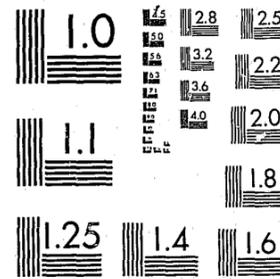


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**MANDATORY SUPERVISION:  
A DISCUSSION PAPER**

Report of the Committee on Mandatory Supervision, March 1981.

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MANDATORY SUPERVISION: REPORT OF  
THE MINISTRY COMMITTEE ON MS

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SECTION I  
INTRODUCTION AND SUMMARY

Background

In effect since 1974, there have been several successive Ministry committees charged with looking at Mandatory Supervision (MS), of which this present committee is the latest. None of the earlier committees reached any conclusions, although some useful work was carried out.

The present Committee was constituted a year and a half ago with (more or less) its present membership, drawn from the National Parole Board (NPB), the Correctional Service of Canada (CSC), and the Solicitor General Secretariat. Initially, it met on a monthly basis but, as the study progressed, it met more frequently, sometimes twice a week, or as often as other duties permitted. This is not an ideal way to handle a subject of such complexity and sensitivity, and the members of the Committee strongly advocate that, in future, studies of this sort be assigned to teams that can devote full time to them, or at least several days a week.

Terms of Reference

There were no formal terms of reference, as such. Nonetheless, it was understood from the beginning that the purpose of the Committee was "to evaluate the effectiveness of Mandatory Supervision and to make any appropriate recommendations."

It soon became clear, however, that MS means different things to different people. The members of the committee took it at its literal meaning, namely, the supervision provided to an inmate when he is released from prison to serve the remitted portion of his sentence. It is clear, too, that inmates in their frequent complaints about MS are referring to it in this sense.

On the other hand, several other groups when they refer to MS actually mean mandatory or automatic release before the warrant expiry date. Certain police groups, for instance, when they call for the abolition of MS do not really want the supervision removed; they simply don't want the inmate to be released automatically while he is under sentence. In other words, they really want to abolish remission.

Because of the ambiguity of the term, therefore, and the relationship between the two issues, the Committee took it on itself to deal with both, at least to the extent possible. The reason for the qualifier is that MS in this second sense of automatic release can not be studied without examining remission, which, as an institutional program, is undergoing continuous evaluation by The Correctional Service of Canada (CSC). For this and other reasons, therefore, many of the report's conclusions (and some affect remission) are based on the assumption that the basic remission program will continue to exist in its present form.

Finally, during the latter months of the Committee's existence, a total study of all aspects of release, of which MS is only a single element, was ordered by the Solicitor General. This Release Study, now formalized and in progress, may therefore come forward with recommendations which, because of the broader context in which they are made, supersede the recommendations contained in this report on the MS Study. However, even if this proves to be the case, the detailed examination of the MS issue contained in this report should prove valuable to the Release Study team.

#### Conduct of Study

The Committee found that it was impractical to mount a research study to measure the effectiveness of supervision of MS offenders. Apart from the methodological problems of such a study, it would be impossible to reach a definitive conclusion about effectiveness through any one study, and there were problems of a political and legal nature involved in setting up a proper evaluation. These facts, plus the question of costs and the time factor involved, resulted in the Committee discarding this particular evaluative technique. Moreover, the MS question is clearly not confined to the question of whether MS is effective in reducing recidivism, and even if it were possible to obtain a definitive answer on this issue, many other issues and concerns would remain.

Instead, the Committee opted for a consultative method, described in detail in the next section. The concerns arising from MS were identified and several different possible options developed. These were then submitted to selected groups for response. The groups included representatives from field staff, the Union of Solicitor General Employees, police, private agencies, and inmates.

General trends were immediately apparent in the responses. Offenders felt MS was inherently unfair simply because "it makes them do their earned good time on the street" under supervision; they also, for the most part, said the supervision was unhelpful. The National Joint Committee of Chiefs of Police and Federal Correctional Services submitted a succinct position: that MS and Earned Remission be abolished because they permit the release of "dangerous" persons prior to warrant expiry. Field staff, had more mixed views. As a group they were more likely to recommend retaining MS, yet institutional staff, who see the impact of MS failures, were more likely to recommend a return to discharge without supervision at two-thirds of the sentence.

The Committee broke down the responses by group, category and region, then, after a detailed analysis, arrived at certain preliminary conclusions about a preferred option. This is somewhat different from any of the options originally submitted in the consultation process, but it is, we believe, the one that best balances security with opportunity, while responding to some of the concerns and problems of the present system.

#### Conclusions

It is clear that the major cause of public and official concern with the MS program is the nature and number of the offences committed by inmates while on MS. The public and the police appear to accept the general philosophy of early release and are willing to live with some violations, provided that they are not violent in nature. It follows, therefore, that the greater the number of violent violations, the more the MS program will come under attack (the same principle applies to parole and temporary absence).

The Committee believes that the MS program is sound in principle, because it is desirable - some argue necessary - to provide a degree of supervision and support to an inmate after a long period of incarceration (and penitentiary sentences are long by definition). But an important part of the purpose of sentencing is incapacitation, and the public has the right to expect that it will be protected from offenders, particularly those who may be dangerous, during the entire period that an inmate is under sentence.\* However, the only way to guarantee such total protection (except for escapes) would be to keep all inmates in prison until the end of their sentences. The Committee does not believe this would be a sound proposition -- it would be incredibly costly apart from anything else -- nor does it believe it would be practical or justified to hold only certain inmates until the last day of sentence. Actual violent behaviour on MS is, overall, infrequent and unpredictable enough that such a model would probably result in at least three inmates being held for every one who would in fact have recidivated had he been released. Although this measure would be discriminatory, the Committee would nonetheless not hesitate to recommend its introduction if it considered it necessary for public protection. However, it is not justifiable as a protective measure because it would not prevent - though it would delay - violent acts committed by federal offenders. Therefore, the Committee is leaning towards a model that would, in the opinion of the members, provide an acceptable degree of added security without going to this extreme.

In short, the Committee favours the continuation of mandatory release and supervision for all non-paroled offenders, but with this difference: if an offender has his MS revoked, he will be returned to penitentiary and thereafter (a) will not be eligible for remission on the remanet of his original sentence (there will be no subsequent releases on MS on the same term, though offenders revoked with a new offence will still be eligible to earn remission on the new term); and (b) will be released prior to warrant expiry only on the authority of the National Parole Board (NPB). Further, in order to provide more structure, control and attention to dangerous cases, the Committee

\* Throughout this report, when reference is made to "dangerous" offenders, this is meant in the most general sense, and is not intended to refer to the Criminal Code (Sec.668ff.) provision for indeterminate detention of "dangerous offenders".

would like to see NPB set up a formal process to identify and "flag" those cases where there is a high probability that the offenders will be physically dangerous when released on MS. A structured release, by way of a day parole to a C.C.C. or CRC, would be granted to these inmates for the last four months prior to the MS date, where the NPB feels that this could result in a reduction of the subsequent risk to society. Whether or not this type of day parole is granted, the NPB should, prior to the MS release date, designate such offenders for unusually intensive supervision, including, if possible, residence at a halfway facility. The CSC would provide District Offices the additional resources, including cash funds for purchase of special services in the community, to allow parole officers the opportunity to meet more fully the needs of these offenders. Experimentation with specialized caseloads made up of only these types of cases should also be encouraged.

This model to which the Committee is leaning is premised on a number of principles. Admitting the imperfection of violence prediction and the considerable costs involved in holding inmates until warrant expiry date, the model nevertheless provides for the designation of certain inmates whom the authorities believe to be dangerous. These offenders are designated for intensive attention, more so than they often receive now. The Committee found that, curiously enough, despite universal concern about violence, the correctional system does not always devote its priority programs and resources most fully to those cases thought to be potentially violent. Often this is because these offenders vigorously and successfully resist our "attentions", but not always. In some instances, it is because an agency will be reluctant to use its high-profile programs (such as day parole) for bad risks. In many instances, it is because certain programs (such as halfway houses) have extremely limited capacities. The Committee finds all of these things understandable, and many of them inescapable. Nevertheless, if violence is a priority concern (and it surely must be), it must be treated as one. The Committee finds that the usual suggestion, namely to hold "all" people considered likely to commit violent crimes until warrant expiry, is not, literally speaking, to deal with the problem. It is to delay the problem, and in many instances it will be to aggravate the problem. Only in the community does corrections get to try to deal with the offender and his behaviour in its "natural habitat", but we find that, too often, community corrections is not encouraged to do even that. Our intent in part is to legitimate the objective of intensive intervention in this type of case.

The second half of the option we are considering is designed to try to prevent some new offences which may be committed by offenders on MS, and to meet some of the operational problems which we have observed with MS, most of which we lump together under a phenomenon called the "revolving door syndrome", sometimes known as "MS turnarounds". The "revolving door" phenomenon is caused by several factors, one of which is in the process of disappearing, that create situations in which a revoked MS offender becomes due for his next mandatory release shortly after his return for revocation. This is undesirable for a number of

reasons, including the cost and the paperwork involved in such brief returns to penitentiary, but principally because it causes certain MS cases which would have been "turnarounds" not to be returned to penitentiary at all. Some persons consulted felt that NPB may sometimes (it is impossible to say how often) refuse to revoke an MS offender whom the parole officer has suspended, basing their refusal on the grounds that the brevity of the offender's stay before his next release does not justify the expense involved. Parole officers, in turn, sometimes may not suspend potential MS turnarounds or may not recommend them for revocation by NPB because they anticipate that revocation will be denied by NPB. This is clearly not ideal, since in some cases justice is not done, nor is it seen to be even attempted. For these reasons, the Committee has recommended a change which will reduce the number of MS turnarounds by making revoked MS cases ineligible for remission on the remanet of their original sentence, thus retarding the mandatory re-release date of some offenders. This change could also serve to prevent a number of offences which might have been committed by persons re-released on MS.

Further on the question of violence, the Committee believes that a major research study should be conducted of incidences of violent recidivism within the federal system, and that both NPB and CSC should be required on a continuing basis to carry out analyses of all such incidents involving inmates on temporary absence, parole or MS. Though the accurate prediction of violence and non-violence is not yet within our capability, continuing empirical exploration of this problem must be carried out.

These proposals would not be well received by the inmate population, who contend that their "good time" entitles them to a release without any sort of conditions or supervision. However, given the fact that the inmates are still under sentence and are the responsibility of the Ministry, such a view cannot be supported, particularly while the incidence of violations remains relatively high. The first consideration must always be public safety.

#### Acknowledgements

The members of the Committee wish to acknowledge the contribution made by the various groups and individuals contacted during the course of the study. In addition, they wish to give a special word of thanks to Brian Yealland, CSC Regional Headquarters, Ontario, who, during the period he was a member of the Committee, contributed substantially to our work and handled (with unfailing good humour) the consultative aspects of the study with the field staff of the CSC.

