

Conditional Release Violations, Suspensions and Revocations

A Comparative Analysis

November 2008

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A Comparative Analysis

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Executive Summary

Managing the social reentry of sentenced offenders is a potentially cost-effective way of preventing crime. Different types of conditional release programs can be used to support the social reintegration of offenders and improve public safety. A conditional release program creates an opportunity to supervise and assist offenders after their release from a correctional institution.

However, we still know relatively little about what works with respect to the release and supervision of offenders on conditional release. At the heart of the supervision/control aspect of interventions to facilitate the offenders' social reintegration are: (1) the decision to release an offender; (2) the conditions that are attached to that release; (3) the enforcement of these conditions; (4) the decision to suspend or revoke a conditional release as a result of an alleged breach of these conditions or a new offence being committed; (5) the support and assistance by supervisor; and (6) the determination of an appropriate response to the violation of the commission of a new offence. In fact, there is relatively little systematic information about the decisions that are made by supervisors and supervising agencies in the course of the supervision of offenders.

In many jurisdictions, conditional release failures have also had a definite impact on the prison population. An increase in the number of offenders failing to complete a period of conditional release is problematic for a number of reasons. As was just mentioned, it clearly has an impact on the size and composition of the prison population. It can also affect the credibility of the whole conditional release system in the eyes of the public. It raises questions about the decision-making process that leads to returning offenders to the community who are apparently incapable of successfully readjusting themselves to life in society. Finally, it most certainly can call into question the efficacy of the community corrections agencies responsible for assisting and supervising the released offenders.

The present study is a preliminary comparative attempt to examine the decision-making process involved in selected jurisdictions in cases of alleged breach of conditions by offenders released on conditional release. This involved an examination, for these same jurisdictions, of: the arrangements typically made for the supervision of offenders on conditional release; the role of the supervisors and their responsibility with respect to the enforcement of the conditions attached to an offender's conditional release; and, the policy and procedures governing the supervisory agency's response to breaches of conditions or new offences committed by conditionally released offenders.

Introduction

A recent review of the experience of various jurisdictions in facilitating the successful reintegration of offenders and preventing further recidivism confirmed that comprehensive crime prevention initiatives must include, as a matter of priority, some effective measures to prevent recidivism by prisoners who are released into the community (Griffiths, Dandurand, Murdoch, 2007). Their reintegration must be facilitated by reentry programs which find the right balance between supervision and assistance, address the criminogenic needs of offenders and offer a continuum of care and support to released offenders.

We still know relatively little about what works with respect to offender supervision. At the heart of the supervision/control aspect of interventions to facilitate the offenders' social reintegration are: (1) the decision to release an offender; (2) the conditions that are attached to that release; (3) the enforcement of these conditions and the assistance offered; (4) the decision to suspend or revoke a conditional release as a result of an alleged breach of these conditions or a new offence being committed; (5) the support and assistance by supervisor; and (6) the determination of an appropriate response to the violation or the commission of a new offence. In fact, there is relatively little systematic information about the decisions that are made by supervisors and supervising agencies in the course of the supervision of offenders.

Decisions to suspend offenders are most often completely justified from the point of view of public safety. They nevertheless have serious consequences for the offenders. They may interrupt other important interventions (assistance, treatment, education, etc.), affect the offenders' morale, attitudes, and needs, or significantly increase the challenges the offenders face in attempting to successfully reintegrate into society. Of course, not intervening in a case of an alleged breach of release conditions can also have serious consequences for both the offender and the community (e.g. recidivism).

In some jurisdictions, however, a significant number of suspensions or revocations are for violations of the conditions of the release – acts such as missing treatment sessions – which are not crimes. Available data do not always present a clear picture of the degree to which returns to prison for parole violations involve solely breaking the rules of supervision or also involve significant new criminal offences. In some instances, these so-called “technical” or “condition” violators account for more than half of all those returned to prison (Hughes, Wilson, and Beck, 2001: 13).

These suspension or revocation decisions and their impact are not well understood, including who makes the decision in different jurisdictions, on what basis, within what policy, regulatory and legislative framework, or with what frequency. It is in everyone's interest to examine how these decisions are made, but even more importantly how they can be improved or enhanced. Jurisdictions use different methods to try to guide and improve the quality of these discretionary decisions, including staff training, operational policies and regulation, closer professional supervision, and/or information feedback systems for decision makers. Comparing one's experience with that of professionals in other jurisdictions is another way to do so.

In many jurisdictions, conditional release failures have also had a definite impact on the prison population. In many countries, the recalled prisoner population is indeed exacerbating the problem of prison crowding (Tonry, 1990; Thompson, 2007: 147). The United States (U.S.) and England and Wales are experiencing a growing prison population due in part to the number of offenders released on license and violating conditions of their release. Currently in the U.S., the fastest growing segment of the prison population is made of offenders who have violated the terms of their parole or probation (Petersilia, 2004). The number of offenders being recalled back to prison in England and Wales has more than trebled between 2000 and 2005, with recalled prisoners accounting at the end of that period for 11 percent of the local prison population (Collins, 2007: 159; also, Fletcher, 2003). In England and Wales, in one year, recalled prisoners already accounted for as much as eleven percent of the prison population (Padfield, 2005).

As recall rates continue to rise, the prison population is “increasingly shaped by those who return by the ‘back door’” (Padfield, 2005; 276). In addition to the problematic impact on the prison population, there is also concern for the rights of recalled offenders within the recall procedure, as well as their experiences with being returned to prison. There is also some concern about the suicide rate among recalled prisoners, as these prisoners are often upset, uncertain, and distressed, and they may not know why they have been recalled to prison or how long they will remain in confinement (PRT, 2005; Liebling, 1992). This problem can be exacerbated by a lack of access by recalled offenders to legal advisers.

An increase in the number of offenders failing to complete a period of conditional release is problematic for a number of reasons. As was just mentioned, it clearly has an impact on the size and composition of the prison population. It can also affect the credibility of the whole conditional release system in the eyes of the public. It raises questions about the decision-making process that leads to returning offenders to the community who are apparently incapable of successfully readjusting themselves to life in society. Finally, it most certainly can call into question the efficacy of the community corrections agencies responsible for assisting and supervising the released offenders.

Even though a conditional release and supervision system may be perceived as a “small cog in the large wheel we call our criminal justice system” (Padfield and Liebling, 2000: 125), its influence on the correctional system and on the credibility of the whole justice system, as well as its impact on communities, offenders, victims and their families, should not be underestimated. Conditional release is a key component of the corrections system of many jurisdictions and it probably deserves far more research attention than it has received so far.

Concern over the rise in the number of recalls and parole failures is not new. Research dating back to the 1980s described the recalled offender problem in the California prison system and alleged that “parole supervision [had] evolved to be little more than a gateway back to the institution, given extremely high recidivism rates, decreased flexibility in case management, and growing caseloads” (Messinger, Berecochea, Berk, and Rauma, 1988: 77). This will be addressed later in the report as it related to the impact of non-discretionary conditional release.

The observed increase in the frequency of parole suspensions and revocations cannot be attributed solely to the worsening of behaviour among offenders under supervision in the community, although the conduct of offenders affects the rate to a certain extent. Equally important, perhaps, is

that the number and rate of recalls is most affected by parole supervisors' sensitivity to condition violations (Reitz, 2004). As noted by Thompson in the U.K., it seems reasonable to contend that the reason for the rise in recalls for breach of licence conditions "lies not in the behaviour of the offenders themselves, but in the legislation and the professional practice of those involved in the process" (Thompson, 2007; 150).

Comparative research is required to further explore this phenomenon. Researchers should consider investigating the rising revocation rate for breach of conditions, as well as changes that may have to be made to accommodate the increasing number of revoked offenders returning to prisons (Murdoch, 2006). The nature of the experience of offenders on conditional release in the community, the kind of supervision and assistance they receive, and their compliance with release conditions should also be part of the research agenda. In particular, attention should be given to the decision-making process with respect to parole suspensions and revocations.

Obviously, a critical first step for any agency interested in better handling parole violations is, as was suggested by Burke, Gelb and Horowitz, (2007), a careful analysis of current policies and practices. Policies and practices can be redesigned to enhance the likelihood of successful completion of supervision, with violations being considered opportunities to intervene with offenders and redirect their behavior.

The present study purported to examine the decision-making process involved in selected jurisdictions in cases of alleged breach of conditions by offenders released on conditional release. This of course also required an examination, for these same jurisdictions, of: the arrangements typically made for the supervision of offenders on conditional release; the role of the supervisors and their responsibility with respect to the enforcement of the conditions attached to an offender's conditional release; and, the policy and procedures governing the supervisory agency's response to breaches of conditions or new offences committed by offenders who are conditionally released.

Academic interest in parole peaked in the 1970s, with the debate about Martinson's (1974) "nothing works" statement with respect to the rehabilitation of offenders and with the heightened public concern about apparent sentencing disparities. The increased scrutiny resulted in proposals for sentencing reform, for tightened conditional release systems, and in some cases, for the abolition of parole (Hanrahan, Gibbs, and Zimmerman, 2005). Since then, there has been relatively little systematic research on parole systems, particularly when compared to the vast amount of literature written about front-end agencies in the justice system (Morgan and Smith, 2005).

The present report is partly based on a narrative review of a selection of the literature on community supervision and decision-making during the supervision of conditionally released offenders. Also included in the report are the results of a survey in which invited jurisdictions accepted to participate, and the review and discussions which took place during a two day expert group meeting held in Vancouver on May 1-2, 2008.

This main survey was conducted by the International Centre for Criminal Law Reform and Criminal Justice Policy with the participation of the following jurisdictions and agencies:

- Correctional Service of Canada, (CSC);
- Kansas Parole Board and Department of Corrections;

- National Offender Management Service (England and Wales);
- National Parole Board of Canada, (NPB);
- New Zealand Parole Board;
- Ontario Parole and Earned Release Board, Ontario, Canada;
- Parole Board for England and Wales
- Parole Board for Scotland;
- Pennsylvania Board of Probation and Parole;
- Prisoners' Review Board, Western Australia;
- Queensland Corrective Services (Australia);
- Scottish Prison Service;
- United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Japan.

Each one of the participating agencies responded to a questionnaire that was circulated in January 2008. One of the purposes of the current report is to provide a comparative overview of the conditional release suspension, recall and revocation practices in these jurisdictions. Section I of the report will highlight some key issues about the social reintegration of offenders and the role of conditional releases and supervision in facilitating and monitoring the offenders' social reentry process. In sections two through four, the conditional release systems currently in place in the participating jurisdictions will be reviewed, before considering, in section five, the challenges faced by offenders at the time of their release. This is followed by three sections looking specifically at the question of parole supervision, breaches of parole conditions, and the responses given in such instances. The report concludes with suggestions about possible next steps in gaining a better understanding of best practices in terms of parole supervision and other measures to facilitate the safe social reintegration of offenders.

1. Some Issues

The Social Reintegration of Offenders and Public Safety

There is an increasing interest among policy-makers in identifying programs and strategies that will help prisoners successfully reintegrate back into their communities without re-offending. Successful crime prevention strategies must address factors which contribute to the large number of crimes committed by individuals who have served a term of incarceration and failed, upon their release, to integrate into the community as law-abiding citizens (Rakis, 2005). In the absence of material, psychological, and social support at the time of their release, offenders have a very difficult time breaking the cycle of release and re-arrest. Short-term prison terms and extended terms of remand in custody provide limited opportunities for successful treatment and interventions to prevent future recidivism. Community safety makes it imperative that governments and communities develop effective interventions that will assist ex-prisoners to successfully reintegrate into the community and avoid further criminality. Managed offender reentry processes and programs are gaining acceptance and may offer a cost effective way of preventing crime. Effective and supportive supervision as part of a conditional release program is a necessary part of that equation.

In order to reduce offender recidivism and thereby increase public safety, we need to examine the factors that contribute to the successful social reintegration of offenders, both at the time of reentry into society after a period of incarceration and later. We also need to look at the policies and practices of releasing and supervising authorities, both in cases of discretionary early release and in cases of mandatory release involving some form of supervision.

There are clearly many factors at play in determining whether an offender will successfully complete a period of conditional release, and more importantly, successfully reintegrate into society. Individual factors and the nature and extent of the individual's criminal involvement are important. So is the availability of treatment and rehabilitation programs for the offenders both before and after their release, as well as the availability and accessibility of support services to help offenders deal with the difficult challenges they face at the time of social reentry (Griffiths, Dandurand, and Murdoch, 2007; Borzycki and Makkai, 2007). Finally, one cannot underestimate the importance of a number of factors related to the supervision of conditionally released offenders, including supervision policies and procedures, the style of supervision, the nature of the conditions imposed, and the manner in which these conditions are enforced.

