UNDERSTANDING THE LAW

CRIMINAL LAW & PROCEDURE

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Community Legal Education Association

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This booklet is intended as legal information only, not as advice. Every situation is unique, and involves individual legal issues. If you have been charged with an offence, or want legal advice about some other matter, call a lawyer. If you need help finding a lawyer, call our Lawyer Referral Service at 943-2305 or 1-800-262-8800 (IF PHONING FROM OUTSIDE WINNIPEG).

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BASIC LEGAL RIGHTS

To prevent crime and to make sure that there is order in the community, police officers are given special powers to search, arrest and detain any individual who is committing, has committed or who is believed to have committed a criminal offence. However, these powers are limited by certain basic rights guaranteed to all Canadians in the *Canadian Charter of Rights and Freedoms*.

Searches

According to the *Charter of Rights and Freedoms*, everyone has the right to be secure against unreasonable search and seizure. Many people are under the mistaken belief that the police do not have the right to carry out a search without a warrant. Subject to certain limitations, there are a number of situations where the police are entitled to conduct a search without first obtaining a warrant. For example, they may perform a “frisk” search on an individual that is incidental to a lawful arrest or detention, or where the police observe evidence of criminal activity or the product of a crime in “plain view” (or without entry or search), or where consent is given to search.

With some exceptions, the police cannot enter any residence or place of business against the occupant’s wishes unless they have a valid search warrant. A warrant is unnecessary if the police are invited into the premises. Search warrants should be checked for validity before the police are allowed to enter. A warrant may be invalidated if it is improperly filled out or does not refer to the residence that the police want to enter.

Arrest

The police can apply to the court for a warrant to arrest an individual whom they believe has committed a criminal offence.

The police can arrest an individual without a warrant who has committed an indictable offence, or who on reasonable and probable grounds they believe has committed or is about to commit an indictable offence, or who is found committing any criminal offence, or where there are reasonable and probable grounds to believe that there is an outstanding warrant for the arrest of that person.

In some circumstances, people can also be arrested for summary conviction offences without a warrant.

When making an arrest, the police officer must inform the accused person:

- that he or she is under arrest;

- of the reason for the arrest;

- of the right to call a lawyer and the availability of free legal advice over the telephone; and

- that anything he or she says may be used in evidence.

An individual who is under arrest must go with the police and have fingerprints and a photograph taken. Although the police have the right to ask further questions as part of their investigation, the accused person has the right to remain silent and to refuse to make a statement or sign a confession.

Judicial Interim Release (Bail)

If a person is arrested, he or she may be released from custody on a promise to appear or on an appearance notice with a requirement to appear in court on a date stated on the document. In addition, a person may be served with a summons to appear in court on a date stated on the summons.

Sometimes a person is kept in custody after being arrested. In such a case, he or she has the right to be given a hearing, commonly known as a bail application. The purpose of the hearing is to request judicial interim release from custody until the person's trial is held. The hearing must be made available within 24 hours of arrest, or as soon as possible after that, where a magistrate is not available within the 24-hour period.

The court considers three issues at the bail application. One is whether detention is necessary to make sure that the accused attends court. The second ground is whether detention is necessary for the protection or safety of the public. The third ground is whether the detention is necessary to maintain confidence in the administration of justice.

The accused may be released by signing a promise (known as a recognizance or an undertaking) to attend court as required and may be released with or without a surety. A surety is a person who puts up or guarantees to put up real property or money that may be forfeited (lost) if the accused fails to appear for court, breaches conditions or becomes involved in new criminal activity. A surety must have no criminal record and have a full-time job, house or other real property of value.

There are normally conditions placed on a recognizance such as personal appearances at all court hearings, no contact or communication with the complainant (the victim of the alleged offence), reside at a certain address, not to possess weapons, obey a curfew, attend treatment or counselling, report to a bail supervision program as required and to not use alcohol or drugs.

If not released after a bail application, the accused may be able to apply at a later date for a bail review in a higher court (the Court of Queen's Bench or the Court of Appeal).