SECTION II  
HISTORY AND OBJECTIVES OF MANDATORY SUPERVISION

Orgins of MS

In the early 1950's in the United States there was a growing belief in the corrective value of release on parole and the control and assistance provided by parole supervision. A national conference on parole, convened by the U.S. Attorney General in 1956, recommended the same conditions and supervision for those being released as result of remission. The Canadian delegates to this conference returned to Canada with this recommendation; and fourteen years and several task forces later, Mandatory Supervision was instituted in Canada, in August 1970.

Several committees and commissions, the National Parole Board and the police identified the need for a program to provide supervision of all inmates released from imprisonment. The two major committees prior to the implementation of MS - Fauteux (1956) and Ouimet (1969) - and the two after - Hugessen (1972) and Goldenberg (1974) - all endorsed some period of supervision in the community prior to the expiration of the sentence. Fauteux recommended the implementation of a statutory parole period for all releases from imprisonment. The suggestion was that this supervision period should correspond to the time earned by way of Statutory Remission. Ouimet also advocated the establishment of a period of statutory supervision. The Committee expressed concern that the most dangerous offenders were being released without any of the controls or benefits of supervision which were accorded to the better risk parolees. Their recommendation for a "statutory conditional release" program based on the Statutory Remission period would extend supervision to those formerly released directly into the community.

The need to provide some program involving the supervision of released inmates prior to the expiration of their sentence was also recognized by the NPB. A program of "minimum parole", which provided that inmates who had been denied parole could receive a modified form of parole, had previously been instituted by the Board. The NPB Policy and Procedures Manual, April 1972, indicated that "the theory of minimum parole is that the exchange of a short period of detention for a long period of supervision is weighted heavily in favour of the protection of the public. It is applicable to inmates of penitentiaries and other federal institutions and refers to a release based on one month on parole for each year of sentence up to a maximum of six months e.g. an inmate serving a two year sentence would be released two months prior to normal expiry (i.e. discharge date) but would be on parole for the six months of statutory remission in addition to the two months, for a total period of eight months". There were however, a number of inadequacies inherent in the minimum parole program. While some inmates elected to take minimum parole, many were unwilling to take the risk of losing that freedom through a subsequent revocation of minimum parole.

In high risk cases there was also a hesitancy on the part of the Board to grant minimum parole. With the introduction of MS, therefore, the need for minimum parole disappeared and the program was abolished.

Many representatives of the police community also supported the call for controls over non-paroled offenders for the remitted portion of the sentence. The Canadian Association of Chiefs of Police (CACP), in a submission to the Standing Committee on Legal and Constitutional Affairs on March 13, 1973, commended "... the Government for instituting mandatory supervision on an automatic basis during warrant time as a further safeguard to society." Four years later, however, on August 26, 1977 CACP called for even further controls by supporting a resolution that MS and all automatic remission be abolished. This resolution was introduced by the National Joint Committee of the Canadian Association of Chiefs of Police and the Federal Corrections Services at their 72nd annual conference.

Both Hugessen and Goldenberg, the two major committees to study parole after the introduction of MS, agreed that some form of supervision was essential for all inmates released from imprisonment. They concluded that the benefits of an MS-type program outweighed the criticisms of the program as expressed by inmates and parole staff (inmates viewed as unfair the tie between remission and MS, and the parole staff objected to supervising uncooperative inmates). The benefits of MS in terms of protection to society through the threat of revocation and reimprisonment were seen by Hugessen to outweigh the negative effects. Hugessen recommended the abolition of both Statutory and Earned Remission and the establishment of an obligatory supervision period equal to the last one-third of the sentence.

Like Hugessen, Goldenberg noted the incompatibility of having the supervision period tied to a system of remission. It also recognized the difficulty of supervising uncooperative inmates. Amendments were suggested to the Penitentiary Act and the Prisons and Reformatories Act to abolish both Statutory and Earned Remission, and to the Parole Act to permit an inmate to refuse release at two-third of the sentence. However, all inmates not refusing release at the two-thirds mark would be required to serve the last third of their sentence under supervision in the community, through a program to be called "minimum parole". A program of "Minimum Parole" which would entitle an inmate to serve the last third of a sentence in the community was recommended.

All of the aforementioned committees strongly endorsed some period of supervision prior to the expiration of the sentence. Subsequently, the report of the Law Reform Commission "Studies on Imprisonment" (1976) recommended the abolition of both Statutory and Earned Remission, but advocated a "period of transition" for all inmates which would provide assistance and supervision for the last one-third of the sentence. As late as 1977, the "Report to Parliament" by the Parliamentary Sub-committee on the Penitentiary System in Canada commented on the "arbitrary aspects" of both parole and MS, but it did

not make any specific recommendations for modifying the current system, other than to suggest that it be reviewed in order to try to reduce some of the arbitrary aspects.

MS was therefore introduced as a program with rehabilitative, incapacitative and deterrent aims. It was designed to assist the offender in making the transition to law-abiding behaviour and to allow for the relatively quick and easy return to penitentiary of those who had violated the conditions of their release or had committed or were suspected of being about to commit new crimes; and it also held the threat of return for others who could be deterred by it. It is also important to note that the assistance, control and deterrent functions provided to those who had not been considered good parole risks was thought to be at least as important as supervising parolees.

#### Implementation of MS

Prior to the introduction of MS, inmates who had not been granted parole were released directly into the community to serve their period of remission without being subject to any conditions or supervision. The Penitentiaries Act provided for a one-third reduction of sentence in cases where maximum remission was obtained. This meant that many inmates were released unconditionally after serving two-thirds of their sentence. Parolees, on the other hand, were required to serve their full sentence until warrant expiry under supervision in the community - or in the penitentiary until further parole or discharge, if they were returned for a violation of conditions or a new offence. This inequity probably contributed to the decision to make unparoled offenders subject to supervision.

To implement MS, Section 15 of the Parole Act was amended to provide the following:

15(1) Where an inmate to whom parole was not granted is released from imprisonment, prior to the expiration of his sentence according to law, as a result of remission, including earned remission, and the term of such remission exceeds sixty days, he shall, notwithstanding any other act, be subject to mandatory supervision commencing upon his release and continuing for the duration of such remission.

15(2) Paragraph 10(1)(E), section 11, section 13 and Sections 16 and 21 apply to an inmate who is subject to mandatory supervision as though he were a paroled inmate on parole and as though the terms and conditions of his mandatory supervision were terms and conditions of his parole. 1968-69, C 28, S 101.

#### History of Legislative Changes

The present Section 15 of the Parole Act was initially proclaimed into force on August 1, 1970 and was amended through the passage of the Criminal Law Amendment Act Section 28 (1977). Among the changes brought about by the 1977 amendments was the creation of the inmate's option to remain in the penitentiary rather than to accept MS. The following chart (Figure 1) outlines the major amendments to Section 15.

#### Objectives of the MS Program

The MS program is intended to provide at least the same degree of control and assistance to those being released as a result of remission as to those released on parole. The program is based on the following assumptions:

- i) that no one should be released directly to the community without some form of control and assistance.
- ii) that MS releases should be subject to at least the same degree of control and assistance, and to the same kind of conditions as parole releases;
- iii) that supervision provides control;
- iv) that supervision provides assistance;

Through providing supervision, the MS program seeks to meet the following objectives:

- i) to reduce re-offending and/or the severity of re-offending by providing some degree of control and/or assistance, by:
  - a) enforcing compliance with certain conditions which may force or facilitate social integration (such as maintaining employment), and
  - b) providing the threat of revocation, which may act as a deterrent.
- 2) to be humane (by assisting offenders with anxieties, practical problems involved in leaving prison);
- 3) to increase the rate at which inmates apply for parole (since they would now be supervised regardless);
- 4) to re-assure the public that virtually all penitentiary releases are supervised;

FIGURE 1

AMENDMENT	INTENT
<p>1. The definition of MS was reworded to exclude "to whom parole was not granted" and to emphasize that release on MS is as a result of remission. S.15(1) [as amended by S.C. 1976-77 c.53, s.38(1) proclaimed in force October 15, 1977]</p>	<p>1. The intent was to clarify the applicability of subsection 15(i) to parolees who had their paroles revoked or forfeited. These inmates had claimed that they were not subject to MS because of the wording "to whom parole was not granted".</p>
<p>2. Section 15 of the Parole Act was amended to permit inmates subject to MS the choice of remaining in an institution to complete their sentence. Inmates choosing not to be released on MS may subsequently choose to be released if more than 60 days remain in the sentence. S.15(3) [as enacted by S.C. 1976-77, c.53, s.28(2), proclaimed in force October 15, 1977]</p>	<p>2. The intent of this amendment was to permit an inmate the option of remaining in custody. The Senate Report (Goldenberg) recommended that an inmate should be entitled to refuse MS. The Senate Report recognized the difficulties inherent in the supervision and control of cases where the inmate rejected the idea of supervision.</p>
<p>3. The amendment provided for the period of MS to be interrupted when the inmate is convicted of a new offence while on MS and the sentence for that offence is consecutive to the sentence currently being served and the inmate has not been revoked by the NPB. S.15(4) [as enacted by S.C. 1976-77, c.53, s.28(2), proclaimed in force October 15, 1977]</p>	<p>3. The intent was to return inmates to the institution to commence serving their new sentences immediately prior to the completion of the MS period. Previously, inmates awarded consecutive sentences and not revoked were required to complete their MS period on the street before commencing their new term of imprisonment.</p>
<p>4. All persons sentenced to or transferred to any class of penitentiary on or after August 1, 1970 are subject to Section 15 of the Parole Act. S.15(5) [as enacted by S.C. 1976-77, c.53, s.28(2), proclaimed in force October 15, 1977.]</p>	<p>4. The intent was to preserve the proclamation date of the original provision relating to MS.</p>

- 5) to assist the police to know the whereabouts and movements of MS releases (by providing documentation and by providing for reporting to the police).

**A Statistical Description of the MS Program**

Although MS was introduced in 1970, few offenders were released on MS until considerably later, with the result that representative statistical data really are available only from 1973 on. Since 1973, MS has accounted for an average of 2,492 releases a year or 58.6% of all annual releases. Parole was responsible for an annual average of 1,392 or 32.7% and other releases for 8.7% or 372 (Table 1).

The supervision period for mandatory releases is much shorter than for parole. Thus, although almost twice as many inmates are released by way of MS, there are fewer MS cases under supervision at any point in time. Table 2 shows that the average number of federal and provincial parole and federal MS cases under supervision between 1975 and 1979 was 3,621 and 1,806 respectively. (MS applies only to federal offenders, however, and the relative numbers on parole and MS in the Table are skewed accordingly.)

Virtually all inmates, then, (90.2% in 1979) are released on either parole or MS. Several assumptions are made about parole and MS releases relative to comparative time served before release and offence characteristics. Tables 3 and 4 address these issues.