Different Types of Conditional Release Programs

Different types of conditional release programs can be used to support the social reintegration of offenders and improve public safety. The issues involved in operating such programs are somewhat different depending on whether the offenders' conditional release is a discretionary one (e.g. parole), as opposed to a mandatory or statutory release to which conditions and supervision are attached. However, the research that was reviewed as part of this study did not always distinguish clearly between the two. We will therefore focus more generally here, unless otherwise specified, on "conditional release", as opposed to parole, so as to include all cases where offenders are conditionally released from an institution and are placed under some form of community-based supervision.

Offenders' reentry into society after a period of incarceration can take place at the end of their sentence (unconditional release), as a mandatory release, or as a result of a discretionary parole decision (Clear and Cole, 2000). Unconditional release is when an offenders' release is authorized with no further correctional supervision, which occurs when the offenders have served the entirety of their sentence. In England and Wales, for example, this occurs ½ way through sentences of under 12 months. Discretionary parole release is a conditional release that is granted by a paroling authority and is governed by a number of conditions. Discretionary releases are used to different extents in different jurisdictions, sometimes not at all. In certain jurisdictions a mandatory release is authorized for inmates who have served their full sentence minus "good time" – credit for full good behaviour.

In Canada, for example, inmates are customarily released on statutory release (a form of mandatory release) at the two-thirds point in their sentence if they were not granted a discretionary release by the National Parole Board. In England and Wales, offenders sentenced under the Criminal Justice Act 2003 to twelve months or more - but not an extended sentence - are automatically released on license in the community at the halfway point of their sentence. In the U.S., mandatory release is used by the federal government and states that operate under a determinate sentencing structure (Clear and Cole, 2000). In 2002, 52 percent of all state inmates were released because it was

mandatory and based on a statutory requirement, whereas only 39 percent of all state inmates were released due to a parole board decision (Glaze and Palla, 2004). In many jurisdictions, offenders who are released on mandatory release must also comply with a number of conditions and are subject to community supervision during the remaining part of their sentence.

Parole is often a contentious public issue because, as Chevigny contends, it operates in an environment where citizens are inundated with sensationalized news accounts of crime, and where politicians win votes for their ‘tough on crime’ approach to reducing the ‘crime problem’ (Chevigny, 2003). The majority of citizens in jurisdictions that utilize parole do not understand the principles and objectives of parole, the authority of and the criteria utilized by releasing authorities, or the mandate and activities of supervising agencies and personnel. Simply stated, most citizens do not understand the legislative and policy frameworks within which paroling and supervising authorities operate, nor the potential of these strategies for reintegrating and rehabilitating offenders (Murphy, Johnsen, and Murphy, 2002). It is not surprising therefore that parole is often misunderstood, neither is it completely surprising that many states in the U.S. have opted to abolish their discretionary conditional release system.

The purpose of the parole process within the criminal justice system is often somewhat ambiguous. Although its purpose can be inferred from official documents and the operational procedures of Parole Boards, its purpose is rarely defined unequivocally (Ellis and Marshall, 2000). Multiple purposes are evoked such as: reducing correctional expenditures by providing a mechanism for the early release of prisoners; addressing prison overcrowding (Ryan, 1997); offering a behavioural “carrot” to prisoners to encourage them to abide by prison rules and regulations and to participate in programs designed to alter their attitudes and behaviours, both of which possibly contributing in turn to the maintenance of order and control in prisons (Reitz, 2004); and, the rehabilitation of offenders, and the facilitation of their reentry into society (Park, 1985). The parole system apparently pursues several goals, including reducing the costs of the prison system; helping manage prison populations more effectively; providing support for the rehabilitation of offenders and their reintegration in society; and providing protection for the public (Padfield and Liebling, 2000).

Parole is based on three interconnected principles: privilege, contract, and custody (Clear and Dammer, 2003). Offenders are given the privilege of release because the correctional agency can keep them in the institution until a later release date. By applying for parole, the offender is entering into a contract with the releasing authority (most often a parole board) which states that he or she agrees to abide by parole certificate conditions, in exchange for being released early. Parole is viewed as an extension of the custodial period, as the offender is still under correctional authority in the community and if the offender violates the conditions of his/her release, he/she can be returned (recalled or suspended) to institutional custody (Clear and Dammer, 2003).

It is possible to distinguish between two phases of the parole process to reflect “the notion of a continuous flow from prison to community, with a focus on the endpoint of rehabilitation and reintegration” (Travis and Petersilia, 2001; 296). The first stage of the parole process is the release decision, which is most often made by a Parole Board; and the second stage is the supervision of the offender in the community, which is often conducted by probation, parole, or some type of community correction service.

Conditional release refers here to the release from prison¹ of an offender on conditions that are set prior to release and that remain in force, unless altered, until the full term of the court sentence has expired. The release can be mandatory when it takes place automatically after a minimum period or a fixed proportion of the sentence has been served, or it can be discretionary when a decision has to be made to release a prisoner conditionally. Certain jurisdictions may also be involved in a mixed system which affords both possibilities. The term “conditionally released offender” is used broadly to refer to offenders released from prison who are subjected to supervision. In some cases, the individual is also referred to as a “parolee”, a practice that often leads to public confusion and misinformation when used to refer to persons released under mandatory release programs which have nothing to do with parole board decisions.

In a conditional release program, there are usually two types of release conditions (obligations), standard conditions and special conditions. “Conditions” refer to any requirement that is attached to the decision of the releasing authority to conditionally release an offender. Standard conditions are established by law or regulation and apply to all conditionally released offenders within a jurisdiction. Special conditions may include participation in treatment, personal development, or rehabilitative programmes. They are meant to address any condition or risk factor associated with the offender’s risk of re-offending and thus to enhance community safety. Unfortunately, far too little is known about the impact of these conditions in terms of either public safety or offender rehabilitation. There is a need for more research on the value of conditions and their impact on public protection and reintegration.

Challenges Confronting Offenders at the Time of Release

Offenders confined in correctional institutions are confronted by a range of social, economic and personal challenges that may be obstacles to a crime-free lifestyle (Borzycki and Baldry, 2003; Visher, Winterfield, and Coggeshall, 2005). Some of these challenges are the result of the offenders’ past experiences and others are more directly associated with the consequences of incarceration and the difficult transition back to the community (Borzycki, 2005). Offenders may have a history of social isolation and marginalization, physical or emotional abuse, poor employment or unemployment, and involvement in a criminal lifestyle that began at an early age. So too may offenders be challenged by physical and mental disabilities and health issues that may be related to substance abuse and drug addiction. Many offenders are challenged by skills deficits that make it hard for the individual to compete and succeed socially: poor inter-personal skills, poor education, illiteracy or innumeracy, poor cognitive or emotional functioning, and/or poor planning and financial management skills. There are also several practical challenges that the offender may likely face at the time of their release including: finding suitable accommodation with very few means; managing financially with little or no savings until they begin to earn some lawful remuneration; accessing a range of everyday necessities; and accessing services and support for some of their problematic needs.

The period of transition from custody to community can be particularly difficult for offenders and contribute to the stress that is associated with being supervised in the community. The period of incarceration may itself have had several “collateral effects” (Borzycki, 2005: 36) upon many

¹ The terms “prison”, “penal institution”, and “custodial institution” are used interchangeably here to denote places of incarceration or detention.

offenders: they may have lost their livelihood, their personal belongings, and their ability to maintain housing for themselves and their family. They may have lost several important personal relationships and incarceration may have damaged their social networks. Lastly, they may have experienced mental health difficulties or acquired self-defeating habits and attitudes as a consequence of their incarceration.

The primary criminogenic needs that must be addressed by institutionally-based and community-based treatment services are related to: education, employment, accommodation, drugs and alcohol, mental health, social networks, cognitive skills, and attitudes. Some of these risk factors are dynamic- meaning they are amenable to change- whereas other “static” risk factors are not (Harper and Chitty, 2004). Those offenders who complete treatment programs have higher rates of success. Factors associated with treatment completion include:

- More years of education
- Not having a history of sexual victimization
- Fewer previous incarcerations
- Lower levels of minimization or justification of the offending behaviour (Lievore, D. 2004).

As well, treatment programs vary in efficacy and none are totally effective; among the factors that impact the effectiveness of interventions are that not all offenders are amenable to treatment. The nature of the offence, the type of offender, their level of responsibility and acceptance, and their motivation to change, all influence their amenability to treatment.

A review of selected institutionally based interventions designed to address the needs and risks factors of prisoners reveals that there are programs that are effective in addressing the needs and risk factors of prisoners prior to their release (Griffiths, Dandurand, Murdoch, 2007: 12). These programs can actually result in a lower rate of re-offending after release (see: Brown and Dandurand, 2007).

Support and Assistance

The individual characteristics of the offenders are related to various extents to the offenders' likelihood of success while on conditional release. Assessing the needs of offenders, as well as the risk that they may re-offend, is usually a key part of release decisions and the planning process for offenders' social reentry.

Many of the current assessment tools used to determine factors that indicate an individual's risk of recidivism and recommitment are not theoretically based. This is because those who investigated recidivism were often content to merely identify correlates of recidivism, as opposed to understanding the reasons for the recidivism. One researcher (Langton, 2006) examined parole failure based on the etiological theory of crime developed by Gottfredson and Hirschi (1990). The study suggested that low self-control is positively and significantly related to parole failure. Other important correlates of parole failure were: age, type of offence, and offence history. Older individuals were more likely than younger individuals to successfully complete parole: property and non-violent offenders were more likely to violate their parole: and first time admittees were

more likely to succeed on parole (Langton, 2006). Furthermore, the study did not find a significant link between low self-control and the length of time elapsed between release and parole revocation.

The importance of understanding the needs of newly released offenders cannot be underestimated. By use of concept mapping, Brown (2004) was able to identify factors that lead to ex-prisoners' success on parole during their first three months in the community. The identified needs were "income, education, employment, and community support," in addition to, "realistic pro-social expectations and a solid plan for handling difficult situations" (Brown, 2004; 104). These findings are important because they provide an understanding of parolee needs, which, with further research, may lead to the development of community support structures, which could potentially decrease recall rates.

Homelessness, in particular, may place youth at risk of offending (Arnull et al., 2007).

There is no consensus as to whether ex-offender reentry support programs are effective in assisting reintegration and reducing the rates of recidivism. To date, there have been few evaluations of existing programs (Visher, 2006; Griffiths, Dandurand, Murdoch, 2007). Many of the current initiatives were developed on the basis of somewhat conflicting program evaluation findings in related correctional areas (e.g., impact of drug treatment, employment training, counselling, and community supervision). While there is an abundance of ideas as to what, in theory, should work, the findings of program evaluations are often disconcerting. Further, the majority of reintegration programs have not been subjected to controlled evaluations and therefore, successful approaches remain to be identified and articulated. Often, research and practice seem to move on separate tracks (Petersilia, 2004).

The failed reentry of prisoners into society involves some significant costs for society, both financial and in terms of public safety. The costs of programs to support the reintegration of offenders should truly be assessed against the benefits of avoiding these significant future social and financial costs.

2. Characteristics of Conditional Release Systems

Four kinds of conditional release are possible:

1. Unsupervised automatic or statutory release;
2. Unsupervised discretionary release;
3. Supervised automatic or statutory release; and,
4. Supervised discretionary release.

Unsupervised automatic release is found in England and Wales, Scotland, Western Australia and Queensland (Australia). In England and Wales, all Criminal Justice Act (1991) offenders serving sentences of 12 month + are on unsupervised 'at risk' licenses for the last one quarter of their sentence. In England, Wales and Scotland, it is used for low risk or less serious offenders serving less than twelve (12) months who are released automatically after serving half of their sentence. All offenders serving 12 months or more, whether under or over 4 years, are 'at risk' for the last 1/4 of their sentence under the 1991 legislation. Offenders who are in this "unsupervised" conditional release situation are still "at risk" of being recalled (returned to serve the remainder of their initial

sentences) if they commit new offences for which they are liable to imprisonment before the end of their sentence. In Western Australia it is used for low risk offenders serving less than twelve (12) months, and in Queensland it can be used as a part of the original sentence of the court, known as “recognizance”.

It seems that in all the jurisdictions which participated in the survey, the body charged with making discretionary release decisions is separate from the agency responsible for incarceration; and in all jurisdictions save one (Pennsylvania) it is also separate from the agency responsible for supervision after release to the community.