CRIMINAL OFFENCES

The federal government is responsible for making the laws dealing with criminal law and procedure. The *Criminal Code* of Canada is the criminal law statute, but there are other federal laws such as the *Controlled Drugs and Substances Act* that list offences. The *Youth Criminal Justice Act* applies to breaches of federal laws by young persons between the ages of 12 and 17.

Provincial governments can also pass laws that regulate conduct and create offences, which are generally dealt with by summary conviction proceedings. Convictions for provincial offences may result in various sentences, including jail, fines or probation.

Previous cases from the criminal court system (case law) also help define laws and create precedents.

The Prosecutions department of Manitoba Justice prosecutes *Criminal Code* and provincial offences. The Public Prosecution Service of Canada prosecutes federal offences other than those under the *Criminal Code*, such as drug offences under the *Controlled Drugs and Substances Act* and income tax violations under the *Income Tax Act*.

Classification of Offences

There are two types of offences in Canadian criminal law. Less serious offences are called "summary conviction" offences, while the more serious ones are called "indictable" offences. Some offences, called *dual* or *hybrid* offences, can be treated as either summary conviction or indictable. The decision whether to treat a hybrid offence as summary conviction or indictable is made by the Crown Attorney (prosecutor), who bases the decision on the circumstances of the case and the past behaviour of the accused person (including his/her criminal record).

Summary conviction and indictable offences are treated differently in the way they are processed through the courts and in the potential severity of the punishment assigned upon conviction.

Summary Conviction Offences

Summary conviction offences are usually processed relatively quickly and simply. All summary conviction offences, including hybrid offences that are being dealt with summarily, are heard by a Provincial Court judge without a jury. The penalties for such offences are less serious than for an indictable offence. The maximum fines or jail terms for summary conviction offences are much lighter than those available for indictable offences.

Examples of summary conviction offences found in the *Criminal Code* include causing a public disturbance, trespassing at night, vagrancy, and falsifying employment records.

Provincial statutes such as *The Highway Traffic Act* and *The Liquor Control Act* create summary conviction offences. Common offences under these statutes are careless driving, driving while your driver's licence is suspended, driving without a valid driver's licence and drinking alcohol under the age of 18.

Hybrid Offences

Some of the most common offences under the *Criminal Code* are hybrid offences and therefore can be treated as either summary conviction or indictable. Examples of this type of offence are theft under $5,000, assault, impaired driving and possession of stolen goods under $5,000.

Indictable Offences

Indictable offences fall into three categories:

1. offences that must be tried by a Provincial Court judge;
2. offences that must be tried by a Court of Queen's Bench judge and jury; and
3. offences for which the accused can "elect" (choose) the form of trial.

Trial by a Provincial Court Judge

Indictable offences that must be tried by a Provincial Court judge are usually considered to be the least serious of the indictable offences. Most of these offences are hybrid offences that the Crown Attorney has decided should proceed by indictment. Examples of this type of offence are theft or possession of stolen goods valued at less than $5,000, keeping a gaming house and mischief under $5,000.

Trial by Queen's Bench Judge and Jury

There are a number of very serious indictable offences that may be tried only by a judge of the Court of Queen's Bench with a jury. These offences include murder, conspiracy to commit murder and treason.

A person who is charged with any serious indictable offence has the right to have a preliminary inquiry held in the Provincial Court. A preliminary inquiry is a court hearing held to determine whether there is enough evidence to put the accused person on trial. Where the judge decides that there is sufficient evidence, the accused is "committed for trial" and a trial date is set in the Court of Queen's Bench. Where the judge decides that there is insufficient evidence, the accused person is "discharged." This means that the proceedings against the accused are at an end and the accused will not be convicted of any offence arising out of that charge.

Trial Election by the Accused

For all other indictable offences, the accused person has the right to "elect" (choose) whether to be tried in Provincial Court, in the Court of Queen's Bench by a judge and jury or in the Court of Queen's Bench by a judge alone.