TABLE 1  
PENITENTIARY POPULATION AND NUMBER AND PERCENTAGE  
OF PENITENTIARY RELEASES BY TYPE, 1970-1979

YEAR	INMATE POPULATION	TOTAL RELEASES	RELEASE TYPE					
			Parole and Minimum Parole		M.S. and Continu- ation of M.S.		Other*	
			#	%	#	%	#	%
1970	7109	4004	2540	63.4	3	0.1	1461	36.5
1971	7484	3997	2369	59.3	80	2.0	1548	38.7
1972	8255	3453	1778	51.5	870	25.2	805	23.3
1973	9112	3447	1210	25.1	1780	51.6	457	13.3
1974	8503	4160	1432	24.4	2382	57.2	346	8.3
1975	8723	4092	1281	31.3	2431	59.4	380	9.3
1976	9326	3880	1056	27.2	2553	65.8	271	7.0
1977	9376	4630	1484	32.1	2824	61.0	322	7.0
1978	9313	4853	1565	32.3	2922	60.2	365	7.5
1979	9294	4745	1720	36.2	2565	54.1	460	9.8
Aver- age 1973- 1979	9092	4256	1392	32.7	2492	58.6	372	8.7

\* Includes expiration of sentence, provincial transfer, executive clemency, court order, death, and other.

SOURCE: OIS, Inmate Record System

PREPARED BY: Research & Evaluation Unit, National Parole Board -  
July 24, 1980.

TABLE 2  
PERSONS UNDER SUPERVISION FOR FEDERAL AND PROVINCIAL  
PAROLE AND MS ON DEC. 31, 1975-79

YEAR	PERSONS UNDER SUPERVISION	
	Parole*	MS**
1975	3558	1714
1976	3103	1705
1977	3608	1812
1978	4025	1923
1979	3810	1875
AVERAGE 75/79	3621	1806

\* These statistics include both federal and provincial parolees under supervision. Provincial parolees are estimated at 900 cases prior to 1979 and 500 in 1979. The decrease is due to the establishment of provincial parole boards in Ontario (September 1978) and Quebec (April 1979).

\*\* MS applies only to federal inmates.

SOURCE: NPS Quarterly Under Supervision Report

PREPARED BY: Research & Evaluation Unit,  
National Parole Board -  
July 24, 1980

Table 3 shows that the largest proportion of inmates admitted on a warrant of committal and released on parole had served less than two years prior to their release (830 or 66.1% in 1977 and 988 or 68.4% in 1979). The proportion of comparable inmates released on MS who served less than 2 years was 50.2% in 1977 and 57.1% in 1979. While about a third of those paroled are released within a year, very few persons are released on MS in their first year of incarceration (0.7% in 1977 and 1.9% in 1978). This is largely a function of the fact that MS occurs considerably later in the sentence - at about the two-thirds mark - than do most decisions to grant parole.

TABLE 3  
**TIME SERVED IN A FEDERAL INSTITUTION PRIOR TO RELEASE  
 ON PAROLE AND MS BY FEDERAL INMATES\* ADMITTED BY  
 WARRANT OF COMMITTAL, 1977 AND 1979**

TIME SERVED  (IN YEARS)	RELEASED ON							
	PAROLE				MANDATORY SUPERVISION			
	1977		1979		1977		1979	
	#	Cum. Frequ.	#	Cum. Frequ.	#	Cum. Frequ.	#	Cum. Frequ.
1	402	32.0	459	31.8	10*	0.7	25*	1.9
1 2	428	66.1	529	68.4	688	50.2	737	57.1
2 3	178	80.3	220	83.6	368	76.7	249	75.7
3 5	147	92.0	113	91.4	241	94.0	225	92.5
5 10	78	98.2	96	98.0	78	99.6	90	99.2
10 15	18	99.6	24	99.7	4	99.9	9	99.9
15 +	5	100.0	4	100.0	1	100.0	1	100.0
TOTAL	1256		1445		1390		1336	

\* MS applies only to persons sentenced to penitentiary. This would normally involve a sentence of two or more years. However, it can also apply to a person sentenced to less than two years, where he is ordered to serve in a penitentiary a sentence for escape, pursuant to S137(1)(b)(ii) of the Criminal Code, in which case he is subject to MS pursuant to S15(5) of the Parole Act.

SOURCE: OIS Inmate Record System

PREPARED BY: Research and Evaluation Section,  
 National Parole Board - July 14, 1980

One of the assumptions made about MS is that most offenders placed on MS fail under supervision, and that many of even most of them recidivate violently. Follow-up data on MS releases suggest, instead, that most offenders complete their supervision period without being revoked for technical or criminal reasons. Table 4 shows the outcomes for persons released on parole and MS in the years 1973, 1974 and 1975. (More recent years are not used because significant proportions of offenders released in later years are still under supervision, and cannot be counted yet as either successes or failures.)

As the Table indicates, most MS cases (61-63% in the three years) complete their supervision period without being revoked. The remainder, or 36-39% of the MS releases, are revoked and returned to penitentiary, including about 25% for a new conviction for an indictable offence, and 10-13% for technical reasons. By comparison, about 16% of the full parole releases in 1973, 1974 and 1975 were revoked for a new indictable offence committed while under supervision, and another approximate 10% were revoked for "technical" reasons. Some 65-70% of full parole cases completed their supervision period without being revoked (and a further 3-9% of full paroles in those years were still under supervision as of December, 1979).

Overall, these figures suggest that more offenders released on MS succeed than fail. Of course, it can be argued that many of the criminal violations committed by MS cases and parolees go undetected, or that so-called "technical" revocations actually are a product of "known" but unproven criminal activity, or are made to prevent imminent criminal acts. It is impossible to say to what extent this may be the case.

Violent criminal activity committed by MS cases is, of course, of particular concern. Table 5 shows the types of offences for which MS and parole cases released from 1975 to 1979 were reconvicted during supervision, and for which they were revoked up to June 1980. It can be seen that most of the conditionally released offenders who returned to penitentiary with a new conviction between January 1975 and June 1980 have committed a property crime: 60% of MS cases revoked with a new conviction for an indictable offence were convicted of theft, fraud, possession of stolen goods, or break and enter. A further 12.5% were convicted of robbery, which involves at least the threat of violence, if not an act of direct violence. A final 12.1% returned for narcotics offences, or other miscellaneous crimes.

MS cases do not in fact appear from these figures to commit violent crimes under supervision in proportions which are a great deal different from parolees. In fact, 27.5% of the revoked parolees returned for a violent crime or robbery, as opposed to 27.7% violent-crime or robbery revocations for MS. However, the proportional incidence of assault reconvictions is significantly higher for MS cases (5.9%) than for parolees (2.4%), but for robbery is somewhat lower (15.2% of MS reconvictions are for robbery as opposed to 18.0% of parole reconvictions).

The absolute numbers of MS cases reconvicted while under supervision are, however, considerably higher than for parole. Almost 2,600 of the 2,303 offences committed in the period were committed by MS offenders. (This is partly because as we have seen, 26% of MS cases return with a new conviction while only 16% of parolees do, and partly because many more offenders are released on MS than on parole: about 13,000 MS releases and 7,000 parole releases occurred during those five years, for example.) In particular, no fewer than 52 homicides were committed in the five-year period by persons released to MS, or two percent of the total reconvicted.

TABLE 4  
 OUTCOME (TO JUNE 1979) OF PAROLE AND MS RELEASES  
 IN 1973, 1974 AND 1975

Release Type and Year	Total Releases	NUMBER AND PERCENTAGE OF CASES			
		Revoked Without New Offence	Revoked With New Offence	Supervision Period Successfully	Still Under Supervision
<b>MANDATORY SUPERVISION</b>					
1973	1,780	234 (13.1)	445 (25.0)	1100 (61.8)	1 (0.1)
1974	2,382	251 (10.5)	616 (25.9)	1506 (63.2)	9 (0.5)
1975	2,431	329 (13.5)	623 (25.6)	1477 (60.8)	2 (0.1)
<b>FULL PAROLE</b>					
1973	1,191	116 ( 9.7)	219 (18.4)	916 (68.5)	40 (3.2)
1974	1,359	125 ( 9.2)	224 (16.5)	945 (69.6)	65 (4.8)
1975	1,264	141 (11.1)	181 (14.3)	829 (65.6)	113 (8.9)

TABLE 5  
 OFFENCES COMMITTED UNDER MS AND PAROLE  
 BY FEDERAL INMATES RELEASED FROM  
 JANUARY 1975 TO DECEMBER 1979 AND  
 READMITTED WITH A NEW CONVICTION AS OF JUNE 1980

OFFENCE TYPE	PERSONS REVOKED FROM PAROLE		PERSONS REVOKED FROM MS	
	No. of Cases	% of Total	No. of Cases	% of Total
<b>CRIMES AGAINST THE PERSON</b>				
Murder	9	1.3	31	1.2
Manslaughter Attempted	9	1.3	21	0.8
murder	0	0.0	11	0.4
Rape	10	1.4	25	1.0
Sexual Assault	4	0.6	23	0.9
Other Assaults	17	2.4	153	5.9
Kidnapping	6	0.9	15	0.6
Other	12	1.7	45	1.7
ROBBERY	127	18.0	394	15.2
<b>CRIMES AGAINST PROPERTY</b>				
Break and enter	192	27.2	737	28.4
Theft, stolen goods	148	21.0	615	23.7
Fraud	53	7.5	214	8.2
NARCOTICS	49	7.0	98	3.8
MISCELLANEOUS	69	9.8	216	8.3
<b>TOTAL</b>	<b>705</b>	<b>100.1</b>	<b>2598</b>	<b>100.1</b>

SECTION III  
CONSULTATION PROCESS AND RESULTS

When the present MS Committee took over from its predecessor, we immediately were faced with the aboriginal dilemma of any government committee: what precisely was our mandate? We had been told only that the Ministry's Senior Policy Advisory Committee (SPAC) wanted an evaluation of MS. Later, SPAC specifically asked us to comment on the feasibility of assessing the extent to which MS meets its objectives. After considerable discussion, the Committee reached the conclusion that (1) it was impossible to assess definitively whether, under what circumstances, and with whom MS was effective; (2) the MS question is a much broader question than even the question of "reducing renewed criminality", and deserved consideration on the basis of all the other concerns, lesser and greater, which had been expressed about it.

It probably bears explaining why an evaluative research methodology was rejected by the Committee. First, a thorough evaluation would, in our estimation, have taken three to five years, and SPAC had indicated that it required at least interim conclusions in a much shorter time. Second, there would be enormous legal and political problems involved in setting up the "experiment" which would come as close as was needed to a sound evaluative strategy; most importantly, certain offenders would have to be not only de facto free of supervision (since we would have to compare MS to the complete absence of MS) but legally free of the possibility of being returned to penitentiary under circumstances short of a new conviction and sentence of two years or more. We doubted the acceptability of such an experiment, and SPAC agreed. The other possible research approach - to compare the pre-1970 situation of direct discharge to a later period of MS - had major methodological difficulties, including non-comparability of statistical measures and the confounding effects of a wide range of intervening changes in correctional and other criminal justice practices. Third, a great deal of previous research had already been done on the effectiveness of community supervision, and while the evidence was not, in the main, encouraging, the Committee was acutely aware of the still-raging debates among the "experts" about precisely what could and could not be "proven" to an acceptable degree of confidence by these studies. And finally, as suggested above, the Committee did not believe that the MS issue was confined to the question of effectiveness. We believed, for example, that even if definitive proof existed of supervision effectiveness, there would still be calls for changes from certain bodies inside and outside government.