In most responding jurisdictions, there are both discretionary and automatic or statutory conditional releases for prisoners. Automatic or statutory release can occur early in the sentence for low risk or short sentenced offenders, and also near the end of the sentence for higher risk offenders. In Japan, Pennsylvania and Ontario, release is only by way of discretionary decision. In these jurisdictions, prisoners who are not released on parole serve the full sentence (less remission).

In some jurisdictions, there are forms of conditional release that do not require supervision for some or all of the period of the conditional release. In each of these, the offender remains “at risk” to the end of the sentence. “At risk” means that if there is another conviction before the end of the sentence, a recall or revocation action will result in the addition of the remaining un-served time to any new sentence imposed by the courts.

The implementing authority is a community-based agency in all reporting jurisdictions. With the exception of Pennsylvania, the decision-making authority and the implementing authority are separate agencies, with different reporting relationships to government. The implementing authority is in all cases a contributor to the collection of information prior to the decision to release. It has an opportunity to recommend to the decision makers the conditions that should be imposed on an offender in order to enable supervision to be effective. It has a responsibility to identify community resources that will be utilized to meet the offender’s identified needs, and to mitigate the risk that is perceived to be posed by the offender.

The agency implementing the release is the same agency that operates the prisons in Canada, New Zealand, Kansas, Queensland, Western Australia, England & Wales, and Ontario. The structure was less clear in the submissions from Japan and Scotland where the community agency seemed separate from that which operated the prisons (although still an arm of government), as well as from that which made the release decisions. In Pennsylvania, the implementing agency is the Parole Board. Japanese community-based treatment is provided by 50 probation offices which are under the jurisdiction and supervision of the Rehabilitation Bureau (one of the six Departments of the Ministry of Justice) and prisons come under the supervision of the Corrections Bureau which is also one of the Departments of the Ministry of Justice.

Eligibility for conditional release is established by legislation. There are variations in eligibility for discretionary conditional release based on either the nature of the offence committed or the length of the sentence imposed. Table 1 illustrates the earliest release dates in each jurisdiction.

Table 1 – Agency and Earliest Release Date Possible

Agency	Earliest Release Date
<p>Correctional Service of Canada and National Parole Board of Canada</p>	<p>Earliest eligibility is 6 months prior to 1/3 of sentence, except where the court has established parole eligibility at 1/2.</p> <p>If not released by the National Parole Board, release occurs at 2/3 of the sentence, unless established criteria are met to detain to the end of the sentence.</p>
<p>Kansas Department of Corrections & Kansas Parole Board</p>	<p>Offenders sentenced after 1993, excluding “off-grid offenders” are mandatorily released based on a grid.</p> <p>Offenders sentenced indeterminately before 1993, or to “off grid” sentences, are subject to discretionary release by the Kansas Parole Board. Parole eligibility begins after half of the minimum sentence has been served.</p>
<p>Parole Board for England and Wales & National Offender Management Service</p>	<p>Earliest eligibility is ½ of sentence for 4+ years for discretionary conditional release and mandatory release at 2/3 of sentence and mandatory release at ½ of sentence for under 4 years under the CJA 1991; automatic release at ½ for those serving 12 months + standard determinate sentence under the Criminal Justice Act 2003. Set by court for indeterminate sentences.</p> <p>The legislation is complex and eligibility varies depending on legislation in force at time of offence/sentence or release considerations. Eligibility for automatic release has been increased by successive Criminal Justice Acts in England & Wales. Offenders given a determinate sentence after the introduction of the <i>Criminal Justice Act 2003</i> will be eligible for automatic release at ½ of sentence irrespective of type of offence. Also offenders sentenced to 4+ years under the CJA 1991 will be eligible for automatic release provided they are not Schedule 15 offences (sex/violence) and the parole eligibility date falls on or after the implementation date of the new release provisions in the Criminal Justice and Immigration Act 2008. There will be no parole consideration for determinate cases other than those cases sentenced under earlier legislation and still in custody – declining numbers.</p>
<p>New Zealand Parole Board</p>	<p>Earliest eligibility is 1/3 of sentence; mandatory release at 2/3 of sentence.</p>
<p>Ontario Parole and Earned Release Board</p>	<p>Earliest eligibility is 1/3 of sentence; full release at 2/3 of sentence.</p>
<p>Parole Board for Scotland & Scottish Prison Service</p>	<p>Earliest eligibility is 1/2 for those serving over 4 years Automatic release at ½ for those serving under 4 years, and at 2/3 for those serving more than 4 years.</p>
<p>Pennsylvania Board of Probation and Parole</p>	<p>Eligibility established by court at sentencing. First review occurs at the minimum sentence point (sentences have a minimum and maximum amount of time to be served).</p>

Prisoners Review Board, Western Australia	Earliest Eligibility Date (EED) set at sentencing by the court.
Queensland Corrective Services, Australia	Earliest eligibility is at 1/2 of sentence for Board ordered parole Court ordered parole date established at sentencing; will be released on that date unless released sooner by a Queensland Parole Board.
Japan	Earliest eligibility is 1/3 for definite sentence; 10 years for indefinite sentence.

Most of the jurisdictions studied provide for the appeal of conditional release decisions, including the decision to revoke. In Canada (NPB), England/Wales, Pennsylvania, Ontario, Western Australia and Queensland, the higher authority is internal to the paroling authority. In Queensland it is also possible to subsequently appeal to an external authority (judicial review). In New Zealand, Japan, and Scotland, the appeal is external. In Kansas, there is no appeal upon revocation.

All reporting jurisdictions have both a standard set of conditions that apply to all persons on conditional release, and the capacity to impose special conditions based on case specific factors. All jurisdictions require a linkage between the identified risk/needs of the offender and the special conditions that might be imposed.

Queensland, Western Australia, Kansas, Ontario, Pennsylvania, England/Wales, Canada and New Zealand all described risk/needs instruments in use. Some jurisdictions are using one such instrument, while other jurisdictions are using several.

In summary, while there are significant similarities, there are also significant differences. Great caution is necessary to ensure that the use of similar terms with different meanings to their respective jurisdictions do not cause unnecessary confusion. Table 2 reflects the most recent legislative changes in the jurisdictions under consideration.

Table 2 Most Recent Legislative Changes

Country	Year	Country	Year
Canada	1992	New Zealand	2002
England/Wales	2008	Kansas	1993
Scotland	2005	Western Australia	2003
Japan	2007	Queensland	2006

Discretionary release decisions occur in all of the jurisdictions which participated in the survey. There are also, in some jurisdictions, one or more forms of non-discretionary conditional release. Non-Discretionary releases come in three forms: (1) early release after half of the sentence is

served (England and Wales for those serving a sentence under 4 years and for all determinate sentences imposed for offences committed on or after the implementation of the *Criminal Justice Act* in 2003.); (2) release for the last third of sentence for most under supervision (Canada and Scotland) (England/Wales for between 2/3 and ¾ for most of those with a sentence 4 years and over.); and, (3) in Queensland, an offender can get 'court ordered parole'. Where an offender is sentenced to a period of imprisonment of three years or less, and has not been convicted of a sexual or serious violent offence, the court must set a Court-ordered Parole release date. This date may be the first day of sentence, the last day of sentence or anytime in between.

Exceptions to this are Ontario, Pennsylvania, and Japan, where all releases are discretionary. It should be noted that as a province of Canada, Ontario deals only with offenders serving less than two year sentences, and that such offenders are released without conditions or supervision at two thirds of the sentence in most cases.

Kansas has had a history of discretionary release, however, is moving to a “grid” approach for determinate sentences wherein release dates are defined by statute or statutorily, rather than discretionary (as of 1993). Indeterminate sentences will of necessity continue to require a decision by the Kansas Parole Board, which will also be required to consider the imposition of special conditions on those offenders who are released as required by the grid approach.

Non-discretionary release systems can nevertheless involve some decision-making. For example, non-discretionary conditional releases in England and Wales or in Canada, may not appear to require a decision, but they do in certain circumstances. The following are examples where decisions may be required:

- Where the imposition of special or additional conditions on non-discretionary conditional release is recommended by either the prison or the implementing/supervising conditional release agency.
- Where for certain cases (in particular, high risk offenders) there is a requirement for the paroling authority to review the statutory release to determine whether or not certain criteria are met which would require the offender to be detained in custody until the full expiry of the sentence (Canada).
- Where a high-risk offender has been detained, there can also be subsequent decisions made to release the offender with certain conditions, prior to the expiration of the court sentence (Canada).
- Where any offender who has received a conditional release that has been interrupted by a “suspension” or “recall”, the paroling authority is vested with reviewing the circumstances and making a subsequent decision about a “cancellation of suspension or recall” or “revocation” (all jurisdictions).

3. Discretionary Conditional Release in Different Systems

Discretionary release decisions are made in all of the jurisdictions which participated in the survey. This is, in fact, why they were invited to participate in the study. With the exception of short-term temporary absences from prison, the authority for discretionary release rests with a paroling

authority constituted for that specific and exclusive purpose which is neither responsible for prisons nor the implementation and supervision of conditional release. In Pennsylvania however, release decision-making and supervision are managed by the same agency, the Pennsylvania Board of Probation and Parole.

Discretionary release decisions include: (1) the actual decision to release; and (2) the definition of the conditions under which the release will occur. It is important to be clear that more is involved than only a decision to release. The actual conditions are discussed later in this report; however, there is always a list of legislated conditions, and then a menu of special or additional conditions that can be imposed.

Parole Board Decision Making

Despite the fact that many jurisdictions - Australia, Canada, Japan, some States in the U.S., and in England and Wales - continue to rely on parole boards to release some offenders into the community, there is still relatively little systematic research. There is an absence of research on board decision making, including the processes by which persons are appointed to parole boards, training, the manner in which individual parole board members exercise discretion and the impact of this on decisions to release offenders from confinement, the legislative and policy frameworks within which release decisions are made, and the relations between releasing authorities and supervising authorities.

The primary role of most parole boards is to decide whether to grant or deny parole. In some cases guidelines are provided for these decisions; the U.S. Board of Parole has paroling guidelines that must be considered in parole decisions: time served, offence seriousness, and risk of recidivism (Morgan and Smith, 2005). In other jurisdictions, parole decisions can be informed by risk assessment instruments designed to evaluate the risk that an offender may re-offend.

In an attempt to understand the parole decision-making process, Morgan and Smith (2005) conducted a study of the factors that are correlated with parole release decisions. Using a sample from the State of Alabama, the researchers examined the influence of offender, offence, and institutional-related variables on parole release decisions. The most significant predictors of parole release were total felony convictions, the length of the original sentence, and the recommendations from the warden and senior parole officer. Offenders who had committed less serious offences, who were convicted of fewer felonies, and who had positive recommendations from the warden and senior parole officer, were more likely to be granted parole. Inmates with a high school education and beyond, who had served more of their original sentences, and who had gone several months without a disciplinary infraction, were also more likely to be granted parole (Morgan and Smith, 2005).

Using the “focal concerns” perspective, which is typically applied to court decision making, Huebner and Bynum (2006) described the intricacies of parole board decision making in terms of the three primary “focal concerns” typically considered in such decision making: community protection, offender blameworthiness, and practical constraints and consequences of the decision. Parole boards are the gatekeepers between the prison and the community and one of the primary functions of parole boards is to protect the community. This protection is often facilitated by the use of more systematic risk assessment instruments.

Information in Support of Release Decision Making

In most jurisdictions the preparation of the information for review by the paroling authority is conducted by the prison service holding the offender and the prospective supervising community agency. In Pennsylvania, officers of the Pennsylvania Board of Parole mainly perform this function. The jurisdictions surveyed make varying use of risk/need assessment instruments, including jurisdictions like Queensland, Canada and Japan which make extensive use of these tools to support the decision making process.

Several participating jurisdictions referred to the need to conduct an initial assessment at the time of the offender's admission to prison, followed up by a more detailed assessment where the nature of the offence or the behaviour of the offender so dictates. The initial assessment is sometimes followed by a plan to prepare the offender for his/her release. In preparation for a conditional release decision, a further assessment is conducted which considers the: progress of the offender; social and criminal history; risk instrument results; specialized risk assessments where necessary (i.e. psychiatric assessment); community resources; outstanding or continuing needs of the offender; the risk the offender represents to re-offend in the community; and, the capacity of the community to respond to and safely address those risks and needs.

Criteria for Release Decision Making

There are two criteria that are common to all of the respondents to the survey: public safety and whether the rehabilitation of the offender is progressing.