The accused person normally makes this election in Provincial Court. If the accused chooses to have the trial in Provincial Court, the trial is scheduled for a later date. If the accused chooses to have the trial in the Court of Queen's Bench (whether by a judge alone or by judge and jury), a date is typically set for a preliminary inquiry to be held in Provincial Court. An accused person who does not make an election or refuses to make one is automatically scheduled for a trial in the Court of Queen's Bench with a judge and jury, with a preliminary hearing in Provincial Court.

The accused person has the right to an election when charged with such offences as arson, robbery, aggravated assault and kidnapping.

SENTENCING

A sentence is the punishment imposed by the court on any person who pleads guilty to or is found guilty after trial of a criminal offence.

These basic principles usually guide the sentencing process:

1. deterring the offender and others from criminal activity;
2. rehabilitating the offender;
3. the separation of offenders from society where necessary;
4. the promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims and the community;
5. demonstrating society's disapproval of the behaviour; and
6. repairing harm caused to the victim and community.

Key Factors

In deciding the appropriate sentence in an individual case, the judge may consider several factors, including:

1. the nature of the offence, including the character and seriousness of the act itself, and whether it was committed on impulse or in a planned and deliberate way;

2. the age, background and family circumstances of the offender;

3. the previous criminal record (if any) of the offender, the length of time since his or her last conviction and any indication of lenient treatment in the past;

4. any unusual circumstances that appear from the evidence;

5. any mitigating factors, such as a plea of guilty and cooperation with the police;

6. any aggravating circumstances, such as the abuse of a spouse, common-law partner, a person under the age of 18 or a position of trust or authority in relation to the victim;

7. a pre-sentence report (if one is ordered by a judge) that is prepared by a probation officer and contains information regarding all aspects of the offender's background;

8. the penalties assigned by law to the offence including minimum and maximum sentences; and

9. consistency in the sentencing of different individuals who participate in the same crime.

The *Criminal Code* also states that all available sanctions other than imprisonment should be considered where reasonable for adult offenders, and particular attention should be given to the circumstances of aboriginal offenders.

The *Youth Criminal Justice Act* states that all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons.

For both adults and youths, pre-sentence reports may be helpful to canvass background issues such as substance abuse, poverty, racism and family or community breakdowns.

Options in Sentencing

A judge who is imposing a sentence has a wide range of options from which to choose. This range is limited to a certain extent by the minimum and maximum penalties set out in the *Criminal Code*, but essentially it is the facts of each individual case that will determine the nature of the sentence that will be imposed. However, the court must also impose a sentence that is similar to sentences imposed on similar offenders for similar offences committed in similar circumstances in previous cases (known as the principle of parity).

A list of some of the sentencing options follows, ranging from least to most severe.

Discharge

The granting of an absolute discharge means that the accused has been found guilty but has not been convicted of the offence.

A conditional discharge has the same result as an absolute discharge except that the person who is sentenced must obey a set of conditions contained in a probation order for a specified period of time. Failure to obey the conditions can result in the revocation of the discharge and the substitution of a more severe penalty. Offenders who do not obey the conditions can also be charged with a new charge – breach of probation. Revocation may also occur where the offender is convicted of a subsequent criminal offence during the probationary period. A court cannot revoke an absolute discharge.

Discharges are usually reserved for first offenders who are judged to be of good character and who have committed minor offences. They can only be imposed on adults where:

1. there is no minimum term set out in the *Criminal Code* and the maximum sentence for the offence is less than 14 years;

2. it is in the best interests of the offender; and

3. it is not contrary to the public interest.

Probation

After making a finding of guilt and recording a conviction, the court may impose a probation order, either as a stand-alone suspended sentence or in conjunction with a fine or jail sentence. This means that the offender will be placed on probation. The probation order usually contains certain conditions that the offender must abide by. These conditions must be followed as specified in the probation order. This time period, which cannot be more than three years, begins to run from the date on which the order is made or following a jail term of no more than two years.