It was consequently decided, with SPAC's approval, to proceed to a consultative strategy rather than attempting a definitive statement of "How far does MS meet its objectives?" The Committee therefore sent out a statement or brief on what was then known about MS, including eight concerns we had perceived about it, and asked respondents to tell us

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what positive and negative effects they thought MS had, how important and valid they thought the current concerns were, and what they thought should be done about MS. (We also sent them a list of 17 possible ways to modify MS.)

CSC and NPB staff, the National Joint Committee of Chiefs of Police and Federal Correctional Services (CACP/FCS, an existing consultative mechanism used by the Ministry), offenders, the Union of Solicitor General Employees (USGE), and the Canadian Association for the Prevention of Crime were invited to respond to the brief. Because of time limits, the last organization was unable to prepare a formal response to our brief, but is expected to make a more comprehensive submission to the Release Study. Some respondents did, however, reply from each of the other groups.

From November 1979 until May 1980 the initial consultation took place with "the field". NPB board members and staff in each region were invited to respond; within CSC, the brief was circulated to at least two parole offices and to one maximum, medium or minimum security penitentiary in each region. The inmate Committee in those same penitentiaries received the brief, and individual offenders reporting to the parole offices were invited by staff to respond. The responses were then summarized on a regional and national basis. The summaries were returned to participants for comments. (See Appendix A.)

With the assistance of these summaries, the Committee developed a preferred option that addresses and, it is hoped, could resolve many of the problems that MS currently presents.

In all, we received 130 separate "individual" or "group" responses to the brief. (A "group response" occurred when a number of respondents who received the brief got together to discuss MS and produced a single report, rather than a number of individual ones.) Of these 130 responses, 32 were from individual penitentiary (CSC) staff; 29 were from individual parole (CSC) staff; 17 were from groups composed mainly of parole (CSC) staff, at times with others invited; 4 were from groups of penitentiary (CSC) staff; 2 were from unidentified CSC staff members; 10 were from individual inmates; 6 were from inmate committees or groups (including one group of 243 slips gathered in a "polling" process of some sort); 18 were from individual offenders out under community supervision; 9 were from groups of NPB staff or board members; 1 was from the USGE; 1 was from the National Joint Committee; and 1 was from an individual police officer.

#### A General Note of Caution about Interpretation

The representativeness of the received information is not known. Most of the 17 possible options listed in the brief received fewer than 15 clear-cut "reactions" from among a possible 130 responses. However, a broad cross-section of opinion was obtained, and a great deal of

useful information and comment resulted, for which we are grateful. We wish to emphasize, however, that this was a consultation, not a "referendum", and our conclusions are based on our own analysis and weighing of the factors involved, though our conclusions are of course informed by what we learned in the consultation.

#### What they said about Positive and Negative Effects of MS

Most Ministry employees who spoke on the subject thought MS had positive effects on offender recidivism; most offenders disagreed. Parole staff seemed somewhat more positive overall than institutional staff. Belief in the value of MS seemed lower overall in the Ontario region. The CACP/FCS National Joint Committee position speaks only to the question of "potentially dangerous" offenders on MS; it claims that "existing resources" are inadequate to handle such cases on MS and that "enforcement [of] constraints upon the movement" of such cases is inadequate.

Additional benefits from MS noted by respondents, were: its delaying effect on recidivism (until Warrant Expiry Date or close to it); its incapacitative effect in "getting off the streets" offenders who could not have been touched through other criminal justice processes; its punitive or deterrent capacity (through the strategic use of suspensions or revocations); its impact on savings in formal criminal justice processing for crimes executed under supervision; and its effect on penitentiary populations (by letting offenders out after two-thirds of their sentence).

Some detrimental aspects of MS were also acknowledged by most respondents. Staff and offenders seemed to agree that MS had the undesirable effects of engendering offender bitterness, making parole officers' jobs more difficult in many cases, and increasing public concern about parole generally. The CACP/FCS response refers to the "police/corrections discord" caused by "current police and general public concepts of the operation of MS; and the differences between TA, Temporary Parole (sic), Day Parole and Parole [being] misunderstood [and] misinterpreted". The police response qualifies this problem by saying that "the police concerns are, in fact, occasioned by the very small percentage of potentially violent or dangerous offenders".

Further detrimental effects offered by the staff respondents included the "paperburden" involved, especially for "revolving door" offenders; complications to sentence administration; and the creation of "unrealistic expectations" for MS offenders, which result in a "no-win" situation. Effects mentioned by offenders included the impact on offenders' anxiety about succeeding in the community; due process violations in revocation proceedings and the "major impact" of MS on institutional "rioting" and inmates' willingness to participate in penitentiary programs.

### Concerns about MS: What they said

In our brief, we listed eight concerns we had perceived about the MS program, and asked respondents to react to them: were they still current, and how significant were they? The substance of these concerns is addressed later, in Section IV: below, we note only what our respondents said about them.

The first concern, over difficulties experienced by parole officers in dealing with MS cases, was acknowledged by parole officers, particularly in Ontario, as still valid. MS cases are often poorly motivated, without release plans or resources, and contribute to the "revolving door syndrome" more than do parolees, both because parolees have a lower overall risk of recidivating and because parolees who have successfully gotten through their (typically) longer supervision periods to the point where warrant expiry is close, are probably going to finish out their supervision successfully. However, many parole officers took the view that the greater needs presented by many MS cases were merely a part - often the more "challenging" part - of the job. MS cases were seen by this group as in need and deserving of greater attention than were parolees.

A second concern, seen as the "automatic" (i.e. statutory) release of "dangerous" offenders as a result of remission, was also acknowledged to be significant, and in fact formed the real substance of the resolution/response received from the National Joint Committee of the CACP/FCS. However, with the exception of the National Joint Committee (which recommended that all offenders, unless paroled, stay in penitentiary until warrant expiry) and a few others, most respondents saw this concern as not being susceptible to easy solutions. The alternatives were seen by most respondents as worse: releasing higher-risk offenders without any community supervision; having two systems of earned remission (one for the dangerous and one for the non-dangerous); or placing all releases until warrant expiry in the hands of NPB.

Concern over the "revolving door syndrome" of rapid re-releases of revoked offenders from penitentiary, varied a great deal but was present in responses from all CSC regions. There was also a great deal of disagreement - even confusion - about the "real" causes of this syndrome. A number of respondents recommended that revoked MS offenders be ineligible for further release other than through parole.

Offender resentment of MS was acknowledged by most respondents but was seen as a critical concern only by offenders, and by some CSC staff in the Ontario, Quebec and B.C. regions.

NPB concern about being "blamed" for MS failures was also not seen as a significant concern. "That seems to be the reality of today" was a frequent view, and more public education was seen as a solution by many.

Concern over MS's contribution to the penitentiary population, except among offenders, was minimal. A frequent response was that technical revocations for MS were usually serious and justified, though a few CSC staff in Quebec and NPB staff in Ontario advocated reducing conditions to a simple requirement to "obey the law".

Concern about MS's effects on the parole rate, when expressed at all, was not strong.

The costs of MS were generally seen to be "worth it", except to most offenders. These costs were, moreover, seen as small compared to the cost of incarceration for the equivalent time period, or to the costs of the new crimes and criminal justice processing of these new crimes which MS supposedly alleviates through the judicious use of revocation.

### What they said about Options

As noted above, most of the 17 possible options we listed in our brief were not discussed directly by more than a minority of the respondents. Nevertheless, implied positions among most groups were fairly apparent: offenders wanted to return to the pre-1970 system of direct discharge at two-thirds as a result of remission; most (though by no means all) correctional staff favoured retention of the basic system currently in operation, though with variations; penitentiary staff were, overall, more likely than were parole officers to favour return to the pre-1970 system, though no real consensus emerged in either group.

Eight of the 17 possible options attracted a fair amount of comment, either positive or negative, or both. Since these options, and others, will be discussed in detail in a later Section, the reader is referred to Appendix A for a summary of the degree of interest shown in each and the arguments offered for and against each by the consultation participants.

**SECTION IV**  
**CONCERNS ABOUT THE MS PROGRAM**

This section of the report provides a brief description and review of the major concerns raised about the concept or operation of the MS program. Wherever possible, an attempt is made to provide evidence explaining, supporting or countering the concerns discussed.

**Offender Attitude**

The MS Program has been said to engender a good deal of anxiety and resentment among inmates. They see remission as time off their sentence which they have earned by their behaviour while incarcerated, and question why this earned time off should have to be served under supervision on the street. Further, they feel it is unfair that they are released under the same conditions as parolees when they have been refused a parole release.

Being under supervision also entails the possibility of revocation, and thus having to serve in the institution time which has supposedly already been remitted. Further, offenders on MS may feel at particular risk to be revoked because they are subject to the same system, and sometimes the same supervisors, which have deemed them incapable of succeeding on parole. They also question the equity and fairness of revocation decisions.

Finally, offenders may be particularly sensitive to the inequities caused by differences from other jurisdictions, such as the provinces or various American States like Georgia, where remission is real time off sentences. They are also well aware that until August 1970, the Canadian federal system operated in that way as well.

Offender attitudes toward the MS program may have negative influences both within institutions and on the street. Poor morale may lead to behavioural problems during incarceration, and this may be enhanced by a reduction in the motivating effect of earned remission. Under supervision, these offenders may be particularly hostile and uncooperative. Those who have been revoked from MS may be particularly difficult when re-incarcerated.

Although inmates now have a choice as to accepting MS or remaining incarcerated until the end of their sentence, this is seen as a "poor man's decision". It does not resolve what they see as the major inequity entailed by placing their remission period under correctional control.

It is clear that the inmates do not have a valid legal argument on which to base their case against MS. Nevertheless their resentment is real and strongly felt, and thus a major concern.

**Public Attitudes**

The public often express fear and concern relating to any form of early release from incarceration. They question whether sentences should not be served entirely in institutions, and are particularly sensitive to automatic, largely non-discretionary early release.

In addition, there is extensive public confusion over the role of the NPB in the release of MS cases, which often results in failures on MS being attributed to parole.

The public reaction about MS, and particularly its relationship to parole, may contribute to a lack of public support for parole programs as a whole. This creates difficulties both for NPB and parole officers in effectively using community resources and agencies. If this lack of public support were to lead to a reduction or abolition of parole, it would involve, at least in the short term, considerable costs in terms of penitentiary overcrowding, new capital construction and longer average time served in institutions.