- Public Safety – This notion is explicit in all submissions, as a principle in conditional release decision-making, and in defining the range of conditions that will be imposed. Within this notion are found the various requirements for reports and risk/need instruments that help to guide decision-making. “Can the offender be managed safely in the community with the right set of conditions?”
- Rehabilitation/Reintegration – This is second only to the notion of public safety in all jurisdictions. The focus here is generally on the “needs” side of the ledger; “are the resources that are needed going to be available for the offender when he/she is released into the community?”

There is a lot of variation across jurisdictions in the criteria used to decide whether to release offenders from confinement. In Canada, the *Corrections and Conditional Release Act (CCRA; 1992)* states the purpose of conditional release “is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens” (s.100). This is similar to the original legislation in the *Canadian Parole Act (1959)*, which provided that offenders should only be considered for conditional release when they had taken all that they could from imprisonment, when their release would not pose an undue risk to society, and when any further reform and rehabilitation could only be aided by parole.

In order to meet the *CCRA 1992* release criteria, the National Parole Board grants parole to an offender only if it believes that the following two criteria are met: first, that the offender will not,

by re-offending, present an undue risk to society before the expiration according to the law of the sentence the offender is serving; and second, whether the release of the offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen (*CCRA, s.102*).

In England and Wales the release criteria that must be applied by the Parole Board are contained in the Home Secretary's directions. The Parole Board for England and Wales must decide whether it will release a determinate sentenced offender considering "primarily the risk to the public of a further offence being committed at a time when the prisoner would otherwise be in prison and whether any such risk is acceptable" (Home Secretary's Directions, 2004). This risk "must be balanced against the benefit, both to the public and the offender, of early release back into the community under a degree of supervision which might help rehabilitation and so lessen the risk of re-offending in the future" (*ibid*). An additional emphasis is placed on risk, as the Board must "take into account that safeguarding the public may often outweigh the benefits to the offender of early release" (*ibid*).

Members of the Parole Board for England and Wales are required to use a different test when they consider the release and recall of life-sentenced prisoners. The test of risk for prisoners serving a life sentence, for example, is more stringent than the test of risk for determinate-sentenced prisoners, as "the test to be applied by the Parole Board in satisfying itself that it is no longer necessary for the protection of the public that the prisoner should be confined, is whether the lifer's level of risk to the life and limb of others is considered to be more than minimal" (Padfield, 2006a; 11).

The recently created (January, 2007) Prisoners Review Board of Western Australia has the authority to conduct parole hearings throughout Western Australia. In determining whether to grant, defer, or refuse parole, the Prisoners Review Board takes many factors into consideration. These include factors that affect the offender, victims of crime, and the safety of the community. *Section 5A of the Sentence Administration Act (2003)* sets out the release considerations that the Prisoners Review Board is required to follow:

In this Act a reference to the release considerations~ relating to a prisoner is a reference to these considerations;

- (a) the degree of risk (having regard to any likelihood of the prisoner committing an offence when subject to an early release order and the likely nature and seriousness of any such offence) that the release of the prisoner would appear to present to the personal safety of people in the community or of any individual in the community;
- (b) the circumstances of the commission of, and the seriousness of, an offence for which the prisoner is in custody;
- (c) any remarks by a court that has sentenced the prisoner to imprisonment that are relevant to any of the matters mentioned in paragraph (a) or (b);
- (d) issues for any victim of an offence for which the prisoner is in custody if the prisoner is released, including any matter raised in a victim's submission;
- (e) the behaviour of the prisoner when in custody insofar as it may be relevant to determining how the prisoner is likely to behave if released;
- (f) whether the prisoner has participated in programmes available to the prisoner when in custody, and if not the reasons for not doing so;

- (g) the prisoner's performance when participating in a programme mentioned in paragraph (f);
- (h) the behaviour of the prisoner when subject to any release order made previously;
- (i) the likelihood of the prisoner committing an offence when subject to an early release order;
- (j) the likelihood of the prisoner complying with the standard obligations and any additional requirements of any early release order;
- (k) any other consideration that is or may be relevant to whether the prisoner should be released.

Automatic Review Processes

With the exception of Japan and Queensland, all jurisdictions who participated in the survey have an automatically triggered review process. This means that the submission of an offender's case to the decision-making authority is made at the earliest time of eligibility for release. In Japan, the Warden of the prison holding the offender determines whether or not the offender's case will be submitted. In Queensland, the offender must apply for Parole Board ordered release.

Offender Participation

Offenders participate in parole hearings in Ontario, Canada, Pennsylvania, England/Wales, New Zealand, and Kansas. In Queensland an offender can make an application to appear or have an agent appear. It is however, not normal practice. In England and Wales, decisions relating to determinate conditional release and re-release following revocation are mainly conducted on paper. The offender can make written representations (generally assisted by their legal representative) but will not be present at the hearing. The Parole Board can decide on an oral hearing and thus opt for offender participation (always in cases involving juveniles) and offenders can make representations for an oral hearing at which they will be present. Indeterminate hearings are mainly oral hearings with offender participation, but decisions can be made on paper. When offenders participate they will almost always have legal representation at the hearing who will state the position of the offender, question witnesses on behalf of the offender and make final submissions to the panel.

Offenders do not appear in formal parole hearings in Japan, and it is an option for the Parole Board in Scotland. In Japan, there is a "Hearing Examiner", who interviews the offender on behalf of the Regional Parole Board, and in Scotland, there are several prison and community sources providing information to the Parole Board. Where offenders are permitted to participate, they are often also permitted to have "assistants" (Canada), and in Pennsylvania and Kansas attorneys can actually represent them. "Assistants" are permitted to support the offender in their presentation to the Board, but they do not speak for or on behalf of the offender at any time. While they can be lawyers or anyone else so approved, they do not play the role of advocate. In Pennsylvania and Kansas it appears that they can play the role of advocate.

4. Conditions Attached to a Conditional Release

All jurisdictions apply conditions to the release of any person prior to the expiration of sentence, regardless of whether or not supervision is a requirement of the release. Most conditional release

systems impose both mandatory/standard and special conditions on the offender. Mandatory conditions are usually those stipulated by law and imposed on all parolees. Special conditions are added, usually on a case-by-case basis. Parole Boards usually enjoy considerable discretion in determining these special conditions. In fact, a relatively unexplored area of parole board decision-making relates to the decisions to impose special/additional conditions on parolees' conditional release certificates. As will be highlighted later, a further "unexplored area" would be the relationship between imposing special/additional conditions and the "technical" failure of the offender on conditional release.

Standard Conditions of Release

Suspension/recall/revocation of offenders under conditional release is most frequently a result of a condition, or "technical" violation. The way in which the conditions are worded and understood, together with departmental policy/procedure and even culture, determines how condition violations are managed. This is discussed further in later sections. The number of standard conditions (SC) is not consistent as shown in Table 3.

Table 3 - Number of Standard Conditions by Jurisdiction

Country	Number of SC
New Zealand	9
Canada	9
Japan	5 (2008)
Scotland	5
England/Wales	6
Ontario	5
Kansas	4 (law) 8 (policy)
Western Australia	4
Queensland	6
Pennsylvania	7

Standard conditions of release are most frequently defined and imposed by the legislation governing conditional release. They can also be augmented by departmental policy, such as in the case of Kansas.

There are some common denominators. All jurisdictions have standardized conditions that require the following:

- Initial contact with a supervisor;
- Ongoing contact with a parole supervisor as directed;
- Notification of any change in living or employment circumstances to the parole officer;

- Limitations on travel; and,
- To be “of good behaviour” and/or to be lawful at all times.

New Zealand, Canada, Japan, Queensland, and Kansas include in their standard conditions some of those conditions that are found elsewhere in the form of “special” or “additional” conditions, such as cooperation with urinalysis on demand (Queensland, Kansas) and program participation as directed by the supervising officer (Kansas, Queensland, New Zealand). In Canada and Kansas, a standard condition specifically prohibits possession of weapons. Participating in the “core programme” for sex offenders is a “standard” condition for sex-offenders in Japan.

Special or Additional Conditions

Special or additional conditions are imposed where the decision makers believe that they are necessary to manage the risk or meet the needs of the offender in the community. These conditions are meant to offer a more specific response to the unique risk presented by the offender, or a more detailed response to their reintegration needs. In all reporting jurisdictions, there is similarity in that the management of risk is the primary motivator for additional conditions.

These conditions fall into two general groups: (1) conditions which are directly and explicitly related to the crime pattern of the offender; and, (2) conditions which enable supervisors to acquire hard information about the offender.

Examples of conditions to facilitate the supervision of the offender include requiring the offenders to submit themselves to urinalysis, electronic monitoring, polygraph, or regular reporting to the police.

The following are examples of conditions related to the offender’s criminal pattern:

- Requiring the offender to avoid certain geographical areas, such as school grounds for sex offenders against children;
- Requirement to abstain from the use of intoxicants and/or drugs;
- Requirement to avoid contact with certain persons;
- Requirement to live at a particular location;
- Requirement to be in contact with a volunteer or other person on a regular basis;
- Requirement to participate in a particular treatment program; and,
- Curfews.

Queensland, Kansas, Ontario, England/Wales, Scotland, Japan and New Zealand do not collect statistical data on the imposition of special/additional conditions. Some limited data are collected by Western Australia and by Pennsylvania. The National Parole Board of Canada collects data on the imposition of all special conditions, and reports regularly on the residency condition. Reports on the other special conditions are also available as required.

Tailoring the Conditions to the Risk Posed by the Offender

Decision makers can impose a large number of conditions on released offenders. Through the use of special conditions, decision makers are encouraged to tailor the conditions of release to the perceived challenges presented by the offender. Intuitively, one might assume that the use of

special conditions is related to the degree of risk that is presented by an offender. In England and Wales, for example, it is laid out in policy that the conditions must be both necessary and proportionate to risk - necessary to manage the risk and proportionate to the level of risk presented. Respondents did not offer data that would allow us to confirm or deny this particular assumption.

Also intuitively, one might believe that there is a positive correlation between the number of special conditions imposed, and the likelihood of suspension/recall/revocation. Of the reporting jurisdictions, only three maintain minimal data (“some”) on the use of conditions, and no one reported data that linked the use of conditions with data on suspension/ recall/revocation.

In jurisdictions where there are both discretionary and statutory releases, one might believe that there is a positive correlation between the number of special conditions imposed and the type of release, since those released statutorily were by definition unable to persuade a paroling authority to release them earlier. However, the absence of data makes it impossible to confirm or deny a relationship.

In England and Wales, the Parole Board tailors the licence conditions for the offenders they release using both standard and additional license conditions. A standard licence includes the following conditions:

...While under supervision you must:

1. keep in touch with your supervising officer in accordance with any reasonable instructions that you may from time to time be given;
2. if required, receive visits from your supervising officer at your home at reasonable hours and for reasonable periods;
3. live where reasonably approved by your supervising officer and notify him or her in advance of any proposed change of address;
4. undertake only such employment as your supervising officer reasonably approves and notify him or her in advance of any proposed change in employment or occupation;
5. not travel outside the United Kingdom without obtaining the prior permission of your supervising officer (which will be given in exceptional circumstances only);
6. be of good behaviour, not commit any offence and not take any action which would jeopardize the objectives of your supervision, namely to protect the public, prevent you from re-offending and secure your successful reintegration into the community; (...)

Additional license conditions may include:

- attendance at appointments with a named psychiatrist/ psychologist/medical practitioner and co-operation with recommended care or treatment;
- not to take work or organized activities with people under a certain age;
- a residence condition;
- a requirement not to reside in the same household as children under a specific age;
- a requirement not to approach or communicate with named people;
- a requirement to avoid a particular area;
- a requirement to address alcohol/drug/sexual/gambling/solvent/ abuse/anger/ debt/offending behaviour problems at a specified centre;
- a drug testing condition.

In Canada, the National Parole Board imposes both mandatory and special conditions on parole certificates.