All probation orders contain the conditions that the accused keep the peace and be of good behaviour, appear before the court as required and inform the court of any change of name, address or employment. In addition, the offender may be required to do any of the following:

1. report to a probation officer for supervision;

2. not use alcohol or drugs;

3. not own, possess or carry a weapon;

4. make restitution for the loss suffered by any person injured as a result of the crime;

5. seek and maintain employment;

6. not associate with certain individuals;

7. take alcohol, drug, anger management or other such counselling as the probation officer may order;

8. not attend at certain locations (for example, at the residence of the complainant);

9. complete community service work hours; and

10. obey any other reasonable conditions imposed by the court.

This is not an exhaustive list.

Both the offender and the Crown Attorney have the right to apply to change the conditions of the probation order at any time. The court will usually only make the change if there has been a change in circumstances.

Breach of Probation

An offender who does not obey a specified condition can be charged with the offence of failing or refusing to comply with a probation order. The penalties for such an offence can include the imposition of further conditions, an extension of the order or a fine or imprisonment. If the offender is convicted of another offence at any time during the probation period, the court may revoke the probation order and impose any sentence which could have been imposed for the original offence (if imposed as a suspended sentence) or change the optional conditions of the order or extend the length of the probation order by up to one year (in all circumstances).

Other Cases of Probation

It is not necessary that the court impose a suspended sentence before the offender is put on probation. Probation can also be combined with another form of sentence:

1. a fine or term of imprisonment not exceeding two years;
2. an intermittent term of imprisonment not exceeding 90 days; or
3. a conditional sentence order.

Firearms Prohibition

Convictions for certain indictable offences that involve violence or threats of violence where a person may be sentenced to imprisonment for ten years or more and certain specified firearms and drug offences will lead to a mandatory order from the sentencing judge that prohibits the offender from possessing firearms, cross-bows, prohibited weapons, restricted weapons, prohibited devices, ammunition, prohibited ammunition or explosive substances for a period of ten years, or in certain circumstances, for life.

There are also discretionary prohibition orders that can be imposed on convictions for certain weapons and violence-related offences that can be imposed for a period of up to ten years.

In addition, upon application by a peace officer, a Provincial Court judge may make an order prohibiting a person from possessing firearms, ammunition, explosives and other weapons for up to five years, with or without the person being charged with a criminal offence, where there are justifiable grounds for so imposing.

Fines

A fine is punishment in the form of money that must be paid. A fine can be imposed alone or in addition to a term of imprisonment or other form of sentence, like probation. The order for a fine will include the time by which it must be paid. Civil means of enforcement will be used in the event of non-payment. Fines imposed under the *Criminal Code* can be worked off through the Fine Option Program.

Amount

Unless otherwise specified for individual offences, the *Criminal Code* limits the amount of the fine imposed for a summary conviction offence to a maximum of $5,000 for individuals. There is no limit to the amount of a fine imposed for an indictable offence.

Victim Fine Surcharge

The court imposes an additional penalty on an offender who has been convicted of a provincial offence or a federal offence under the *Criminal Code* or the *Controlled Drugs and Substances Act*. The money goes into a trust account to provide services for victims of crime. The surcharge is generally 15% of any fine imposed for federal matters or $50.00 (summary conviction offences) or $100.00 (indictable offences) where no fine is imposed. The surcharge is 25% of any fine for provincial matters or $100.00 where no fine is imposed. However, depending on the offender's financial circumstances, the court may waive (not charge) the surcharge.

Restitution

The court may order that the offender compensate the victim for property loss or damage, for loss of income or support as a result of injuries suffered or for moving and temporary housing expenses for leaving the offender's household.

Conditional Sentence

A conditional sentence is a sentence of imprisonment that is served in the community. Generally, a conditional sentence is an option where the offence has no minimum term of imprisonment, a sentence of imprisonment of less than two years is imposed and the safety of the community would not be endangered. However, the *Criminal Code* prohibits the imposition of a conditional sentence for certain types of offences.