**Parole Officer Concerns**

Some parole officers feel that the introduction of MS brought about a shift in their roles, from one of assisting inmates released on their own merits to one of imposing controls on inmates released automatically. For those officers whose background and interest lie with the former orientation, the shift may have been very unwelcome.

MS cases sometimes present more difficulties for their parole supervisors. The inmate resentment of and hostility towards the program may prevent, or at least delay, the development of cooperation and trust which many feel is necessary for the supervision relationship to be effective. The lack of adequate plans upon release of many of these inmates, the release of some into very high risk situations, the insufficiency of resources to assist them, and the negative attitudes of the public and the police increase the difficulty of dealing with already very resistant cases. Officers may also feel at some personal risk caused by the potential dangerousness of certain MS cases, and may perceive a loss of control over them as warrant expiry date approaches. "Revolving door" cases (see below) are a particular strain on parole officers.

The factors described above, the inevitable failures on MS (or to a lesser extent on any other form of conditional release), and the consumption of time that these cases require, combine to increase parole supervisor frustration and may have a damaging effect on job satisfaction.

**"Automatic" Release of Potentially Dangerous Offenders**

The fact that release on MS occurs as a result of earning remission, and not of a deliberate act of granting release on an individual basis, has raised concerns about the lack of a selective mechanism, particularly for offenders who may be dangerous on release. It should be noted that in this instance it is actually release as a result of remission which is being questioned, not the MS program per se, since it in effect adds controls to what used to be an uncontrolled release. Nevertheless it is included here because discussions of MS inevitably draw out this concern.

Although it is recognized that only a very small percentage of offenders are potentially dangerous and that "dangerousness" is almost impossible to predict with an acceptable degree of accuracy, there is no doubt that the few sensational failures may jeopardize the whole release system, cause public fear and contribute to what the police have called "police/corrections discord".

**The "Revolving Door Syndrome"**

This is a name which attaches to rapid re-releases from penitentiary of offenders who have been revoked from MS.

It causes some dismay to the police, who may have expected the offender revoked on conviction of an indictable offence to be off the streets for a good period of time. The credibility of claims about the control over offenders provided by release systems may be brought into question. Parole supervisors may find that it reduces the influence of threat of revocation as an offender management tool. Institutional staff and parole supervisors complain about the paperburden it creates in revocation and admission procedures.

The committee has been unable to ascertain the causes and future of the revolving door syndrome. It was thought that it might be due to the former practice of automatically re-crediting earned remission upon revocation. As a result of Bill C-51, only earned remission accumulated before 15 October 1977 is automatically re-credited; all remission accumulated after that date is under the authority of NPB, which as a matter of policy, will recredit only in cases of "undue hardship". It was felt that as the number of offenders still in the system with old earned remission to their credit diminished, the problem would disappear. As can be seen from Table 6 below, however, there appears to have been no clear reduction in rapid re-releases in the last four years.

**TABLE 6  
INMATES RELEASED ON MANDATORY SUPERVISION\* AFTER SERVING 60 DAYS  
OR LESS DURING LAST QUARTER OF CALENDAR YEARS 1976-1979**

YEAR	TIME SERVED				TOTAL INMATES
	less than 3 days	3-10 days	11-30 days	31-60 days	
Oct.-Dec. 31, 1976	10	12	12	19	53
Oct.-Dec. 31, 1977	18	10	11	25	64
Oct.-Dec. 31, 1978	8	10	16	26	60
Oct.-Dec. 31, 1979	6	13	15	19	53

SOURCE: Inmate Record System, June 1980.

\* includes releases on MS continued. Also includes inmates whose previous release type was parole rather than MS (e.g. 8 in 1979).

This suggests that only part of the revolving door syndrome can be attributed to automatic re-crediting of remission, since no significant decrease in revolving door cases is apparent. Part of it may also be due to the provision, also contained in Bill C-51, that time served under supervision before revocation is to be counted towards sentence completion. Thus offenders revoked without a new sentence towards the end of the supervision period would have only a short period left until warrant expiry date. Finally, in those cases where offenders are revoked upon conviction of an indictable offence, rapid re-release must largely be attributed to judges awarding very short or concurrent sentences for the new offence. We must assume that in these cases there were reasonable grounds for the light penalty.

Eventually, of course, there will be no inmates left in the system who have the old Earned Remission standing to their credit. At that point, that part of the revolving door syndrome caused by automatic re-crediting will disappear.

It should be noted that not all reaction to the existence of the revolving door syndrome is negative. Some feel that a brief period of reincarceration is a useful therapeutic tool.

**Effects on Parole and Sentencing Decisions**

There is some speculation that judges award longer sentences to take into account the fact that approximately 1/3 of the sentence will not be served in an institution. Once again, this is a concern not

directly related to the MS program, but to the larger subject of release as a result of remission. Since this form of release has existed since long before the MS program, which was instituted in order to provide supervision during the remitted portion of the sentence, it was not possible for the Committee to test the veracity of this concern.

A related concern suggests that NPB might have become more conservative in their releasing behaviour following the introduction of MS. Since all early releases would be supervised, it would no longer be necessary to grant parole to borderline risks in order to ensure supervision. The graph below (Figure 2) indicates that this may be a relevant consideration. The percentage of eligible inmates granted parole, which had been rising prior to the introduction of MS, peaked in 1970 and 1971 at about 52% and fell rapidly after that. It appears now to be stabilizing at about 30%. However, many more factors occurring in the 1970's may have caused the parole rate to decrease, including changes in the penitentiary population, and the all-time peak in the parole rate which occurred in 1970.

It may have been hoped that the introduction of MS would increase the number of inmates seeking parole, and thus partially counteract the above-noted effect. Because offenders released under this program would be, like parolees, under supervision and subject to revocation until warrant expiry, the incentive would be reduced to choose release by remission over a parole granted late in the sentence. As can be seen in the following graph, there is no clear evidence that this in fact occurred. The increase in parole applications began in the mid-sixties and applications remained fairly stable after 1971.

If it is true that MS has resulted in more conservative parole releasing behaviour, this suggests that one effect of the program may have been an overall increase in time served in institutions.

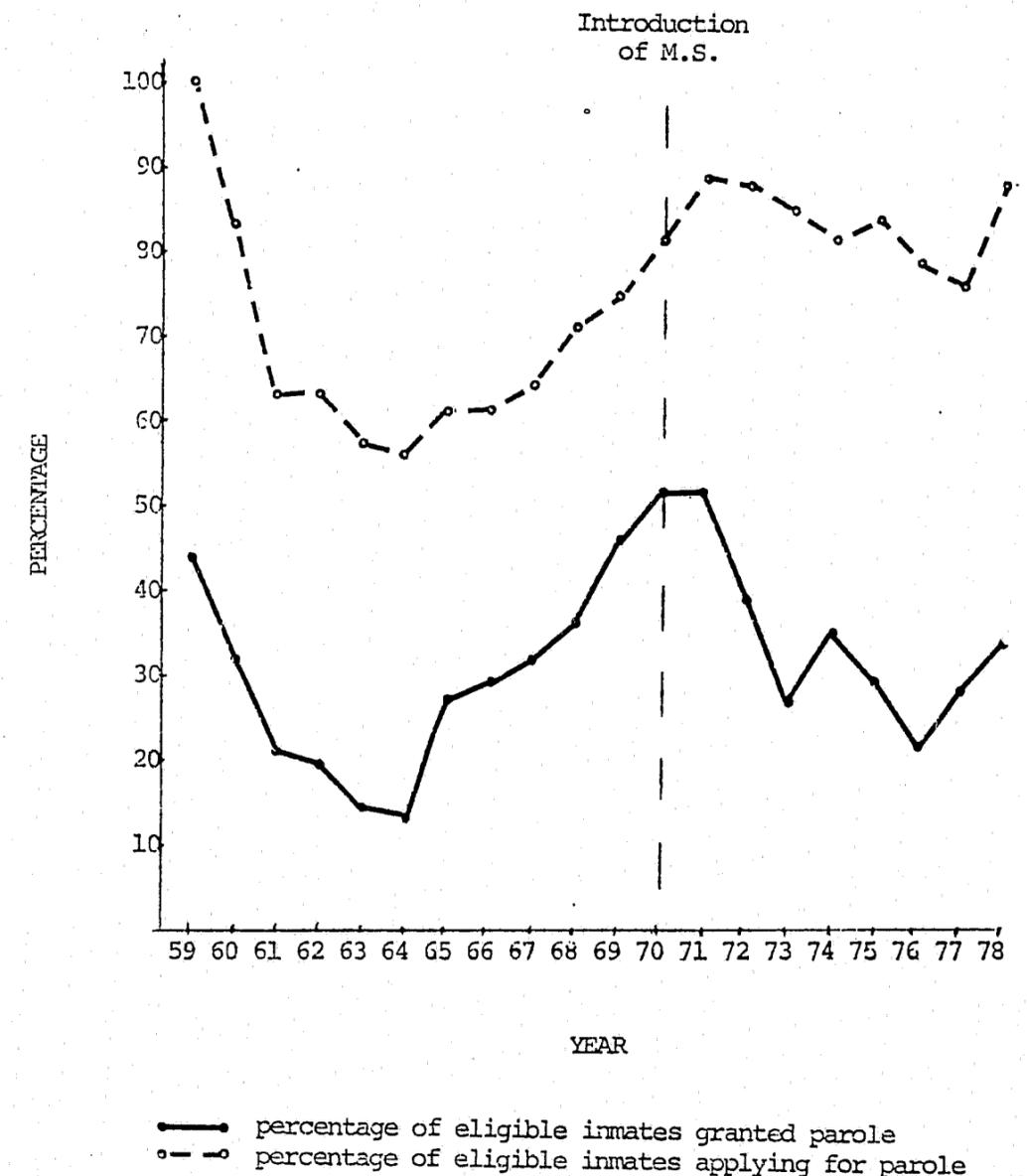
Assumptions on which Program is Based

The introduction of the MS program was fundamentally based on two assumptions: that supervision of parolees is a useful intervention; and that if it is useful for the better risk offenders released on parole, it should be at least as important for the higher risk offenders released as a result of remission.

Both of these assumptions have been called into question. Some research literature suggests that supervision has no effect, or at best a slight delaying effect, on recidivism, and that any delaying effect is largely due to the liability to revocation/forfeiture (i.e. the risky legal status) rather than to anything the parole officer does (see, for example, Axon, 1980; Waller, 1974).

FIGURE 2

PERCENTAGE OF ELIGIBLE\* INMATES APPLYING FOR AND GRANTED FULL PAROLE 1959-1978



SOURCE: CSC Manual Statistics

\*eligible inmates are defined as inmates who applied for parole or received an automatic parole review in each year.

Related to this issue is the preventative effect of so-called technical revocations. Many have argued that these revocations are invaluable when compared to the crimes that might have been committed, and presumably were about to be committed, by revoked offenders; however, the research literature available to date on the subject shows little to support the contention. In Canada it has been found that rates for parole revocation with conviction for indictable offences were highly correlated with lagged parole release rates, while rates for parole revocation without conviction were not. Rates for MS revocation with conviction were also correlated (but not as highly) with lagged parole release rates, but rates for MS revocation without conviction showed a negative relationship with parole release rates (Hann, 1980). One would have expected that as parole rates increase (and thus higher-risk offenders are released), not only would revocations with conviction increase, but those without conviction would also increase, if the revocations were truly preventative.