The Mandatory Conditions are set by regulation and include:

- (a) on release, travel directly to the offender's place of residence, as set out in the release certificate respecting the offender, and report to the offender's parole supervisor immediately and thereafter as instructed by the parole supervisor;
- (b) remain at all times in Canada within the territorial boundaries fixed by the parole supervisor;
- (c) obey the law and keep the peace;
- (d) inform the parole supervisor immediately on arrest or on being questioned by the police;
- (e) at all times carry the release certificate and the identity card provided by the releasing authority and produce them on request for identification to any peace officer or parole supervisor;
- (f) report to the police if and as instructed by the parole supervisor;
- (g) advise the parole supervisor of the offender's address of residence on release and thereafter report immediately (i) any change in the offender's address of residence, (ii) any change in the offender's normal occupation, including employment, vocational or educational training and volunteer work, (iii) any change in the domestic or financial situation of the offender and, on request of the parole supervisor, any change that the offender has knowledge of in the family situation of the offender; and, (iv) any change that may reasonably be expected to affect the offender's ability to comply with the conditions of parole or statutory release;
- (h) not own, possess or have the control of any weapon, as defined in section 2 of the Criminal Code, except as authorized by the parole supervisor; and
- (i) in respect of an offender released on day parole, on completion of the day parole, return to the penitentiary from which the offender was released on the date and at the time provided for in the release certificate. (CCR Regulations Section 161 (1)).

Section 133 (3), of the *Corrections and Conditional Release Act* stipulates that “the releasing authority may impose any conditions on the parole, statutory release or unescorted temporary absence of an offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender”. Special conditions typically include:

- Avoiding certain persons (either a specific person such as a co-accused or people with criminal records in general)
- Completing the treatment plan
- Abstaining from intoxicants
- Undergoing psychological counselling
- Avoiding certain places

In the Canadian system, an offender has the ability to challenge the special conditions that are imposed.

Parole Conditions and Parole Failure

We need to better understand the process of imposing conditions, as the conditions of a parole certificate/license ultimately impact an offender's success or failure on conditional release. For example, do parole board members 'check all of the boxes' on the certificate/license in order to be able to claim that they have taken all of the necessary precautions should the parolee re-offend? As Padfield and Maruna (2006) explained, it may feel safer for parole board members "to err on the side of over-caution than to risk the media attention that might surround" (339) the recidivism of an offender who was released from prison early. This overabundance of caution, however, may merely set the offenders up to fail once they are released.

This is a particularly important question, since releasing authorities have begun in recent years to impose an increasing number of license conditions, in addition to imposing more stringent conditions (Padfield and Maruna, 2006). As one may reasonably assume, this trend may make an increase in parole failures quite inevitable. The conditions do not always constitute reasonable expectations. Special conditions are sometimes imposed that cannot be observed in spite of the best intentions of an offender, or conditions that are not specific to the individual risks posed by the applicants or their needs. For example, a releasing authority may impose a 'no drinking clause' even though the offender's past behaviour does not necessitate the imposition of such a condition. In fact, some observers have argued that one of the partial explanations for the rise in the number of recalls in the Parole Board for England and Wales system is that the Parole Board or the supervisory authority have increased the number and stringency of conditions imposed on offenders (Padfield and Maruna, 2006).

The expert group which met as part of this project asked whether the multiplication of conditions attached to conditional release did in fact amount to setting the offenders up for failure.

It would be worth noting that the Correctional Service of Canada and National Parole Board apply the concept of 'least restrictive measure', that is what is reasonable and necessary in the recommendation (by CSC) and imposition (by NPB) of special conditions.

5. Supervision of Released Offenders

Supervision is the act of managing the risk presented by the offender, acquiring/arranging resources to meet the needs of the offender, and developing and maintaining a human relationship with the offender that engenders trust with appropriate boundaries. It includes acts of surveillance, of teaching, of support, of reinforcing positive behaviour, and of enforcing consequences for negative behaviour. Carried out professionally, it includes at its core, supporting the social reintegration of the offender while never forgetting the risk that the offender may re-offend. It is a complex undertaking.

While few studies have investigated parole supervision, those that had focused primarily on two issues. The first issue is how probation and parole supervisors engage in one of two types of supervision; either casework-oriented activities, or surveillance-oriented activities (Seiter, 2002; 2003). The second and related issue is how changes in parole supervision may have led to an increase in recalls and revocations.

Models of Parole Supervision

One can distinguish between at least four major models of parole supervision: 1) risk-based; 2) needs-based; 3) middle-ground; and, 4) strengths-based (Maruna and LeBel, 2002). Risk-based strategies operate on the premise that offenders are dangerous and need to be controlled and closely monitored. This control “suggests the need for an ‘electronic panopticon’ or the ‘pee ‘em and see ‘em’ approach to supervising offenders” (Gordon, 1991; Maruna and LeBel, 2002:164). Needs-based supervision strategies focus on offenders’ criminogenic needs, which means parole supervisors help offenders get appropriate treatment in programs such as cognitive skills training and addictions counselling (Burnett and Maruna, 2006). The body of evidence supporting this parole supervision strategy is stronger than that for the risk-based strategy, as recidivism rates have been found to decrease slightly when offenders and treatment programs are correctly matched (Maruna and LeBel, 2002).

The ‘middle-ground’ position is a combination of the two deficit models. The amalgamation is supposed to appease supporters of both models. However, the problem with this dual approach is that parole officers tend to experience uncertainty about which model they should be using and when (Maruna and LeBel, 2002). This problem was identified by Fogel (1978), who asked: “A parole officer can be seen going off to his/her appointed rounds with Freud in one hand and a .38 Smith and Wesson in the other... Is Freud a backup to the .38? Or is the .38 carried to “support” Freud?” (10-11).

The final (and least-researched) supervision strategy is the ‘strengths-based’ model which views offenders as “assets to be managed rather than merely liabilities to be supervised” (Maruna and LeBel, 2002:167-68). This approach is based on the assumption that prisoners are stigmatized, and that it is this stigma, rather than any inherent dangerousness, that makes them more likely to commit further crime. These interventions provide ex-prisoners with the opportunity to experience success in support and leadership roles (Maruna, 2001; Sampson and Laub, 2001).

Intensive supervision is often advocated, but the available empirical evidence suggests that intensive supervision programs have not reduced the rates of re-offending (Paparozzi and Gendreau, 2005). This has been due, in part, to the fact that these programs tend to target low-risk offender populations, contrary to the research literature which suggests that high-risk offenders are most likely to benefit from intensive institutional and community-based correctional interventions (Andrews and Bonta, 2003; Paparozzi and Gendreau, 2005).

Supervision in Various Jurisdictions

England and Wales, Scotland, Western Australia and Queensland have unsupervised conditional release programs for offenders who meet certain criteria (normally low risk offenders, defined in different ways). Although they are not supervised, they can still be returned to prison if they violate their conditions or commit a new offence for which they receive a sentence of incarceration.

Every one of the jurisdictions which participated in the survey supervise conditionally released offenders to some extent. Most conditionally released offenders are supervised. The material submitted suggests that there are highly developed policy and procedure frameworks in place to govern how supervision is to occur.

Defining the process of supervision is not an easy task. The best evidence for this is the significant amount of descriptive material shared by the participating jurisdictions. Having said this, there are what appear to be some common characteristics. The most often included characteristics are the following:

- Commitment to the safety of the public;
- Enforcement of the conditions of release;
- Motivation of the offender as a responsibility of the supervisor;
- The use of technology such as urinalysis and electronic monitoring (although to significantly differing degrees);
- Frequency of contact with the offender increases as the perceived risk increases;
- The use of collaterals in the community to assist with supervision; and,
- A wide range of options for use by supervisors in the event of a condition violation within the context of the risk presented by the offender. If the offender is perceived as high risk, there are generally fewer options available.

There are also some areas where there are some notable variations amongst these jurisdictions, including:

- Differences in the extent to which some specialized supervision techniques, such as electronic monitoring and urinalysis testing, are used. One jurisdiction, Pennsylvania reported using a polygraph with certain offenders; or,
- Differences in the use of volunteers in the supervision of offenders, with one jurisdiction, Japan, making extensive use of volunteer supervisors.

All of the jurisdictions which responded to the survey expressed to varying degrees their commitment to evidence based approaches and to research for improving the supervision of offenders on conditional release. Finally, some jurisdictions reported some of their initiatives to improve the supervision process. Some jurisdictions, for example England and Wales, New Zealand and Japan, are basing their supervision strategies on a system for classifying offenders in groups according to the type of offence(s) they committed and the risk they represent. The tiers system in England and Wales is based on risk of harm risk of re-offending and the level of intervention needed. Some jurisdictions have developed some fairly complex systems for doing so, while others rely on much simpler procedures.

Several jurisdictions have apparently developed supervision standards which clearly define what is expected of the parole supervisor and of the offender on conditional release. The present analysis does not permit a discussion of the nature and content of these standards. Data was not obtained on how the standards are applied and/or enforced. Most jurisdictions acknowledge the importance of developing well-trained and highly skilled professional supervisors.

Roles of Supervisors

Up until the late 1960s, parole supervision was primarily focused on restoring offenders to the community (Rothman, 1980), a process commonly referred to as “reintegration”. Over the past two decades, the nature of parole supervision has shifted, as parole officers have attempted (often with

difficulty) to reconcile the conflicting objectives of a social-work oriented practice and a surveillance and control approach more akin to law-enforcement (Travis and Petersilia, 2001). It would seem that many parole officers increasingly define their role in terms of enforcing release conditions and intervening when offenders fail to meet the requirements of their conditional release. This is often encouraged *de facto* by a culture which emphasizes risk assessment and holding the supervisors accountable for offender recidivism while on conditional release.

Many researchers and other observers have been very critical of recent developments in community corrections. Writing about what is often referred to as the “new penology”, Feeley and Simon (1992) argued that a systems approach to danger management has taken over criminal justice system administration during the past few decades. Its official discourse emphasizes risk and probability in relation to the criminal population; it is less concerned with punishing or normalizing deviants than it is with managing classes of offenders. New managerial surveillance techniques have developed, as well as statistical/actuarial risk prediction techniques, which assist in the classification and control of offenders’ risk. Managerialism, it would seem, has increasingly characterized professional practices within criminal justice and correctional systems, leading to the adoption of national standards of performance, the development of guidelines for decision-making and other aspects of professional practice, and the incremental restriction of the amount of discretionary authority of correctional professionals (Loader and Sparks, 2002).

As part of this trend, processes, tools and methods for risk assessment and management have been developed which may have led many professionals to adopt risk-adverse attitudes and to tend toward overcautious, “defensive” decision-making (Kemshall, 1998; Tuddenham, 2000). The introduction of new surveillance technologies, such as urine testing and electronic monitoring, have increased the capacity of parole supervisors to detect parole violations and to proceed quickly with a suspension or revocation (Travis and Petersilia, 2001). In the current actuarial risk management regime, such technologies allow parole supervisors to “sort individuals into groups according to the degree of control warranted by their risk profiles” (Simon and Feeley, 1992; 459).

The reasons for the public’s support of the ‘new penology’ can be found in the public’s rejection of leniency in corrections, the belief that ‘nothing works’ with respect to correctional treatment, and decreasing resources (Quinn and Gould, 2003). With the arrival of this ‘new penology’, the goals of surveillance and control have replaced the traditional goals of parole (Petersilia, 1999). The current ‘culture of control’ in community supervision (Garland, 2001) encourages officers to report violations and revoke licensees (Ryan, 1997). In their discussion of ‘the new penology,’ Feeley and Simon (1992) discussed how the new penology’s paradigm is so focused on custody, risk assessment and control, that recidivism has all but been abandoned as the yardstick against which to measure parole success. In the past, high rates of revocation were an indication of program failure; however, such rates are now “offered as evidence of efficiency and effectiveness of parole as a control apparatus” (Feeley and Simon, 1992; 455).

Revocations and suspensions of parolees are often presented as cost-effective components of the long-term management of a dangerous and “chronically troublesome population” (Feeley and Simon, 1992; 456). High rates of prison recalls are advocated as cost-effective strategies for crime control. These strategies allow the system to avoid costly prosecution and judicial proceedings, even in the face of evidence to the contrary – evidence to the effect that the extensive use of parole

revocations and suspensions is often “highly costly, discriminatory, and apparently ineffective as a strategy for crime reduction” (Padfield and Maruna, 2006; 11).

Discretion is in operation in parole officers’ decisions to suspend or to recommend conditional release revocation. Variations exist in terms of parole officers’ responses to violations of supervision conditions (Clear et al., 1992). Parole supervisors still enjoy a fair amount of discretion in making their decisions even if they do not all use it to the same extent (Simon, 1993). There is quite a lot of variability in the decisions of parole supervisors and the extent to which they apparently tolerate minor breaches of parole conditions. There is sometimes wide variability, even within a supervision agency or region, in the staff members’ interpretation of when revocation is appropriate (Burke, Gelb, and Horowitz, 2007). Little is known, however, about how supervising personnel exercise their discretion and what affects their decisions when parolees deviate from the conditions of their parole. It would seem that responses to violations are shaped by a number of factors, including organizational policies, rules and procedures, and organizational culture (Collins, 2007; 161).