An offender receiving a conditional sentence order must comply with the following mandatory conditions:

1. keep the peace and be of good behaviour;
2. appear before the court when required to do so;
3. report to a supervisor as directed;
4. remain within the jurisdiction of the court; and
5. notify the supervisor of any change of name, address or employment.

In addition, the court may order that the offender obey additional conditions, such as a curfew, abstain from alcohol or drugs, not to possess any weapons, perform community service work hours, attend a treatment program, provide support for dependants or such other reasonable conditions as the court considers desirable for securing the good conduct

of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences.

Imprisonment

Most criminal offences are potentially punishable by a term of imprisonment. The length of the term imposed, the place of imprisonment and the manner in which the time is to be served will vary with the circumstances of each case. A sentence of two years or more, for example, must be served in a federal penitentiary, while a sentence of less than two years is served in a provincial institution.

Maximum and Minimum Terms

The *Criminal Code* sets out maximum terms of imprisonment ranging from two years to life for all indictable offences, and, unless otherwise specified, six months for summary conviction offences. These maximum terms provide a guideline to the court as to how seriously Parliament and society regard the particular crime. It is only in the most serious of circumstances that the maximum penalty is imposed. For certain offences, such as impaired driving, robbery with a firearm and some sexual offences, the *Criminal Code* imposes minimum terms of imprisonment. In such cases, the court cannot sentence the offender to a lesser term.

Consecutive and Concurrent Terms

Sometimes, an accused person is convicted of more than one offence and sentenced to more than one term of imprisonment at the same hearing. In such cases, the court has the option to order that the terms be served either consecutively (one after the other) or concurrently (at the same time). Generally, concurrent sentences are ordered where the offences were committed together or within a short period of time. Where the offences are totally unrelated and took place at different places and times, consecutive sentences are generally imposed. In such cases, the court must ensure that the total term is not excessive.

Intermittent Terms

Where the total term of a jail sentence does not exceed 90 days, the court has the discretion to order that the time be served intermittently (at distinct intervals, such as on weekends). Such sentences allow the offender to remain employed, continue with educational pursuits or otherwise avoid financial hardship.

Indefinite Terms

An application can be made to have an accused person (usually a habitual offender or dangerous sexual offender) declared a “dangerous offender”. If this is done, the offender can be sentenced to an indeterminate (indefinite) period of imprisonment.

There are also “long-term offender” designations given to persons convicted of serious personal injury offences who are found to be likely to re-offend. Someone found to be a long-term offender must be given a sentence of at least two years and long-term supervision in the community for a period not exceeding ten years.

Capital Punishment

Capital punishment (the death penalty) was abolished in Canada by Parliament in 1976.

Youth Criminal Justice Act

The *Youth Criminal Justice Act* applies only to violations of federal laws (including the *Criminal* Code) by young persons between the ages of 12 and 17. The *Youth Criminal Justice Act* recognizes that young persons should be held responsible for their actions, yet that they should not be held accountable in the same way or face the same consequences as adults in all instances.

Extrajudicial measures may be used rather than judicial proceedings to deal with a young person. Extrajudicial measures are ways used to deal with a young person alleged to have committed an offence, other than through the court system. If judicial proceedings do take place, a youth court may impose one or more of the sentences outlined in the *Youth Criminal Justice Act*. These include reprimands, discharges, deferred sentences, fines, restitution, community service work, prohibitions and custody and community supervision orders.

Under the *Youth Criminal Justice Act*, a youth justice court is the only court that can deal with an offence committed by a young person. In some cases, adult sentences can be imposed on young persons who are convicted of certain serious offences.

CRIMINAL RECORDS

A criminal record is easily acquired but very difficult to erase. Often, a person who gets a criminal record has it forever and the effect this has on his or her life can be far-reaching and serious.

Any conviction under an Act of Parliament results in a criminal record. The most common convictions occur under the *Criminal Code* and the *Controlled Drugs and Substances Act*. Even a discharge will result in a criminal record.