Further, research in California has found that neither increase nor decrease in return rates for technical violations on parole affected rates of return for new felony commitments (Burkhart, 1976).

Finally, it has been argued that even if the assumption of the effectiveness of parole supervision were true, it does not necessarily follow that it would be true for MS cases, who may be quite different from parolees in motivation and capacity. What is in question here is whether supervision originally geared to inmates released through a discretionary parole system can be successfully grafted onto offenders released by law as a result of remission.

#### Costs

A consideration of the costs of the MS program must include both its effects on the penitentiary population and thus its incarceration costs, as well its release system costs.

In the course of 1978, there were about 1000 returns by those on MS to prison, approximately 50 percent of them revoked without new indictable offences. An attempt to estimate the impact of the MS program on penitentiary population, excluding those whose new sentence was such that they would have been sent to federal institutions anyway, arrived at a suggested contribution of from 319 to 433 inmate/years in 1978 (Canfield and Hann, 1978). At approximately \$2,800 marginal cost and \$25,000 average cost per inmate/year, this amounts to about \$1,000,000 marginal cost and about \$9,000,000 average costs. Of these, 170 inmate/years are due to returns for revocation without offence, or about \$500,000 marginal and \$5,000,000 average costs.

These cost figures do not include the cost of increased penitentiary population related to the possible increase in overall time

served as a result of more conservative parole releasing behaviour, (as discussed above under Effects on Parole and Sentencing Decisions).

Finally, in terms of the release system costs, one must consider the cost of supervising offenders on MS (estimated at over \$3 million, based on an average cost\* of \$1,900 per offender/year), and in addition, the cost of preparing pre-release reports and community assessments on offenders about to be released on MS, and the costs of NPB time needed to make revocation and re-release decisions on MS cases.

Given the current questioning of the effectiveness of MS, these quite substantial costs are a source of some concern.

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\* Average cost is determined by dividing the total supervision budget (both parole and MS) for a year by the number of offender/years (since not all offenders are supervised for a full year) of supervision during that year.

**SECTION V**  
**SUGGESTED MODELS AND OPTIONS FOR MODIFYING MS**

The MS Committee has received and developed a large number of suggested options for dealing with the MS program. These options range from suggestions for minor adjustments to proposals for fundamental changes to the entire basis of and rationale for MS. They are directed at a wide variety of concerns, and seek greater effectiveness in achieving a number of different objectives. As discussed in Section III, a list of 17 possible options for MS was sent out by the Committee to consultation participants. These received comment by some, though by no means all, respondents.

This Section discusses those options which have attracted most attention or which seem to be the most significant. For purposes of analysis, and to avoid a lengthy and probably confusing discussion, the Committee has arranged these options under five general types, which appear to respond to a certain type of concern about or view of MS. Apparent advantages and disadvantages of each general model and major alternative option are discussed.

**General Models for MS**

**1. Status Quo Model**

There are a number of perceived and demonstrated advantages for retaining MS in its present form. While, as discussed in Section III, the Committee felt, and still feels, that it is impossible to make definitive statements about the impact that the supervision of MS cases has on their likelihood and seriousness of re-offending, there is no question that MS has other objectives and latent functions, some of which are clearly fulfilled.

- Prior to the introduction of MS in 1970, an inmate who did not receive parole was released to "direct discharge". It was not possible to return discharged offenders to confinement except through the laying of a criminal charge and a judicial decision to remand or to impose a sentence of imprisonment after conviction. The introduction of MS enabled the correctional system to return offenders to penitentiary for breach of conditions or for new crimes through a process which can be easier and quicker than formal judicial processing. Of all those offenders released on MS in any given year (2565 MS releases in 1979), in fact, about half eventually return to penitentiary, and of those returned, about a third are returned to penitentiary for a "technical" revocation: one which does not involve a conviction for a new offence.\* Nevertheless, many of these "technical" revocations

\* Source: OPS Historical Reporting System, June 1980; and Solicitor General Annual Report, 1978-79.

may involve a new crime which has occurred or which is suspected of being about to occur; one prominent view which emerged out of the consultation with field staff was that the label, "technical" revocation, frequently does involve new crime. MS thus enables return to a penitentiary for crimes which would be too difficult, and certainly considerably more expensive, to establish in court. (Admittedly, significant civil libertarian objections can be made to this approach.) It is also believed to result in "preventive" returns of persons who are believed to be about to recidivate, thus creating a savings to the potential victim, as well as to the criminal justice agencies which would have had to become involved in dealing with the crime.

- The introduction of MS in 1970 also enabled the police to obtain information about the whereabouts and movements of penitentiary releases not granted parole. Police are informed of an MS offender's impending release, his destination, and other pertinent facts. Many parole officers meet regularly with police to share information about recent release, including identification photographs which police may not have. MS cases are also obliged to report to the police on a monthly basis (though some police departments have voluntarily opted out of this reporting process), and this information allows some monitoring of the movement of cases, though the submission made to the Committee by the National Joint Committee of the CACP and FCS complained that for "potentially dangerous" offenders, the "enforcement [of] constraints upon [their] movement" is inadequate. Police are, at any rate since 1970, informed in advance of "who's going to be in town", regardless of the method of release from penitentiary.
- As has been seen earlier, the principal rationale for introducing MS was to provide assistance and control, through supervision, for the "worse risks" (non-paroled offenders), rather than just for the "better risks" (parolees). This rationale has come into question in the last decade, but as we have said above, the Committee feels that no definitive statements on the rehabilitative or reintegrative effects of supervision are possible at this point. Certainly, many field staff feel they are effective with certain offenders, though by no means with all.
- As distinguished from the rehabilitative effect of MS, there is also at least a potential deterrent effect to MS. That is, the mere fact of knowing one is under supervision and subject to suspension for up to 14 days at the discretion of the parole officer, or to return to penitentiary at the discretion of NPB, may have a preventive effect on some offenders. There is, in fact, some evidence to support this notion. About 10-15% of persons released on MS in any given year are eventually returned to penitentiary for a new crime committed after the expiration of the MS period. Of these, more than twice as many (or about a

fifth of all such returns) are returned within the first three months after expiration as are returned in any subsequent three-month period. This may suggest an offender reluctance to commit crimes while still under supervision, since this reluctance seems to take a notable drop shortly after the removal of MS controls.

- MS may also provide certain types of practical assistance to offenders (such as temporary housing, cash, or jobs) which serve a humanitarian function, quite apart from their possible rehabilitative value. Many MS cases are released from a highly secure environment, and they experience very real difficulties in coping with the free-world environment for the first few weeks or months. For this reason, practical help is often the primary focus of the parole officer's attentions for the first weeks of supervision. No data are available, unfortunately, on the frequency with which this type of "delivery of service" successfully occurs, but offenders who participated in the consultation were most likely to mention practical help, if they mentioned any positive aspect of MS.
- MS also permits assurances to the public that virtually all persons leaving penitentiary will be subject to some form of control and assistance after release. While this fact is probably imperfectly understood by most members of the public, the removal of MS (by return to a system of direct discharge) would certainly not go unnoticed by significant numbers and members of the public.

The "status quo" in MS, then, has certain effects, though the exact nature and magnitude of these effects is not known. Certain disadvantages have also been traced to MS. Some of these have been referred to earlier, as "concerns": MS's effect on offender attitudes, on the strength of the "motivating" effect of Earned Remission, on public support for early release generally, on parole officer frustrations (and paperwork), on parole grant rates, on penitentiary populations, and on the costs and caseloads of penitentiaries and community supervision.

Some other possible disadvantages (or advantages, to some) of MS are: that it merely provides more opportunities for failure by the individual (through technical revocations); that offenders on MS are treated more harshly by police, judge, and parole officials; and what some offenders consulted referred to as the "major impact" which MS has in increasing institutional violence and decreasing inmate willingness to participate in programs.

Certain other concerns have arisen during our study, but some of them are, or seem to be, more precisely tied to phenomena other than MS. The revolving door syndrome, while it could not exist without the existence of MS, would appear to be caused by a combination of

recrediting of former Earned Remission, street time credit, the administration of Earned Remission after return to penitentiary, and the maximum limit of the sentence chosen by the judge (warrant expiry date).

"Automatic" release of offenders, especially potentially "dangerous" offenders, after serving about two-thirds of the sentence, is also caused not by MS, but by Earned Remission. MS adds community supervision for the last one-third of the sentence of non-paroled offenders. Concern expressed over "dangerous" offenders is also a concern which should more properly be addressed to sentencing judges and crown prosecutors, who rarely attempt to invoke "dangerous offender" (potential life) sentences.

## 2. "Improve supervision" Models

The Committee came across a variety of suggestions whose basic aim was to improve the effectiveness of MS at influencing offender behaviour. These suggestions included: that minimum standards be relaxed in order to enable the parole officer to devote more time to difficult cases and less time to offenders who will probably successfully complete their supervision (or that minimum standards be relaxed in order to enable the parole officer to devote more time to cooperative offenders who are amenable to help, and less time to intractable offenders); that the amount of paperwork and administration done by parole officers be reduced in order to free a greater proportion of their time for working with offenders; that parole officers concentrate on providing direct practical assistance with jobs, etc., and not attempt any counselling or "traditional casework" activities; that more volunteers be used in community supervision; that, whenever possible, release plans be formulated with MS cases; that better sharing of information take place between police and parole officials; that the legitimacy and usefulness of "punitive" or "therapeutic" suspensions (not intended to result in revocation) be recognized; that more offenders be released through spending the last part of their sentence in a CCC or CRC; and that greater legitimacy and encouragement be given to innovative parole officer strategies, including officer specialization in certain types of cases, small intensive caseloads, and purchase of services in the community (such as training courses or psychiatric counselling) for the offender through a special fund.

Over the last 5-10 years, corrections has been going through a period of uncertainty about effectiveness, occasioned by the "nothing works" doctrine. The effectiveness question is indeed a critical one to MS; there is little doubt that if there were clear and convincing evidence that MS had no beneficial effects on offender recidivism, it would probably not survive, despite its other advantages discussed above.

However, as discussed earlier, the MS Committee does not feel that definitive statements about the effectiveness of community supervision will be possible for some time to come. Perhaps more importantly, though, it is extremely doubtful and probably undesirable that community (parole and mandatory) supervision be abolished in the foreseeable future, for a wide variety of reasons, including the lack of definitive proofs about effectiveness, but also reasons of costs, (especially compared to the costs of imprisonment, whose effectiveness has also been seriously questioned), distribution of discretionary power, and humaneness.

Given that community supervision will be around for some time, and that field staff morale is affected by confusion over the legitimacy of "helping" interventions in the era of the "opportunities model", it seems to the Committee that a higher priority should be placed on "action research" experiments designed to develop and test the effectiveness of new ideas for supervision.