Research investigating parole supervisors, their performance, and their attitudes, has found that parole officers often feel very challenged in trying to achieve their dual goals of helping offenders successfully reintegrate into the community and protect society from at-risk individuals. This is partly the result of the tension between the two main aspects of their role as supervisors, the helping agent and policing agent aspects of their function (Stanley, 1976; Seiter, 2003).

In Lynch’s (1998) ethnographic study, parole officers explained how they felt they performed their job most effectively when they were in the field watching parolees - acting as enforcers of rules and conditions - ready to revoke parolees at the slightest infraction of one of their conditions. That attitude was justified by their belief that violations of conditions were “signals of more serious transgressions” (Lynch, 1998: 11). The main finding of this and other studies is that parole officers are apparently prioritizing their law-enforcement function over their rehabilitation function. Parole supervisors have consistently been found to be more involved in their enforcement role than in the more complex and illusive role of supporting the offenders’ social reintegration (Byrne, 1989; Baird, Wagner and DeComo, 1995; Lynch, 1998).

Some studies focused on the so-called “supervisory style” of parole supervisors, distinguishing between how supervisors define their role on some kind of continuum between control and assistance (Quinn and Gould, 2003). The styles are quite well described in the literature, but there is far less research on the factors which influence supervisory styles (Seiter and West, 2003). For example, to what extent are these styles influenced and/or guided by the correctional agency’s policies or regulations? Or are they more directly influenced by political rhetoric, media reports, public pressure, or the agency’s organizational structure? To what extent are these styles related to the personal characteristics of the supervisors themselves, gender, age, ethnicity, training, professional background?

In some jurisdictions, it would seem that officers have considerable flexibility in determining what activities and styles of supervision they will use on a case-to-case basis. In the State of Missouri, one study showed that an officer’s age and time on the job were not predictive of the officer’s style of supervision (Seiter and West, 2003). The study also showed that it was not uncommon for officers to report that the characteristics of the offenders and their criminal history primarily

dictated their approach to supervision. However, the analysis nevertheless indicated that larger caseloads and increases in reporting requirements sometimes led parole officers to resort to a more surveillance-based approach to supervision. In some instances, officers admitted that they prioritized surveillance-type activities despite the fact that they thought that a casework/assistance approach was more likely in the long term to support offenders' social reintegration.

Another study looked at the characteristics of a group of parole officers in Texas and the relative importance they attached to the development of treatment resources for parolees (Quinn and Gould, 2003). Seniority, caseload size, and job type were found to be the strongest factors in predicting the extent to which the officers prioritized treatment. City size, race, gender, education, and political ideology also played a role, albeit smaller, in predicting a respondents' stated desire for more treatment resources (Quinn and Gould, 2003). In fact, one of the most important findings in recent research is that, despite a frequent policy emphasis on control and surveillance, supervising officers often continue to prioritize the need to develop treatment resources. Officers in the State of Missouri, for example, explained how they believed that the most effective functions they perform are structured to help and assist offenders under supervision (Seiter, 2002). These attitudes prevail despite the organizational environment these officers work within; an environment that encourages officers to engage in intensive supervision, frequent urinalysis testing, specialized supervision, and electronic monitoring (Seiter, 2002).

The Relationship between Releasing Authorities and Supervising Authorities

Although the case preparation process itself is very important and can act as "gatekeeper", the conditional release process customarily involves two primary agencies working with one another to facilitate the early release of offenders into the community. The parole board makes conditional release decisions based on the information provided by correctional authorities while community corrections agencies provide supervision. Parole boards identify and impose the conditions they deem necessary to facilitate the offender's successful transition to the community, while simultaneously considering the risk to the public. Community corrections agencies' primary responsibility is to guide offenders to the programs and services required in their parole certificates/licenses, in addition to providing supervision and enforcing the conditions mandated by the releasing authority. Close collaboration between the releasing authority and the supervision authority is necessary (Burke, Gelb and Horowitz, 2007).

It is important to understand the reciprocal relationship and influence between the two agencies. Parole Boards' decisions may indeed influence the nature of supervision styles practiced by supervising agencies. For example, one may perhaps assume that the imposition of a greater number of parole conditions on the parolees' certificates/licenses may increase supervising officers' workloads. Similarly, when the releasing authorities mandate electronic monitoring, urinalysis testing, and no-go/exclusion zones, parole officers are in fact directed to engage in law-enforcement oriented supervision tactics as opposed to social-work oriented tactics.

Tensions may exist between releasing agencies and supervising agencies due to the increasingly managerialistic environment within which conditional release decisions are made. In that environment, parole supervisors may well be more hesitant to 'over-look' minor technical violations committed by offenders. Responding to minor breaches of conditions without resorting to a suspension or recommending revocation is often more difficult for supervising officers, when

such alternative responses are actively discouraged by the system or when the officers or their agency risk coming under unwanted and sometimes intense scrutiny for not suspending an offender at the first sign of misbehaviour.

On the other hand, when parole supervisors suspend offenders for every single digression from their license/certificate, the workload of the releasing agencies may increase because they have to conduct recall/revocation hearings. It is possible that the releasing authorities may not view the minor digression from the parole certificate as a necessary cause for recall/revocation. This may create tension between releasing authorities and supervising authorities, as the releasing agency may become frustrated with their increased workload for what they view as unnecessary recalls.

Another possible factor, which may create tension between releasing authorities and supervising authorities, occurs as a result of how the releasing authority uses the information provided by the supervising authority when they decide whether or not to release an offender. In many jurisdictions, supervising authorities provide releasing authorities with community assessment reports often making recommendations as to whether or not the offender should be released based on their proposed release plan. Such recommendations are not binding on the releasing authority and these agencies may ignore community corrections' recommendations. In England and Wales, the supervisory authority recommends additional conditions for insertion by the Secretary of State in non-discretionary conditional releases which make up the majority of releases. Therefore, it may be a source of tension between the releasing authority and supervising authority if the releasing agency consistently ignores the recommendations provided by the supervising agency. It is likely that this tension increases as a consequence of cases when offenders are revoked for further offences. As such, this is an area in need of further exploration.

Another issue deserving some attention is the extent to which public inquiries and internal investigations into high-profile offences committed by conditionally released offenders may affect the working relationship between releasing authorities and supervising authorities. Both agencies may face considerable public and political scrutiny for their decision-making throughout the duration of the individual offender's conditional release process.

The Enforcement of Release Conditions

The work of the National Institute of Corrections (NIC), U.S. Department of Justice, on violations indicates that it is typical for 75 to 80 percent of offenders under conditional release to be, at one time or another, in violation of some condition of their supervision (Burke, 2004: 4). When these breaches result in a recall, someone made a decision to intervene.

There is no conclusive evidence demonstrating that non-compliance with technical conditions signals an offenders likelihood of further criminal behaviour, or that returning these prisoners actually prevents them from engaging in further criminal behaviour (Padfield and Maruna, 2006). Fulton, Stichman, Travis, and Latessa (1997) explained how the surveillance method has not been effective in reducing recidivism. In fact, a balanced supervisory approach - incorporating social worker and law enforcer functions - was proposed to be the most effective method of supervision (Fulton et al., 1997).

Control-oriented supervision roles take away from the parole officer's ability to 'help' parolees with their rehabilitation. Therefore, 'risk-based' techniques of increased surveillance and control that result in revocations are short-term 'solutions' to long-term problems. This 'solution' merely displaces offenders' criminal behaviour until they are released without supervision.

If recall does not help reduce offender recidivism, then it is important to question its use and the increasing reliance on this costly approach. A suspension can be very disruptive in terms of the offender's reintegration process.

Some members of the group of experts which met as part of the present project discussed at length the question of the discretionary authority to make decisions in the case of a breach of condition. In some jurisdictions, the use of discretion is seemingly encouraged while in others it seems to be regarded with some suspicion. It was also noted that there is often a long gap between the breach of condition and the decision to respond. This is not conducive to effective supervision or to public safety. Finally, it was felt that information and analytical data is not always made available in time for the parole boards to use. The boards themselves cannot typically be involved in the immediate decision to respond to a breach of condition.

Breach of Conditions

The successful completion of a period of conditional release by offenders depends on their compliance with the various conditions attached to their conditional release, and whether they manage to refrain from committing another offence – or at the very least - manage not to get caught for committing one. Success on conditional release, it is generally assumed, depends in large part on the offenders themselves, but also on the quality of the supervision and assistance they receive. The successful completion by an offender of a period of conditional release is not necessarily proof of a successful social reintegration. However, failure to complete a period of conditional release amounts to a failure on the part of the offender to reintegrate into society.

In a large percentage of cases, the parolees' attempts at social reintegration are interrupted by violations of the conditions of their release or by the commission of a new offence, and therefore by parole suspensions, recalls, or revocations. In England and Wales there is an increasing number of recalls (made up from all conditional release groups), but the number of recalls as a proportion of the prison population is about 16% at any one time. In fact, in many countries, a large proportion of the prison population is there because of the offenders' failure under community supervision. This may not necessarily be due to an increase in re-offending among offenders on conditional release, but rather to the strict enforcement of other release conditions by supervisors (Padfield, 2007). A significant proportion of the offenders returned to institutions are indeed returned solely for violations of parole conditions - acts, such as missing treatment sessions, breaking a curfew, breaching no-go/exclusion zones - and not for having committed a new offence (Hughes, Wilson, and Beck, 2001; Stickels, 2007).

In the United States, these so-called "technical" or "condition" violators account in some States for more than half of all those returned to prison (Hughes, Wilson, and Beck, 2001). The main reason behind the substantial growth in incarceration has not been higher crime rates, but rather stricter sentencing and releasing policies (Burke, Gelb and Horowitz, 2007).

Other countries also have reasons to be concerned about the growing rates of recalls and revocations, even if it is clear that the violations vary widely in terms of severity and risk to the community. Looking ahead, one might reasonably predict further increases in the recalled prisoners' population of many jurisdictions. Unfortunately, available statistics do not always provide a clear estimate of the proportion of offenders who are returned to prison for conditional release violations that involve solely breaking the rules of supervision or that involve new criminal behaviour. We know that in some jurisdictions, some of the cases that could be handled as new criminal prosecutions are, instead, processed administratively as conditional release violations, often to avoid the delays and costs involved in initiating new criminal proceedings.

6. Suspensions, Recalls, Revocations

Responding to a Breach of Condition

All of the jurisdictions which participated in the survey, except Japan, reported that statistical data are available on suspension decisions and that the information in question is included in their annual reports. In Japan, a questionnaire is completed for each case which includes information on suspension when applicable. That data, however, is apparently not collected nor reported.

The responding jurisdictions all expect an assessment of risk to be made upon violation of a condition of release, and a decision to act based on that risk assessment, as well as the identified needs of the offender.

All reporting jurisdictions describe the use of a variety of sanctions to deal with condition violations, dependent upon the perceived implications of the violation. Respondents elaborated a wide variety of possible responses, including disciplinary interviews, increased frequency of contact, alternate housing arrangements, program involvement, urinalysis, electronic monitoring, and so on. It was not possible from the responses to gauge the frequency of the use of such alternatives.

Where a suspension or temporary recall of the offender is deemed necessary, the action is typically initiated by the supervising officer in consultation with a manager. In Canada, Scotland, Pennsylvania, Kansas, Western Australia and Queensland, the authority to actually issue a warrant authorizing the arrest of the offender is delegated to the supervising agency. In England and Wales, the notice is issued by the Secretary of State on the recommendation of the supervising authority. In Ontario, the warrant is issued by the Parole Board upon the recommendation of the supervising agency. In Japan and New Zealand, the warrant is issued by a District Court Judge upon the recommendation of the supervising agency.

The offender generally plays no role in the decision to suspend the conditional release, although there is involvement in the post violation hearing process. Kansas, Pennsylvania, Canada, Ontario, Queensland and New Zealand have statutory post violation hearing rights for the offender. In England and Wales, the offender has the right to make representations on their return to custody as a result of recall.

All decisions involve more than one person, with a review by a senior person as a standard requirement. Thus, some jurisdictions considered this to be a positive response to the question of whether or not a mechanism is in place to monitor the quality and impact of decisions concerning suspension. In broader terms, no jurisdiction described a systemized approach to how to routinely examine the quality and impact of decisions around suspensions of conditional release.