Who Keeps Criminal Records

Since various government departments compile their own statistics for each offender with whom they come into contact, there are several different kinds of criminal records.

Bureau of Police Records

The Winnipeg Police Service has its own Bureau of Police Records that is used by local police personnel. The Bureau keeps track of all convictions made by courts in the Winnipeg area. In addition, the Royal Canadian Mounted Police in Ottawa advise the Winnipeg Police Service of any information that they have about criminal convictions in other parts of Canada.

C.P.I.C.

There is a central police record managed by the Royal Canadian Mounted Police that can be accessed by every police force across the country. This is called the Canadian Police Information Centre (C.P.I.C.). The C.P.I.C. system records convictions, discharges, suspended sentences, outstanding charges or warrants and court appearance dates. It can be used only by authorized police personnel.

Court Records

A form of criminal record is also kept by the courts.

The Court of Queen's Bench records are kept in the registry at the court office and are permanently maintained.

The Provincial Court keeps records of the cases in its courts.

Manitoba Public Insurance Driver and Vehicle Licensing

The Driver and Vehicle Licensing Branch keeps a record of all driving convictions made under *The Highway Traffic Act* of Manitoba. These are usually referred to as "driving abstracts" rather than criminal records. A driving record may also list some *Criminal Code* convictions, such as impaired or dangerous driving. The Winnipeg Police Service now includes *Highway Traffic Act* infractions on their printouts of local criminal records.

Police Department

The police department takes photographs and fingerprints from all persons arrested for certain types of criminal offences. These are kept on record by the local police and by the R.C.M.P. in Ottawa. An accused person who is ultimately found not guilty may apply to the Winnipeg Police Service to destroy both the local and RCMP records.

Youth Criminal Justice Act

The *Youth Criminal Justice Act* creates a number of special rules that apply to the criminal records of young persons. Youth records may be kept by the youth justice court and other courts, review boards, police forces, government departments and agencies under specified purposes and organizations participating in an extrajudicial measure or administering a sentence.

The *Youth Criminal Justice Act* also sets out who may have access to youth records. A young person who has received an adult sentence and whose time for appeal has expired will have their record treated as an adult record. A youth record may be accessible by the young person, the young person's lawyer, the Attorney General and the victim of the offence. Parents of the young person or an adult assisting the young person have access during the proceedings and for the duration of the sentence. Peace officers have access to the youth record for case administration and law enforcement purposes, and a judge, court or review board may access the youth record for related proceedings or subsequent offences by the young person.

The *Youth Criminal Justice Act* provides for non-disclosure of records after a certain period of time in order to prevent persons from being haunted by their previous infractions as youths.

Other than the R.C.M.P. central repository that must eventually destroy its records, other agencies may be able to keep their records indefinitely, subject to non-disclosure.

Effects of a Criminal Record

For both adults and youth, having a criminal record can affect a person's life in a number of ways. For example, a criminal record can affect:

- the severity of the sentence imposed for a later criminal offence. In most cases, a person with a criminal record will be dealt with more harshly by the courts than a person who does not have a record;
- employment opportunities, particularly in those occupations where employees must be bonded for reasons of financial security;
- membership in professional associations, licensing and insurance applications;
- franchise applications for bonding establishments, which often require proof of characteristics such as integrity, stability and honesty; and
- entry into foreign countries. For example, entry into the United States (whether as a visitor or as an immigrant) is prohibited for any person with a criminal record, including records for such offences as polygamy, prostitution, trafficking in narcotics or espionage. Although it is possible to obtain a U.S. waiver, such an application must be made to the United States government and can be costly and time-consuming.

PAROLE

The *Corrections and Conditional Release Act* governs the operations of the Parole Board of Canada and the Correctional Service of Canada. The protection of the public is the paramount consideration in all decisions relating to the treatment and release of inmates. Parole and statutory release are forms of release from prison where the inmate continues to serve part of a sentence while living in the community under strict supervision. The terms and conditions are designed to serve the interests of the community and the individual.