While no new treatment ideas can guarantee success in a given case, the literature does suggest certain directions in which supervision could grow and principles which it should embody. The Committee feels that individual parole offices are the best starting place for experimental projects of this type and that a special fund should be made available through CSC Headquarters for defraying any expenses incurred in implementing innovative strategies. Administrative obstacles to innovation, such as minimum standards, for supervision should be relaxed for approved experimental projects.

Despite the above, however, improving community supervision, including MS, is still an intent, not an actuality, and cannot really at this time be regarded as a true option for dealing with MS.

### 3. "Increase controls" Models

The Committee came across a number of suggestions which could be grouped together because they argued for increased controls at some part of the MS system. The available models seem to be few, and deserve individual attention.

- Permit "dangerous" offenders to be held in penitentiary until warrant expiry (no MS)

Under this option, offenders found to be "dangerous" would not be placed on MS, but would serve the full sentence until warrant expiry. Since MS is created by Earned Remission, this option would be created by making offenders considered "dangerous" ineligible for remission, or eligible only for a limited form or amount of remission ("statutory"?).

There are a number of problems with this option. The first is that there is no validated method available for identifying who will be violent if released. Moreover, statistical methods for prediction of violence and studies on the subject of attitudes towards and decisions made about violence suggest that overprediction of violence and "dangerousness" is widespread in criminal justice, and that it may never be within our capability to prevent a large proportion of violent recidivism from penitentiary without holding the great majority of all inmates until warrant expiry.

One possible solution to the overprediction problem might be to put into law criteria for the selection of remission-ineligible ("dangerous") offenders which are extremely restrictive and quite specific, such as requiring two prior convictions for violence within the last five years and requiring a strong standard of evidence, such as "clear and convincing" evidence that the offender "will, if released, within a short time attempt to cause serious physical harm to another". The Committee feels that such a criterion, placed into law, could reduce a large number of the overpredictions, and could capture cases of mentally disordered and violent offenders not accepted by mental health facilities, as well as cases of conduct so bizarre or clearly patterned as to appear to put those cases in a class by themselves. This sub-option has the disadvantage that the "dangerousness" label is serious enough to warrant being judicially reviewable, both on its substantive merits and the procedures by which the finding was made. This would entail some financial costs for litigation, as well as a type of precedent for judicial involvement, which might be considered undesirable.

This option as a whole also has the disadvantages of affecting the operation of Earned Remission in the penitentiary, removing or reducing whatever incentive or punitive value remission may have for some inmates who may be most in need of sanctions or rewards. Remission-ineligible inmates may take on a symbolic, heroic role in the institution, as SHU inmates often do at present; this could, in turn, increase their interest and effectiveness in creating management problems.

Finally, the ultimate benefits of this option are actually rather limited. Half the offenders entering penitentiary have a sentence of three years or less, and three-quarters get less than 5 years\*. The average amount of additional time served (that would have been earned as remission) in penitentiary as a result of this option would be about a year. While society would be protected by the incapacitation of the offender for the additional time, his recidivism may only be delayed and in fact he may -- as a result of the labelling, additional time served, bitterness and possible symbolic status in the penitentiary -- be

\* Source: OPS Historical Reporting System, June 1980.

more likely to recidivate than under the present system. There would, of course, be the benefit to the NPB of not being "blamed" for the failures of those released through this means, which could in turn relieve any loss of public support which may have been caused by MS.

• Remove NPB discretion to "recredit" remission for revoked MS offenders

This option has received some attention. All offenders would still be eligible to earn remission in the penitentiary, and would thus be subject to release on MS at the approximate two-thirds date in the sentence. "Street time credit" would also still be in force. However, revoked MS offenders, who at present can sometimes be "recredited" with part of their remission, would no longer be able to benefit from this recrediting provision. The intent of this option would be to reduce the revolving door syndrome, by retarding the revoked MS offender's next MS release date by the number of days of recredited remission he might have received after revocation.

This option would appear to have few benefits to offer. As discussed above in Section IV, though the recrediting of "old" Earned Remission, earned prior to October 15, 1977, is automatic in accordance with the Parole Act, this phenomenon is gradually disappearing, and currently involves only a small number of inmates who are serving long sentences. The same gradual disappearance of Statutory Remission, which can be recredited by NPB in whole or in part, seems to obviate the necessity of change at this time. Finally, Earned Remission granted on or after October 15, 1977, can only be recredited by NPB in "exceptional circumstances" (NPB Policy and Procedures Manual, Section 106-4). These circumstances, as delineated in the Manual, must be "beyond the inmate's control", and among the examples cited are such situations as a voluntary request by the offender for a revocation, an offender's ineligibility for parole as a result of an error in sentence computation, or an increased sentence as a result of appeal by the Crown.

Though no statistics are available on the recrediting of remission, the Committee has been given to understand that very few offenders received recrediting of "new" Earned Remission last year, and that very few remission-days were involved in total.

• Remove eligibility to earn remission (and thus re-release on MS) by offenders who have already been released once on MS on the current term

This option is directed primarily at the revolving door syndrome and at the prevention (through incapacitation in penitentiary) of crimes. It would preserve the first MS release at the

approximate two-thirds point in the sentence, and thus permit virtually all offenders to have some supervision and assistance available on first release. However, these individuals would only be given the one chance under supervision; once revoked off MS, for technical or new-crime reasons, the individual would no longer be eligible for MS release on that sentence. (If he receives a new sentence for a crime committed while on MS, he would however be eligible for remission on the non-overlapping period of the sentence. The Committee feels that to provide otherwise would create undue confusion in criminal sentencing, and would invite disparities caused by differing judicial awareness of and reaction to the change.)

This option would prevent certain offences by re-released MS cases, or would at least "delay" them until after a release which is not under the supervision of federal correctional authority. It would thus prevent some adverse publicity and public criticism of corrections. It would also prevent a certain number of "revolving door" re-releases and re-admissions, though of course not for those persons released on MS on a new sentence given for an offence committed under supervision.

Some drawbacks to this model have also been identified. It would not of course prevent crimes committed by offenders released initially on MS, and thus would have no effect on any loss of correctional credibility caused by those MS failures. It would increase the average time served by revoked MS offenders, and would have an impact on the size of and frustrations perceived by the penitentiary population. There are also fears that certain MS offenders would be revoked for technical reasons almost immediately after release, out of concern about their potential for violence or other recidivism. Such offenders would of course be eligible for re-release by parole in the usual way, though it seems unlikely that many would in fact receive parole after having been denied it initially and then having been identified as potentially dangerous.

This option will be discussed in greater detail later, in Section VII and VIII.

4. Cost-rationalization Models

The following two models have been grouped together because, even though they have significant differences, they share certain common concerns, such as the efficient use of existing resources, concern over the elimination of non-productive programs and concern for staff frustrations and the quality of the officer-client relationship.

### Return to pre-1970 situation

A return to the pre-1970 system of direct discharge at about the two-thirds mark (as a result of remission) for non-paroled offenders (MS is abolished) has found some support, including support from a number of CSC field staff. The two principal arguments advanced for this option are that supervision has not been demonstrated to be effective in reducing recidivism (a cost-effectiveness view), and that the bureaucratic and procedural problems created by MS, including an increase in parole officer frustration, far outweigh the benefits. Other arguments supporting this option are that there would be cost and manpower savings, which could be used to devote more attention to cases which may be more amenable to attention; that the correctional system would no longer be blamed for "paroling" or providing inadequate supervision in cases of spectacular failures; that the on-going and projected scarcity of social service resources will necessitate the most beneficial allocation of what is available; and that there would be a reducing effect on the penitentiary population, a Solicitor General objective. A recent simulation\* of this effect through a federal penitentiary population model suggested that, depending on the rate at which offenders returned to penitentiary after such releases, penitentiary populations could remain relatively stable, could increase, or could decrease by small amounts.

The Committee feels that, in the absence of solid proof that supervision has no effect on recidivism, it is not feasible, especially at the time of high public concern, to remove a program which represents a state of increased controls over the worst offenders. Further, as noted earlier, MS's impact on recidivism is only one among a number of objectives being addressed by MS, including incapacitation, prevention and denunciation of criminal behaviour.

### "Voluntary" supervision

The second cost-rationalization model argues that non-paroled inmates should leave penitentiary early as a result of remission, but would not be subject to surveillance or other than an initial reporting requirement, though they could, on request, receive whatever assistance the parole office offered. The arguments favouring this model are almost identical to those for a return to the pre-1970 status, except that this option favours making services available to anyone leaving a penitentiary who feels he needs them. Additionally, there is a body of opinion that treatment must be entered into voluntarily in order to be effective; one analyst has actually named voluntariness\*\* as one of five requirements for a successful community treatment program.

\* For a technical description of how these and other population estimates were done, see Canfield (1980).

\*\* Along with familiarity to clients, availability, reliability, and comprehensiveness. See Stanley (1976).

The controlling argument against this option is, again, that the removal or easing of controls does not appear to be feasible at this time. Scepticism about non-parolable offenders seeking help from the correctional system would be widespread and justified. Of course, offenders would have to perceive the supervision as deserving of their voluntary participation, if this model is to be truly successful. From our consultation, we found that "asking the consumer" yielded few product endorsements.

### 5. Remission abolition model

The final model considered by the Committee is in a class by itself. It is aimed at achieving greater control over the full range of sentence until warrant expiry, and placing all early releases under the control of a single authority.

Under this option, both MS and Earned Remission are abolished. All releases from penitentiary prior to warrant expiry are subject to the authority of the NPB; those not paroled are released without supervision at the end of sentence. This option has been suggested by the National Joint Committee of the CACP and FCS, in response to concerns over "dangerous" offenders being released through remission prior to warrant expiry.

This option appears to have a number of benefits. First, it keeps "dangerous" offenders in past the two-thirds mark of the sentence (unless they are paroled), though it will also keep in many others who do not turn out to be dangerous. The increase in time served for certain offenders will mean longer incapacitation for them and a greater denunciatory effect for the sentence. NPB would no longer be blamed for having "paroled" cases given an early release beyond their control. Parole officers would not be forced to deal with intractable "mandatory cases".

On the other hand, this option would entail significant possible drawbacks. Remission, which despite its consistently high rates of full earning is valued by institutional staff as a management tool, would be abolished. The gains in a single releasing authority would be accompanied by losses in a balancing of releasing powers between CSC (in remission) and NPB (in parole). The worst offenders - those not paroled under this model - would leave penitentiary without an available source of supervision or humanitarian assistance.