All jurisdictions reported the possibility of a re-release following a suspension of conditional release, provided that an analysis of the situation warranted such a decision.

There are some elements of consistency across systems regarding the use of disciplinary action such as:

- A discussion (“case conference”) by the supervising parole officer about the consideration of disciplinary action, including the use of suspension/recall was a consistent requirement where the possibility of suspension/recall existed.
- Once a decision to recall/suspend the individual is made, and the offender is taken into custody, there are tight time lines that must be met to advise the offender of the next steps that will be taken.
- The police normally execute the warrant authorizing the apprehension and return of an offender to prison following a suspension/recall. However, in Kansas, Japan and Pennsylvania, the parole officers can also act on or “execute” a warrant.

In New Zealand, an offender can be charged with breach of parole as a new offence, and can receive an additional sentence of up to one year upon conviction. No other jurisdiction appears to have this provision.

In England/Wales, there is a policy that suspension must occur after the third (3rd) “unacceptable failure” on the part of the offender to comply with directions or conditions, and particularly where drug use is involved.

The due process following a suspension includes in some jurisdictions the right to a hearing and the right to legal representation. This is the case in Kansas, Ontario, Pennsylvania, Canada, and New Zealand. In Scotland, the holding of a hearing is an option available to the Parole Board. In England/Wales, written representations by the offender, or on his/her behalf, are accepted and the offender may request an oral hearing which is granted at the discretion of the Parole Board. Queensland has a “show cause” requirement. In Japan, the offender does not have the right to a hearing.

While all jurisdictions seemed to encourage the consideration of alternatives to a return to custody, Kansas and England/Wales described the use of a sanctions “grid” to be used by staff with delegated authority to determine the appropriate response/sanction in the event of a condition violation.

Responding to a New Criminal Offence

The commission of a new offence while on conditional release is taken very seriously in all jurisdictions. Queensland, Ontario, England/Wales, Scotland, Japan, Canada, and New Zealand all consider the circumstances surrounding the new offence, and make a decision about suspension/recall based on an assessment of risk. Western Australia also assesses risk when the offence committed is one that does not involve a custodial sentence. When a custodial sentence is imposed on the offender, the parole is automatically revoked. Kansas uses a risk assessment process when the offence is a misdemeanour and, when the offence is a felony, the offender is detained, and revocation procedures begin. If the offender is convicted, revocation is unavoidable. Pennsylvania detains the offender pending the outcome of the court process related to the new charge, and revocation is a certainty if the offender is convicted. Revocation may also occur because of the circumstances surrounding the new charge.

With respect to the question of a review process, England/Wales, Canada, New Zealand, Queensland and Western Australia indicated the possibility of further review following an incident in which an offender committed new offences. In these jurisdictions, it was clear that authority to conduct such reviews exists. It is possible that it exists in the remaining jurisdictions as well, but if so, the information was not included in the survey responses.

Concerning the existence of an independent oversight process, England/Wales reported that Her Majesty's Chief Inspector of Probation is empowered to investigate complaints and incidents independently. In Canada, it would be a joint investigation team composed of representatives from the NPB, CSC and a community member. In New Zealand, it would be the Chair of the New Zealand Board. In Queensland, it would also be the Parole Board. In England and Wales, the Probation Service has a process in place to review the management of cases where a Serious Further Offence is committed by an offender under supervision.

Revocations

As Maruna (2004) explains, only 188 (less than 6 percent) of offenders released on parole (discretionary conditional release) were recalled for a further offence in the England and Wales system in 2002. Of the 1,480 offenders released on Home Detention Curfew (HDC), 54 percent were recalled for failure to comply with curfew conditions and 27 percent were recalled because it was not possible to monitor them, whereas only 16 percent of those on HDC were recalled and charged with a new offence (Prison Statistics 2002 cf. Maruna, 2004). In California, the rate of new crimes for recalled prisoners has remained stable at 17 per 100 releases from 1977 to 2000 while the recall rate has increased from 800 to nearly 90,000 offenders throughout this same time period (Maruna, 2004). This indicates that the rising recall rate is a function of revocations for 'technical violations', which in California are usually a consequence of dirty urinalysis tests.

Anecdotal evidence suggests that the transition from a "casework approach" to a "surveillance approach" to supervision was a pragmatic adjustment to circumstances. As Petersilia (2000) reports, it was not uncommon for parole officers in the 1970s to have caseloads of 45 offenders, whereas now, it is not uncommon for parole officers to supervise 70 offenders. One of the most shocking statistics reported by Petersilia (2000) was that in the early 1990s, some California parole officers had caseloads of 500 offenders. With such large caseloads, it is understandable that parole

officers had limited time to focus on individual offenders and provide them with individualized treatment. Instead, parole officers with large caseloads were required to engage in surveillance-based supervision, by impersonally monitoring offenders, sometimes through computer programs or EM (electronic monitoring), with little, or no, face-to-face contact. And with more surveillance-oriented supervision, it was inevitable that more breaches of conditions were discovered, thereby creating higher recall/revocation rates.

One of the provisions likely to lead to an increase in recall rates in England and Wales is that offenders sentenced to prison terms of twelve months or more are now released at the half-way point of their sentence and are subject to community supervision until the end of their sentence. Early released prisoners have more opportunities to violate their conditions, as they are under community supervision until the end of their sentence rather than being under supervision until the three-quarters point in their sentence, which was the practice pre-CJA (Criminal Justice Act) 2003 (Padfield and Maruna, 2006). Although this provision is likely to increase recalls in the Parole Board for England and Wales system, it is possible that the longer period of community supervision may actually be beneficial for offenders, as they spend less time in prison, which lessens the effects of imprisonment.

The second provision that may potentially lead to a further increase in the recall rate is the CJA 2003 sentencing framework. The courts are imposing more indeterminate sentences: the indeterminate sentence of 'IPP' (Imprisonment (or Detention) for Public Protection), was implemented in April 2005, and this will translate into an increasing number of indeterminate prisoners being released, and as this population increases, so may the recalled prisoner population, possibly due to IPP prisoners having lengthier supervision periods. The recall rate for extended-sentence prisoners is also expected to increase because the Parole Board for England and Wales recommends their release during the second-half of their sentence, and if/once released, their supervision period can be extended by five years for violent offenders and eight years for sex-offenders (Padfield and Maruna, 2006).

The length of the supervision period may also be a factor. Lengthy supervision periods are not uncommon. Although California abandoned its indeterminate sentencing system in 1977, it kept a system of parole (in California this is a form of non-discretionary release) that provides around 3 years of parole supervision for every person released from prison (Maruna, 2004). There is little wonder as to why the number of revocations has increased in California; especially when one realizes that the ultimate goal of this system is surveillance, as rehabilitative ideals were written out of the constitution of California in the 1970s (Maruna, 2004).

Sexual offenders under the jurisdiction of the Adult Parole Board in Victoria, Australia are subject to a supervision period of up to 15 years under the *Serious Sex Offenders Monitoring Act 2005*. Offenders released with an Extended Supervision Order are under stringent conditions and are subject to strict supervision from the Adult Parole Board and the Secretary to the Department of Justice. The following are conditions of the Extended Supervision Order: requirements to attend monitoring, assessment, or supervision as directed, notify any changes in employment, and no change-of-address without approval. Further potential conditions the Adult Parole Board can impose are: refusal of internet access, being accompanied by Corrections Victoria Staff when leaving one's residence, "no-go" zones, prohibitions on contact with children, electronic monitoring (to ensure one's compliance with curfew restrictions), and control over where the offender resides.

Another possible explanation for the rise in recalls is that within a managerialist environment and its increased accountability requirements, parole boards are imposing more conditions, and conditions that are more stringent than in the past. As the number of conditions imposed on offenders increases, so too does the amount of surveillance behaviour parole officers engage in. This increased surveillance activity takes away from the field-agent's ability to provide counselling and other helping services (Petersilia, 1999).

An additional problem with regards to conditions is that they may be very broad, and result in the parole officer and offender having uncertainty as to their meaning. Dating back to 1979, research explains how broad and vague conditions mean that offenders are subject to re-imprisonment at the discretion of the parole board (Von Hirsch and Hanrahan, 1979).

The decision to revoke a conditional release is, in all jurisdictions, the final action ending a period of conditional release. The authority to revoke a conditional release rests with the Paroling Authority in Ontario, Pennsylvania, Scotland, Japan, Canada, and New Zealand. In Western Australia and Queensland it can be the Chief Executive Officer of the Queensland Corrective Services or the Parole Board. In England/Wales it is the Secretary of State, delegated to the Post Release Section of the National Offender Management Service.

The revocation process always includes a decision to refer to higher authority by the supervising officer; approval by a manager for that referral; a review by the decision-maker based on available information; a detailed investigation into the violation, including interviews with the offender and collaterals; and finally, a decision to revoke the conditional release. There are two-step hearing processes in place in Kansas, Pennsylvania, and New Zealand; the first step being a hearing to determine if there is enough information to hold the offender in custody pending further review; and the second step being the actual revocation hearing, at which the offender may be represented by counsel. Hearings are a right in Queensland, Kansas, Ontario, Pennsylvania, and Canada.

The main consequence of revocation is obviously a return to prison. In most jurisdictions, this means that the offender resumes serving the remaining part of his/her sentence. In Ontario, when the offender accepts a parole, he forfeits the remission he would otherwise have earned. Upon revocation, he is then required to serve that time unless the Parole Board chooses to return some or all of the remission. In Japan, the period of time spent on conditional release is not credited to the offender, and he has to re-serve it.

Revocation decisions may be appealed in all jurisdictions except Kansas. In Queensland, Western Australia, Ontario, Pennsylvania, England/Wales, Canada and New Zealand, the appeal is to a person in, or a sub-department of the Paroling Authority. In Scotland the offender can request a judicial review. In Japan, the offender appeals to the National Rehabilitation Commission.

Six of the ten responding jurisdictions indicated that they do not presently have a system to monitor the quality and impact of decisions made concerning revocations. Queensland, Pennsylvania, England/Wales, and Canada all mentioned efforts to ensure high quality decisions in general, however, they do not have a systemized approach to both the quality and the impact of revocation decisions.

Recall/Revocation Hearings

Due to the increasing number of individuals being recalled, the United States Parole Commission developed an expedited revocation procedure for parole violators who had not committed a new felony offence (Hoffman and Beck, 2005). The majority of parolees are revoked due to technical violations that the parolees will not themselves, dispute. Therefore, the sole decision to be made is what the appropriate sanction should be for the offender (Hoffman and Beck, 2005).

In 1996, the U.S. Parole Commission implemented a pilot project with the objective of expediting the processing of parole violations which were misdemeanour, administrative, or felony charges. The goal of this project was to expedite the processing of parole violations, in addition to conserving resources while simultaneously ensuring that the due process rights of offenders were not violated. The pilot project allowed parole violators (who were violated due to administrative, misdemeanour, and lesser felony charges), to waive the right to a revocation hearing, acknowledge responsibility for the charged violation, and accept a specified revocation penalty which was determined by the commission on the basis of the case record (Hoffman and Beck, 2005).

The pilot project was deemed a success and the Commission incorporated the expedited revocation procedure into its permanent regulations in 1998. Expedited revocation decisions accounted for 40 percent (711 out of 1,761 cases) of all of the commission revocation actions in 2003 and provided the commission with the opportunity to devote more resources to conducting revocation hearings for violators with more serious charges (Hoffman and Beck, 2005).

Re-releasing the Recalled Offenders

Some jurisdictions have adopted legislation meant to facilitate the re-release of recalled offenders when appropriate. For example, in England and Wales, new recall provisions were introduced with the option of re-release before sentence expiry date. The idea behind these new provisions was to create a more flexible risk management tool: allowing the use of the recall at a point when the risk of re-offending appears to rise, or when an offender appears to be close to reoffending. This provides supervisors with the opportunity to put alternative measures in place to manage the offender's risk prior to their re-release into the community (Thompson, 2007). In practice, however, the Parole Board, has not been re-releasing offenders in the numbers envisaged (Thompson, 2007: 150).

7. Strategies to Enhance Parole Supervision

There are some substantial issues with the observed increase in recall/revocation rates in most of the jurisdictions that have a conditional release system. Some have argued that it is necessary to 'reinvent' parole. Petersilia (2002) recommends four strategies to reinvent parole based on the data she gathered from interviews with U.S. correctional experts. The four strategies are as follows:

- Identify dangerous and violent parolees; these individuals should be a top priority in terms of human and technologically-based surveillance.

