

## Work releases: A constructive step forward

About 350 inmates are released each year from Canadian minimum- and medium-security penitentiaries to participate in work-release programs. The average length of a work release is less than three months and most of the work is voluntary or community service activities rather than paid employment.

However, work releases do address a broad range of constructive correctional objectives—they provide meaningful and productive work opportunities for offenders, maintain and strengthen links with community organizations, and permit staff to assess offender credibility with an eye toward future conditional releases.

This article examines the legal foundation for work releases, sets out the eligibility criteria for such programs, and analyzes potential responses to the difficulties of supervising offenders on such releases. Legal foundation The 1992 Corrections and Conditional Release I Act and accompanying regulations were generally a codification of Correctional Service of Canada policies and procedures that had developed over many years. However, they also changed several well-established practices.

For example, section 18 of the act defined a work release as "a structured program of release of specified duration for work or community services outside the penitentiary, under the supervision of a staff member or other person or organization authorized by the institutional head."

This concept is similar to the old "limited day parole" that had been used to achieve similar objectives. Limited day parole used to be available to offenders after serving one-sixth of their sentence to participate in employment or community service programs. It was usually run from a minimum-security facility or community correctional centre, and inmates had to return to the facility either nightly or on weekends. The National Parole Board simply had to ensure that the offender's risk could be properly managed under these circumstances.

The concept also resembles the "escorted group temporary absences" that were widely used in the past to allow offenders in minimum-security institutions to participate in community service projects.

However, the new act restricts the availability of limited day parole in two ways. It moves offender eligibility from one-sixth of an offender's sentence to six months before completion of one-third of the sentence (when an offender becomes eligible for full parole) and it defines the purpose of day parole as preparing the offender for full parole. As a result, work releases are now the most appropriate way to achieve the objectives formerly met by limited day parole and escorted group temporary absences.

Offender eligibility Inmates are eligible for work release at the same time as for unescorted temporary absences, which is generally after serving one-sixth of their sentence. The conditions for such releases are:

- the inmate will not, by reoffending, present an undue risk to society;
- it is desirable for the inmate to participate in a structured program of work or community service in the community;
- the inmate's institutional behaviour does not preclude a work release; and

- a structured work release plan has been prepared.

These criteria are almost identical to those applied to escorted temporary absences under section 17 of the act and unescorted temporary absences under section 116. The criteria for granting full and day parole are more succinct-"the offender will not ...present an undue risk ... and the release ... will contribute to the protection of society by facilitating the re-integration of the offender into society as a law-abiding citizen."

The most significant difference in the criteria for awarding work release and parole is that work release may properly be justified partly by potential benefits to an employer or some other community organization. In short, the focus is not entirely on the offender's re-integration into society.

The availability of relatively low-cost unskilled labour for work such as firefighting, apple picking or municipal cleanups is generally perceived as beneficial to the communities surrounding minimum- and medium-security facilities. Any inmate benefits are more coincidental than designed, unless the work release results in eventual employment.

Service policies and procedures concerning the granting and use of work release are intended to respond to the need for quick, flexible and relatively secure arrangements. Institutional heads have the power to authorize a work release for up to 60 calendar days at a time and can impose any conditions they consider reasonable and necessary to protect society.

Apart from having to act fairly in granting, refusing or cancelling work release, institutional heads have nearly absolute authority over work releases. Their only constraints are community responsiveness, prison operational needs and individual initiative.

There is, therefore, great potential for expansion work release as both the legislation and the Service have left the details to those most closely connected to the local employers and communities.

Responding to supervision problems A primary concern is always the potential liability for wrongful (negligent or intentionally harmful) acts committed by inmates on work release.

Standard procedure requires that a supervisor be designated for each structured work release. Further, the Service must ensure that every work release is appropriately structured for the circumstances and risk factors presented by the inmate's background. The Service must also ensure that the supervisor is aware of these risks and is familiar with proper supervision practices. If the Service does not satisfy these prerequisites, any supervisors or third parties who suffer damages as a result of inmate actions could potentially seek compensation from the Service.

Supervisors and employer and community organization representatives are, however, required to sign a waiver of liability that attempts to absolve the Service of blame for wrongful acts committed by inmates on work release. The waiver is intended to emphasize to employers and organizations that they must undertake the supervision of inmates with a reasonable degree of care.

The waiver is probably sufficient to respond to a complaint that an inmate broke a piece of machinery

that he or she had been assigned to operate, messed up a product or service during manufacture or delivery, or did anything else affecting the quality of work. The employer or organization supervising the work release knows, up front, that the Service does not guarantee the quality of inmate work.

However, what if an inmate escapes or wilfully causes damage while on a work release? The best response to such a situation (and they have been exceedingly rare) is for the employer or organization to have appropriate liability insurance coverage. The law usually blames those who do not take reasonable precautions to protect themselves and others from any foreseeable risk of harm.

Given that criminal behaviour cannot be perfectly predicted, supervisors must also maintain an adequate program structure and adhere to the established frequency and nature of supervision contacts, which should be tailored to both the case needs and work release setting to minimize their exposure to liability.

It is necessary to examine the legal context when attempting to determine the level or degree of supervision required on a work release. *The Corrections and Conditional Release Act* is divided into three parts-institutional and community corrections, conditional release and detention, and correctional investigators.

Section 107 of Part 2 gives the National Parole Board "exclusive jurisdiction and absolute discretion ... to grant parole to an offender," as well as "to authorize an unescorted temporary absence of an offender."

Thus, although institutional heads have the primary authority for granting escorted temporary absences (Part 1), they have only limited authority in granting unescorted temporary absences.

The fundamental distinction between Part 1 and Part 2 is the degree of offender liberty that the respective decision makers may extend or deny. Work releases are covered in Part 1, so the level of supervision is expected to be closer to that of an escorted temporary absence than parole. The same applies for the level of structure imposed on inmate participation in work release activities.

A constructive step Except for non-profit service organizations, most employers are mainly interested in productivity, performance and profit. Therefore, few employers are willing to spend the time and resources needed to meet reasonable supervision and structure criteria when less troublesome alternatives are readily available.

Further, the Service provides no subsidies or incentives to encourage employers to participate in work release programs. Employers are generally expected to provide inmates with the same wages and benefits as regular employees.

Inmates also remain subject to transfers and other institutional arrangements, which can interfere with work release employment, regardless of the effect on the inmate's employability. This makes it still tougher to sell work releases to the average employer.

However, a relatively large number of community organizations and businesses are prepared to accommodate work release programs out of a sense of social responsibility or other specific motivations. Also, a relatively large number of employers are prepared to accommodate specific inmates because of either personal connection to an inmate or a special need for for a particular inmate's skills.

Still, the inventory of prospective work release employers is limited and it takes a concerted effort by local correctional authorities to sustain, cultivate and promote employment opportunities in the community. Where this occurs, there is usually no shortage of qualified inmates eager to take part.

This fact alone indicates that the inclusion of work releases in the *Corrections and Conditional Release Act* has been a constructive step forward. It legally permits institutional heads to expand inmate opportunities for meaningful work in local communities-when and where the interest and commitment exists.

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