officer
Anne Weck, Case Management Officer
Barb Clark, Records Coordinator
C. Nelson, Temporary Absence Clerk

British Columbia Parole Board:

Lynn Greenhill, Chairperson (Acting)
Don Bell, Executive Director

British Columbia Probation Services:

Jim Konowalchuk, Electronic Surveillance

Canadian Association of Elizabeth Fry Societies:

Kim Pate, Executive Director

Canadian Criminal Justice Association:

Gaston St-Jean, Executive Director
Rhéal Jubinville, Deputy Executive Director
John Braithwaite, Former President
Gerry Ruygrok, Chairman, C-36 Committee

Carrefour Nouveau-Monde:

Jacques Déom, Président
Diane Déom, Directrice

Church Council on Justice and Corrections:

Marie Beemans

Citizens' United for Safety and Justice:

Noreen Provost, Coordinator

Citizens' Advisory Committee - CSC

Yves Robillard, Chairman

Correctional Service of Canada,

National Headquarters:

Ole Ingstrup, Commissioner
Mario Dion, Deputy Commissioner
Remi Gobeil, Assistant Deputy Commissioner
Frank Porporino, Director General
Brian Grant, Research Manager
Gilbert Taylor, Project Manager
Jan Klaus, Acting Director General
Liz Bayliss, Assistant Director General
David Pisapio, Senior Project Manager

Correctional Service of Canada, B.C. Regional Office:

Terry Sawatsky, Assistant Deputy Commissioner

Correctional Service Canada Quebec Regional Office:

Lise Bouthillier, Regional Administrator, Community Operations

Cowansville Institution:

Jean-Paul Lupien, directeur
Gilles Lacasse, directeur adjoint
Claude Guerin, sous-directeur
Chantal Fontaine, chef, Service de santé
Hélène Boissonneau, infirmière

Edmonton City Police:

Supt. Al Burger, Criminal Investigations
Staff Sgt. Don Forrest, Coordinator Crime Unit

Elizabeth Fry Society (Montreal):

Nathalie Duhamel

Federal Training Centre:

M.A. Lafleur, Warden
Denis Roberge, Deputy Warden

Carolina Soulie, Coordinator Case Management Programs
David Clérin, Case Management Officer, Inmate Committee

Grierson Centre:

Randy Sloan, Supervisor
George Keehewin, Native Elder

John Howard Society of Alberta:

John Mold, Vice President
Howard Sapers, Provincial Director

John Howard Society (Canada):

Jim MacLatchie, Executive Director

Justice Canada, Montreal Office:

Richard Stark, Federal Crown Attorney

Lafontaine Parole Area Office:

Pierre Saulnier, Area Manager

Maison Tanguay:

Michel Lacoste, Directeur

Montée St. François:

Guy Villeneuve, Warden
Denis Boutin, Deputy Warden
Yvon Goudreau, Coordinator Correctional Programs
Temporary Absence Review Board
Inmate Committee

Montreal District Parole Office:

Gilles Thibault, District Director
Pierrette Soucy
Christine Breton
Louis Roger Gagne
Jules Bourque
Claude Pierre

National Joint Committee (Atlantic Region):

Richard Hubley, Chairman, and members

National Joint Committee, Quebec Region:

Lorrain Audy, Chairman and members

National Parole Board
National Headquarters:

Fred Gibson, Chairman
Michel Dagenais, Vice Chairman
Roy Evans, Director
Denise Walter, Senior Counsel

Senior Management Committee:
K. Louis, Senior Board Member, Pacific Region
G. Bellavance, Senior Board Member, Prairie Region
F. Baines, Senior Board Member, Ontario Region
N. Stableforth, Senior Board Member Appeals Division
K. Morgan, Senior Board Member, Quebec Region
J. Trevors, Senior Board Member, Atlantic Region
A. Himmelfarb, Executive Director, NPB

National Parole Board, B.C. Regional Office

Fraser Simmonds, Regional Director

National Parole Board Ontario Region:

Ross Drummond, Board Member
Gail Puddicomb, Board Member

Native Clan:

Curtis Fontaine, Executive Director

Ontario Regional Headquarters:

Dan Kane, Assistant Deputy Commissioner Operations
Barrie Friel, Director Communications
Bob Cannon, Regional Psychologist
Suzanne MacKenzie, Management Trainee

Osborne Community Correctional Centre:

Jim Johnson, Superintendent

Pavillon Prosper Boulanger:

Marcel Veilleux, directeur
Line Morin
Sylvie Vallière

Plaidoyer - Victimes, Montreal University:

Arlène Gaudreault, présidente

Prison for Women (P4W):

Mary Cassidy, Warden
Donna Morrin, Deputy Warden
June Blackburn, Coordinator Case Management
Maureen Blackler, Unit Manager

Queen's University:

Dr. Vern Quinsey, Department of Psychology

Regional Treatment Centre:

Tom Epp, Warden, Kingston Penitentiary
Paul Crookal, Associate Director
Tim Griffin, Case Management and Occupational Therapy
Bruce Malcolm, Coordinator Sexual Assessments
Arunina Kahana, Psychologist

Rockwood Institution:

Jack Keane, Warden
Doug Spiers, Deputy Warden
Temporary Absence Review Board
Marlene Dyck, Native Clan Liaison Officer

Salvation Army:

Stuart King

Sherbrooke Community Correctional Centre:

Richard Lacroix, directeur

Solicitor General Secretariat:

Bob Cormier, Director Research & Program Development
Richard Zubrycki, Director General Corrections Policy

Stony Mountain Institution:

Art Majkut, Warden
Lorrette Burch, Deputy Warden (acting)
Temporary Absence Review Board
Frank Settee, Native Liaison Worker
Ken Watts, Bridge Program
Native Awareness Program inmates
Dennis Gosselin, Director Native Program

Thérèse Casgrain, Community Residence:

Ruth Gagnon, directrice
Andrée Cyrenne

University of British Columbia:

Dr. Robert Hare, Psychologist

University of Sherbrooke, Department of Psychiatry:

Dr. Pierre Gagné, Psychiatrist

Victims of Takahashi

Victims of Violence:

Gary Rosenfeldt, Executive Director
Sharon Rosenfeldt, Associate Director
Scott Newark, Crown Attorney, Alberta

Warkworth Institution:

Peter White, Deputy Warden
Pat Kerr, Coordinator Case Management (Acting)
Howard Barbaree, Psychologist
Jean Clark, Temporary Absence Clerk

Winnipeg City Police:

Sgt. Ernie Carleton, Police-Parole Liaison Officer

Winnipeg District Parole Office:

Gord Holloway, District Director
Brenda Delaney, Parole Officer
Gabrielle Thiessen, Parole Officer
Dave Clewson, Parole Officer
Peter Krawchuk, Section Supervisor
Jim Hume, Community Resources Coordinator

YMCA (Montreal):

M. Boirond
J.M. Guimond

SUBMISSIONS

- Victims of Violence, Sharon and Gary Rosenfeldt (and Scott Newark)
- Prince Edward Island Department of Justice and Attorney General (Phil Arbing)
- Citizens United for Safety and Justice
- The Victims of Takahashi
- Canadian Criminal Justice Association
- Mrs. E. Cole, Cobourg, Ontario
- St. Leonard's Society, Windsor, Ontario (Louis Drouillard and Skip Graham)
- Correctional Service of Canada, Atlantic Region (Willie Gibbs)
- Nan Harrison, Port Coquitlam, B.C.