- Commit to a community-based approach to parole supervision; partnerships should be formed among police, public service providers, community members, victim advocates, offenders, and their families. The goal of such partnerships should be to manage an offender's risk and increase their likelihood of success on parole supervision through the process of informal control.
- Implement intermediate sanctions for technical parole violators; these intermediate sanctions are a less expensive alternative to imprisonment.
- Provide treatment opportunities for offenders; especially substance abuse treatment and job training for offenders upon their release in the community. Offenders should also have the opportunity to partake in education, work, and rehabilitation programs in-prison (Petersilia, 2002).

As was observed by the late John Edward, what seems to be required is

“(…) a major realignment of the time and energies of those engaged in the fields of correction and related organizations towards the alleviation of those problems associated with employment, family and community relationships, and alcoholism which are at the root of most failures following release”. (Waller 1974).

Burke and Tonry (2006) wrote about the need to “reinvent” parole and offered some recommendations for change. Although their recommendations were focused on reinventing parole, they were applicable to the reentry process experienced by all offenders who are released with a period of post-custodial supervision. They recommended that key agencies and actors embrace the vision of community safety through successful reentry and develop a shared offender case management system supported by the capacity of the various agencies to share and update offenders' information. They also stressed the importance of developing partnerships between various criminal justice system agencies in order to manage in-prison resources to facilitate successful transition and reentry (Burke and Tonry, 2006).

It would also be important to better understand the dynamics between releasing authorities and supervising authorities. In order to do so, empirical evidence must be collected and analyzed to provide information about the nature of the relationship between these two co-existing agencies. Through a process of ongoing research, monitoring, and evaluation, agencies may develop the capacities to better address offender reentry issues. In addition to developing capacities to address issues, empirical evidence provides us with information about ‘best practices’ through the process of evaluation of “lessons learned”. Therefore, in order to facilitate successful reentry, we need to develop “best practices” based on the empirical evidence about “lessons learned”.

Burke, Gelb and Horowitz (2007) suggested that a more strategic approach is required; an approach focused on finding ways to enhance the likelihood of successful completion of supervision, with violations being used as opportunities to intervene with offenders and redirect their behaviour. For these authors, the basic elements of such an approach should be:

- Close collaboration between the releasing authority and supervision agency.
- Clarifying the goals of supervision and translating them into concrete policies and procedures.

- Developing and systematically using good risk assessment tools.
- Encouraging the structured use of discretion by supervisors. Supervision staff must be encouraged to use their discretion in order to respond appropriately to the different situations they encounter. On the other hand, clear policies are required to guide them, particularly as to when revocation should be pursued.
- Possibly requiring higher levels of approval to issue a warrant or begin the revocation process. This could include supervisory approval and the use of centralized “warrant units” that review requests and assure consistency and adherence to policy.
- Encouraging graduated responses to violations. The latter obviously vary in terms of severity and the risk they represent to the community. Sanctions should be scaled according to the severity of the breach of condition and the offender’s risk. Supervision agencies may develop alternatives sanctions for breach of minor conditions and support front-line supervisors with a continuum of practical, community-based sanctions.
- Ensuring swift and certain responses to violations.
- Offering positive reinforcement and supporting the offenders’ motivation to change.
- Remaining ready to identify violations that indicate a substantial risk and to remove offenders quickly from the community.
- Developing community resources to address the needs of offenders. (see: Burke, Gelb, and Horowitz 2007).

The critical first step for all jurisdictions interested in better handling of violations of conditions by offenders on conditional releases is a careful analysis of current policies and practices. A comparative analysis of these policies and practices across jurisdictions and their impact on offenders’ social reentry evidenced by this report seemed to be a good place to start.

8. Available Data

One of the purposes of the present project was to assess the ability of the participating jurisdictions to engage with each other in a more systematic exchange of data. Respondents to the survey were asked to describe the availability of conditional release and revocation/recall data in their jurisdictions.

As a general comment, it seems clear that all jurisdictions have information management systems in place to collect at least basic data about the various functions, including suspension, recall and revocation, and possibly recidivism data. It is just as clear that there is a great deal of variation in the capacity of these systems, although most of them are intended to provide ongoing case management information.

Jurisdiction	Automated System Exists	Level of Detail	Collection of Decision making and Outcome Data	Annual Report or other Annual Production
Queensland	Yes	Summary ²	Summary	Yes
Western Australia	In Development	In Development	In Development	Yes
Kansas	Yes	Considerable Detail ³	Collection, but still developing analysis process	Yes
Ontario	Yes	Summary	Summary	Yes
Pennsylvania	Yes	Considerable Detail	Yes	Yes
England/Wales (NOMS)	Yes	Considerable Detail	Outcome Data yes	Yes
Scotland (PBS)	Yes	Summary	Summary	Yes
Japan	Yes	Summary	Summary	Yes
Canada (NPB/CSC)	Yes	Considerable Detail	Yes	Yes
New Zealand	Yes	Summary	Summary	Yes

Kansas

Kansas has two distinct data systems. The Offender Management Information System (OMIS) is primarily designed to maintain data on the incarcerated offenders, with some treatment discharge information and release planning information. The Total Offender Activity Data System (TOADS) is designed to collect data related to community corrections supervision and post-release/parole community supervision of offenders. A separate small database is designed to capture interstate compact offender data.

These databases can be accessed to generate data on conditional release, community corrections probation, conditions imposed, violations, interventions or sanctions, revocations, and successful discharges. Data is also maintained on active warrants for absconders until resolved. Reasons for revocation would be data elements, such as violations and response to the violations and whether the response was a sanction, treatment, or revocation. Statistics on offender recidivism are collected and measured over periods of time and are presented in regular reports to the Kansas Legislature, Governor and the public.

² “Summary” means that detailed information about conditions, alternatives to suspension, and other actions are not described as available, but summary information about numbers of offenders who are involved in the conditional release process are readily available.

³ “Considerable detail” means that the jurisdiction collects details of supervision, such as conditions imposed, conditions violated, action taken inclusive of alternatives to suspension/recall, and recidivism details. The extent to which any of this information is available was difficult to assess accurately based on the responses received.

Ontario

The Board maintains an in-house system that generates some statistical data. The Ministry also maintains an offender management system across the province and they also generate some data on parole and temporary absences (TA's). The Board system can provide data on conditional release decisions (i.e. number of grant/deny/deferred decisions, number of terminated, revoked or continued decisions and further offences at revocation). This information is not generally available to the public, except through the reports generated from time to time for that purpose. The most recent annual report provides some basic information.

Pennsylvania

The Board has an automated case management system in which relevant data is collected, maintained and analyzed. This data includes information on all release decisions, conditions imposed, reasons for either approval or refusal of parole, violations that have occurred during the offenders' parole period, reasons for revocation, the number of violations incurred at the time of revocation, the length of revocation, etc.

Pennsylvania enclosed with its submission, an example of the research that is possible based on this data, "Evaluating Technical Parole Violator Case Management", December 2007. The outcome of the intervention that was being evaluated was that "more violators are being diverted to treatment to address the causes of the violation, and fewer violators are being admitted to prison, leaving more room for offenders with more serious offences."

England/Wales

The response did not include a comment with respect to this area; however, it produces an Annual Report.

The National Offender Management Service (NOMS) publishes Offender Management Caseload Statistics annually, which contains key statistics describing the prison population and the workload of the Probation Service. Data is drawn from a range of administrative systems. The 2006 version runs to 132 pages of tight narrative and graphics.

Scotland

The Scottish Prison Service has data available, but at this point has not conducted a detailed analysis of revocation practices in Scotland. The Parole Board for Scotland produces an annual report.

Japan

Japan produces an annual "White Paper on Crime" in which routinely collected information is published, such as the following:

- Number of parole applications and their rejection rate;

- Number of released inmates and the parole rate;
- Proportion of served terms before parole release (by repeat and non-repeat offenders);
- Number of life imprisonment parolees by their served term;
- Rate of revocation of parole by type of offences; and,
- Working conditions of parolees at the moment of termination of parole by name of offences.

Canada

The National Parole Board has developed an interactive Web based application which allows users to access conditional release statistical information from the NPB and CSC Offender Management System database. The interactive nature of the system allows users to tailor their information requests to meet their specific statistical information requirements at the click of a mouse by selecting relevant options. The system has information relating to the NPB's decisions, reviews, workloads, grant rates, appeal decisions and outcomes of conditional release supervision periods.

This system does not have information on the conditions imposed on conditional release decisions nor on the specific reasons for breaches of conditions, suspensions or revocations. The annual report produced by the NPB is very detailed.

The National Parole Board uses an automated Offender Management System (OMS) to record information regarding conditional release decisions, conditions, and decisions relating to conditional release cancellations, suspensions and revocations. OMS is an extremely rich and large database.

As with the National Parole Board, the Correctional Service of Canada produces a very detailed annual report.

New Zealand

The New Zealand Parole Board has an information system and routinely collects decision-making and outcome data.

Western Australia

Western Australia Prisoners Review Board is developing an information system. While the Department of Corrective Services has a database, detailed information about the management of parole violations is not available. The PRB has decision-making and outcome data.

Queensland

Queensland collects data on suspensions and cancellations (revocations), but it does not collect the reasons for such action.

Conclusion

The responses from the participating jurisdictions and the expert group meeting have allowed a first comparative overview of the conditional release systems. The responses we received from participating jurisdictions have demonstrated that although it is difficult, information can be shared in a way that makes cross system comparisons possible. Clear and detailed comparisons are not always easy to make given the different language, terminologies, and concepts used in each jurisdiction, but this is not an insurmountable difficulty for future comparative research.

International comparisons between the quantitative data available in each jurisdiction has proven to be particularly difficult, due in part to definitional issues and substantial differences between the systems to be compared.

There are several questions which require more careful attention and a more detailed analysis, including: questions relating to parole outcomes and the relative frequency of recidivism; questions relating to the quality and effectiveness of the supervision offered and its relation to recidivism; and parole suspension and revocation, as well as questions relating to the grounds for suspensions and revocations. The level of discretionary authority left to parole supervisors and how it is used is also difficult to document, let alone to compare amongst jurisdictions.

The impact of the conditions, and in particular special conditions, attached to a conditional release on the supervision and on the eventual success of the offender's social reintegration is also in need of further attention. Attention should perhaps also be given to the extent to which the conditions imposed by the releasing authority affect the nature and intensity of parole supervision.

The use of modern technology in support of parole supervision and its impact on the offenders' compliance with their parole conditions and their eventual social reintegration requires much more attention than this preliminary review was able to offer. Modern technology, such as electronic monitoring, polygraphs, and urinalysis are in use to some extent in most jurisdictions reporting. Their frequency of use is not reported consistently and is sometimes presented only as a general comment. The impact of their use on the frequency of suspension/recall/revocation is another area where research might be very informative. In both this area and the area related to the impact of special conditions, the question might be one of whether or not this results in an increase in "technical violations" and whether or not this in turn leads to an increase in revocations.

All jurisdictions reported that they value the use of alternatives to suspension, recall, and revocation. However, there is not a lot of information on the nature of these alternatives, the frequency with which they are used and in what type of cases, or their relative efficiency in facilitating the social reintegration of offenders. The nature of the policy guidance offered to parole supervisors in making decisions after a breach of parole conditions and the extent of their discretionary power clearly requires further analysis.

The expert group which met in Vancouver as part of this project expressed the hope that the comparative exercise initiated as part of the present project will be continued. The participation of several jurisdictions in that project certainly confirmed that there is a common interest in doing so.

It was suggested by those who reviewed the current findings that the comparative exercise should perhaps focus in the future on:

- Clarifying the differences between the various data definitions used by participating jurisdictions and, if at all possible, create a common language to facilitate valid and informative international comparisons.
- Better understanding the impact of parole failure (revocation, recall) on prison populations.
- Considering more attentively the situation of offenders who are eligible for conditional releases, but waive their right to be released.
- Better understanding the reasons why offenders breach the conditions of the conditional release.
- Better understanding supervisory practices and how they differ from one jurisdiction to another, including variations in the amount of discretionary authority and its use by supervisors and supervisory agencies.
- Better understanding the impact of public opinion on supervisory practices and on the enforcement of release conditions.
- Exploring alternative responses to breach of release conditions.

Future comparative analyses, however, will continue to be hindered by some of the methodological issues that the current project was not always able to resolve. The current project has generated some technical data that could be used in future iteration of an international survey. It has also demonstrated that the participating jurisdictions were able to produce much of the required comparative data in a timely manner.

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Appendix 1 – List of Participants, Expert Group Meeting

Vancouver, May 1-2, 2008

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