The Parole Board of Canada

The Parole Board of Canada is an independent administrative tribunal that has the power to grant, deny or revoke all forms of parole applicable to the offenders who are serving jail sentences.

Types of Release

There are four types of release: Temporary Absence, Day Parole, Full Parole and Statutory Release.

Temporary Absence

A temporary absence (TA) is a temporary release from prison for a specified period of time. It is usually short, occasional and carries no promise of release on parole. TA's are usually granted for medical, humanitarian or rehabilitative reasons, and are usually the first form of release granted to an inmate.

During release, an inmate may be unescorted (UTA) or accompanied by an escorting officer (ETA). ETA's can granted to offenders at any time during their sentence. Most ETA's are at the discretion of the Correctional Service of Canada, while others must be approved by the Parole Board of Canada. Offenders that are serving jail sentences of three years or more are eligible for UTA's after serving one-sixth of their sentences. Offenders that are serving jail sentences of two to three years are eligible for UTA's after serving six months. Offenders serving life sentences are eligible for UTA's three years before their full parole eligibility date. Offenders classified as maximum-security inmates are not eligible for UTA's.

Day Parole

Day parole is a program that helps prepare offenders for their eventual return into the community under full parole or statutory release. Offenders live outside the institution, often in a community-based residential facility or halfway house, and report to authorities at specified times.

Offenders are eligible for day parole six months before their full parole eligibility date or six months into the sentence, whichever is greater. Offenders serving life sentences are eligible three years before their full parole eligibility date.

Full Parole

Full parole is a full-time conditional release of an inmate under the supervision of a parole officer. Full parole lasts until the end of the inmate's sentence unless it is revoked. Paroled inmates serving life sentences may remain on parole for life.

Most offenders become eligible for full parole after serving one-third of their jail sentences or seven years, whichever is less. However, judges are able to lengthen the time offenders spend in prison for certain offences by delaying eligibility for parole until they have served one half of their sentence. It applies only where offenders have been sentenced to a term of imprisonment of two years or more.

Parole eligibility for offenders that are serving a life sentence is set by a judge at the time of sentencing. Offenders convicted of first degree murder are not eligible for parole until after 25 years. Offenders convicted of second degree murder will be eligible for parole after a period of 10 to 25 years (to be determined by the judge at the time of sentencing).

Statutory Release

A federal offender is usually entitled to serve the last third of his or her sentence in the community under statutory release. The date is automatically set at the two-thirds point of the sentence. Statutory release is not available to offenders serving life or indeterminate sentences.

The purpose of statutory release is to allow offenders to reintegrate themselves into the community under supervision before their sentences expire.

Offenders released under statutory release must comply with certain conditions under the supervision of a parole officer. Failure to obey could mean suspension and revocation of statutory release and a return to prison.

Eligibility for Parole

Parole is not an automatic process, since the Parole Board of Canada has the discretion to grant or deny the release of any eligible inmate. Each case is thoroughly reviewed before a decision is made.

The inmate's record, the parole officer's assessment, police reports, psychological profiles, social agency reports and letters from concerned individuals are all examined by the Board, which follows a specific procedure in making its decision.

Factors Considered by the Parole Board

When considering any form of conditional release, the Parole Board conducts an investigation of:

1. the details of the inmate's criminal record, including the pattern and frequency of offences, any crime-free periods and the nature and seriousness of the most recent offence;

2. the inmate's willingness to change his or her criminal behaviour, including remorse and acceptance of responsibility and any concrete action which has been taken in this regard;

3. the inmate's release plan, including employment opportunities, arrangements for accommodation and community supports and resources; and

4. the possible effect on the community if the inmate violates the parole conditions or commits another offence.

When the investigation is complete, the Board begins its review. The inmate is allowed to present his or her case and the Board will usually ask questions in an attempt to clarify the information obtained as a result of its investigation. The inmate may have his/her counsel present at the parole hearing.

Conditions of Release

A number of conditions apply to all persons who are on parole and statutory release. These conditions are put into place to make sure that the inmate understands the responsibility that comes with release. They ease the transition of the inmate into a free environment and, at the same time, provide some protection for the community.

A parole officer makes sure that the conditions are obeyed. A violation of any of the conditions can result in suspension and perhaps revocation of the release. Certain mandatory conditions apply to all inmates who are released on parole, including:

1. report to a parole officer;

2. obey the law and keep the peace;

3. not own or possess any weapon; and

4. report any change of family, domestic or financial situation to his/her parole officer.

In addition to these mandatory conditions, the inmate may have to obey some special conditions designed to control behaviour and to encourage the successful completion of the period of supervision. For example, the inmate may be required to not use alcohol or other substances, not associate with certain people, not frequent certain places and participate in counselling, treatment or random urinalysis.

An inmate can ask the Board to change or remove a condition of release.

Suspension or Revocation of Parole

Suspension of parole or mandatory supervision occurs because of a violation of the release conditions, a conviction for a new offence or because there are reasonable grounds to believe that the parolee is returning to criminal activity and is a risk to the public.

Victims of Crime

Victims of crime are recognized in the federal corrections and parole process. They will be kept informed of an offender's prison and parole status, if requested. Information from victims can be considered by the Board at a parole hearing. Also, victims can apply for financial assistance to attend parole hearings.

RECORD SUSPENSIONS

A record suspension (formerly known as a pardon) allows individuals convicted of a criminal offence under a Canadian federal act or regulation who have completed their sentence and a conviction-free waiting period to have their criminal records kept separate and apart from other criminal records. Pursuant to the *Criminal Records Act*, the Parole Board of Canada has the power to order, refuse to order or revoke record suspensions.

A sentence is completed when a person has paid all fines, surcharges, costs, restitution and compensation orders in full, when a person has served all sentences of imprisonment (including conditional sentences, parole and statutory release) and when a person has satisfied his/her probation order.

The waiting period for a record suspension is five years for a summary conviction offence and 10 years for an indictable offence.

The Parole Board of Canada can deny a record suspension, if, for example, a person is not of good conduct. The person may then re-apply after one year.

When a record suspension is granted, convictions are removed from CPIC and may not be disclosed without the permission of the Minister of Public Safety Canada. The *Criminal Records Act* only applies to federal departments and agencies. While provincial and municipal law enforcement agencies are not bound by the *Criminal Records Act*, many such agencies will restrict access to their records once they are notified that a record suspension has been granted.

A record suspension does not erase the fact that a person was convicted of a criminal offence, nor will it guarantee entry or visa privileges to another country or cancel driving or weapons prohibition orders under the *Criminal Code*.

Convictions for certain sexual offences listed in the *Criminal Records Act* will result in the offender's name being flagged in C.P.I.C. if he/she was previously pardoned. The offender will then be asked to let employers see his/her record if this person wants to work with children or with groups that are vulnerable because of their age or disability. The name will be flagged regardless of the date of the conviction or the date a pardon was granted.

Certain offences are not eligible for record suspensions, namely sexual offences involving children or where there are more than three offences that were prosecuted by indictment that each resulted in a jail sentence of more than two years.

Record suspensions need not be requested where a person's record consists only of absolute and conditional discharges. Absolute discharges are automatically removed from C.P.I.C. one year after the court decision, while conditional discharges are automatically removed three years after the court decision.

A record suspension may be revoked by the Parole Board of Canada if the person:

- is later convicted of a summary conviction offence under a Canadian federal act or regulation;

- is no longer of good conduct; or

- made a false or deceptive statement or concealed relevant information at the time of the application.

Revocation will then result in the record again being kept in C.P.I.C.

A record suspension can cease to have effect if a person is subsequently convicted of an indictable offence under a Canadian federal act or regulation or a hybrid offence, or if the Parole Board of Canada is convinced by new information that the person was not eligible for a record suspension at the time that it was granted. This would result in the record again being kept in C.P.I.C.