Penitentiary populations and related costs (such as new capital construction) would be expected to increase. Even if the parole rate rose to double the present rate under this change, the penitentiary population would be expected to increase by about 1400 persons at the end of 10 years. Without a change to the parole rate (it would be projected as 40% throughout), the difference would be about 2800 inmates at the end of 10 years. (See Canfield, 1980)

SECTION VI  
PRINCIPLES, FINDINGS AND ASSUMPTIONS

In trying to assess the overall value of MS, and the validity of concerns about the program, the Committee had available to it a few statistics, a fair amount of opinion and other assorted facts. Since factual "findings" were few, the Committee was also forced to make a number of assumptions. Finally, we were guided by basic principles, such as natural justice and equity. In this Section, we describe how these principles, findings and assumptions seemed to combine to suggest options to meet the concerns.

Validity and solubility of the Concerns

One of the principal findings of the Committee was that there are no "solutions" to the MS problem. The available options for MS would appear to be either ineffective or at odds with each other in responding to all of the concerns; or would entail unreasonably high costs (in various areas, including financial) in comparison with the expected benefit; or would simply be organizationally or politically impossible. Moreover, some of the concerns are literally insoluble, a by-product of criminal justice. So there are no "solutions" as such, just options which result in various benefits and problems, to varying degrees.

As to the individual concerns, we made the following judgments about their validity and solubility:

1. Public concern about violence committed by federal offenders is largely out of proportion to its actual incidence. A study done of federal releases (parole and MS cases combined) in 1970-72 revealed that only 12.6% were re-arrested within 3 years for an offence which may have involved actual violence (Nuffield, 1977). Concern about violence will always be present, but is also largely insoluble because violence itself is insoluble in most cases: by this we mean that no solution is available for accurately identifying everyone (or even almost everyone) who will be violent if released without "identifying" several times more individuals who will not, in fact, turn out to be violent. No solution yet is available, either, for both identifying and having the capability to control the "dangerous situations" which potentially violent offenders might get into after release.
2. Unless Canada moves to a "flat sentencing" system of no parole and no remission, corrections will always bear criticism as a result of the violent acts committed by offenders at any point between their date of admission and warrant expiry. In fact, if conditional and early release were abolished entirely, sentencing judges would begin to

experience an increase in public criticism of sentencing - to which legislatures would probably also respond by introducing mandatory minimum terms and increasing maximum penalties. Despite the abolition of parole and remission, therefore, public and legislative pressures could ultimately result in judicial sentences which represented a marked increase in time served in prison. On the whole, the Committee feels that corrections is the better focus for public concerns that prison sentences are too short and that "something has to be done about violence".

3. Concern about the "revolving door syndrome" is valid inasmuch as staff frustration and paperwork are important concerns of correctional administrators. The revolving door syndrome is caused by a combination of factors, but principally by: the concept of supervision of persons for the period of their remission, sentences of under several years, and the granting of street time credit. These factors often combine to squeeze the time between an MS offender's revocation date and his mandatory re-release date down to a very short period, so he leaves penitentiary again shortly after re-entering it. The possible options for dealing with these causal factors have been discussed. Increasing sentence lengths in order to solve a problem like the revolving door syndrome seems hardly reasonable or effective. The granting of street time credit was a recent reform undertaken for reasons of natural justice and equity with which the Committee concurs.

Removing eligibility for MS after one MS revocation would prevent some of the approximately 200 annual revolving door cases (defined as mandatory re-release within 60 days of re-admission) but, because of limitations in the available statistics, we cannot estimate how many of these cases would be solved by this reform.

4. Concern about the effectiveness of community supervision is also valid since, as discussed above, the available research literature on the subject does not speak for complacency. On the other hand, as also noted above, community supervision is not about to be abolished. The Committee made the assumption that supervision is sometimes effective, and concluded that it would be worthwhile to try innovative supervision strategies and see if they are any more effective than the standard fare. Community supervision is unquestionably less costly than imprisonment, and though undoubtedly less effective in keeping offenders away from victims in the free world, community supervision is like prison in that its principal benefit may be in delaying (not ultimately preventing) new crime.

5. The Committee was obliged to make another assumption about effectiveness and that is that (without further information to assist us) we must proceed on the basis that those institutional staff who say that Earned Remission is essential to penitentiary discipline are right. (A national conference of penitentiary wardens held in September 1980 recommended, for example, that remission be retained.) We also feel that, just as a balance of powers between judges and correctional authorities may be the most confusing but least undesirable arrangement, so a balance of powers between CSC (through Earned Remission) and NPB (through parole) may be best for the ultimate determination of the proportion of time which is to be served in penitentiary. The abolition of Earned Remission would markedly increase time served by many offenders, unless and until judicial sentences began to compensate for its disappearance, to no apparent end other than delaying the new crime and increasing the penitentiary population significantly. For all these reasons, the proposal to abolish Earned Remission cannot be recommended. Remission will, however, be studied in more depth by the Release Study, which may be in a position to suggest changes.

6. The attitudes of certain offenders, corrections staff, police and public about crime and criminal justice are likely to persist regardless of how much or how little government does about MS. Offenders will always have complaints about release (and some will be well founded, given the nature of the business), especially if they have not yet received it. Offenders' feeling that MS takes back something they have "earned" is both understandable but futile, as they are still under sentence and subject to the legislation governing the sentence.

Some corrections staff will likely continue to feel that MS problems are a necessary part of a job which they still manage to do reasonably well. Others will not feel the MS program is worth the frustration. Some of these differences in opinion may be attributable to differing levels of concern about job security in a future where MS would no longer contribute to work caseloads.

Some segments of the police and public will believe that, regardless of how much time offenders serve in prison, it is not long enough; further, that "flat sentencing", in which "ten years means ten years", will have a deterrent effect on crime; that remission and parole are somehow an "interference" with the sentence of the court (and not legitimated simply by reason of having been created by the Parliament of Canada); and that the longer an inmate spends in prison, the less likely he and others will be to commit crime. There is little reason or evidence to support many of

these views held by the public; in fact there is some reason to suggest, for example, that the shorter the time served by a prisoner, the less likely he may be to recidivate (Gottfredson, 1977).

In the Committee's view, very few of the present concerns about MS are soluble other than to a limited degree. Many of the available solutions would create problems much larger than those they set out to solve.

#### Conclusions and Findings of the Committee

Besides the above-noted assumptions which the Committee made about the necessity of Earned Remission, the predictability of violence, the solubility of the revolving door syndrome, and the continuation of community supervision, the following conclusions and findings helped us decide which options held most promise:

1. The impact of not releasing, at the usual two-thirds date, the 2500 persons who normally go out on MS every year, would be sizable, costly, and of little ultimate benefit.
2. The impact of not re-releasing on MS the approximately 800 to 1000 persons every year who are given a second MS after an MS revocation would also be significant, though clearly less so. As will be seen, the prevention or delaying of the 33 "serious" crimes committed by 1977 re-releases while on a subsequent MS yields, at best, a more than 10:1 false positive ratio (ratio of the number of persons kept in who would not be convicted for a serious new crime, to the number kept in who would). However, the small difference in additional time served by most (though by no means all) of these individuals keeps down the ultimate human and financial costs.
3. All offenders should get one chance to get out under some form of community supervision. This ensures that released persons can at least potentially have help available, as well as the possibility of early return to penitentiary.
4. The need for reassurances to the public at this time suggests that the best available option is a limited "control" option which does not undermine other important correctional processes (such as remission) or result in a dramatic shift in time served, release rates, and re-release rates. The option should preferably have some intuitive, "common sense" appeal for the public.

SECTION VII  
MODEL UNDER CONSIDERATION

As stated in the Introduction (Section I), from the beginning of the study it was apparent that the Committee would have to address both the subject of earned remission and MS, simply because the two programs are inextricably bound together -- to such an extent, in fact, that often the term "MS" is employed to mean earned remission. (For instance, when certain representatives of the police call for the abolition of MS, they actually mean the abolition of the automatic release that results from earned remission, not the removal of the supervision itself.)

The Committee reached the conclusion -- and this is the major conclusion of the report, on which most of the options under most serious consideration -- that both programs (earned remission and MS) are valid programs.

In the case of earned remission, the Committee did not evaluate the program's effectiveness as an inmate motivator within the institution (although it believes it may be a motivator for many inmates, especially in certain situations), nor did it attempt to assess the appropriateness of the amount of time that can be remitted (one-third), nor the method of determining individual awards of remission. But we did examine in some detail the underlying principle of earned remission as a means of early release. Our conclusion is that the earned remission program should be retained. In our opinion, its abolition would be prohibitively expensive (because of the increase in the inmate population) and would (inter alia) exacerbate the problems that often result from releasing long-term or violence-prone offenders into the community without any form of supervision or assistance.

If, therefore, earned remission is to remain, the next question is whether automatic release should also remain. Again, the Committee believes that it should, that any offender who has been denied parole should receive at least one chance to demonstrate law-abiding behaviour while still under sentence. We believe everyone should receive this chance because of the impossibility, as explained earlier, of predicting with accuracy the likelihood of violence among such offenders.

Given the continuation of earned remission and automatic release, the Committee then had to address the subject of MS per se. In other words, should offenders released in this way be subject to supervision? Is MS effective? Is it worth its cost? Would the pre-1970 model be better, when offenders were released without any sort of conditions, supervision or assistance?

The Committee believes that the program, although far from being totally effective, is nonetheless very much worthwhile, and that it provides substantial benefits over the pre-1970 model. First, MS

provides a needed degree of control over and support to inmates who would otherwise be released into the community without any. Second, MS probably has some deterrent value with regard to the conduct of offenders on the program. Third, MS provides an effective mechanism for quickly returning to penitentiary those individuals who commit offences, appear likely to commit offences, or who are intractable in their conduct. Fourth, MS provides some assurance to the public that all offenders are receiving some form of surveillance until the end of their sentences. Fifth, MS provides valuable information to the police on the whereabouts of offenders.

The Committee nonetheless recognizes that the violations on MS, particularly those of a violent nature, require that if the program is to be retained, as we advocate, it must also be improved in some way that specifically addresses the various concerns expressed about it.

The Committee is therefore giving serious consideration to the implications involved in making two major changes to the program and eight minor changes which, in combination, the Committee believes should result in a tighter and more effective program. We invite comment on these changes from any interested party. The minor changes are dealt with separately, in Section IX. The major changes, which are described in detail below, mean:

- (1) that greater attention would be paid to potentially "dangerous" MS cases while they are still in the institution, and that more structured release programs would be developed for them, intended to encourage make greater use of community-based residential centres for those offenders who might benefit from them; and that they would be considered for specially intensive supervision while in the community; and
- (2) that, once an offender is revoked from MS, he would no longer be eligible for earned remission or a further MS during the balance of his sentence, and any subsequent release prior to warrant expiry would be under the sole authority of the NPB. (Offenders revoked from MS with a new offence would, however, remain eligible to earn remission on the non-overlapping portion of their new sentence.)

1. Greater attention to potentially "dangerous" MS cases

The Committee was particularly struck by the irony that, despite obvious concern throughout corrections, the rest of the justice system and society at large, it often occurs that potentially violent cases are among those which receive the least attention. In penitentiary, such offenders may spend most of their time in maximum security; we heard of MS cases released directly to the street from Millhaven's Special Handling Unit. Inmates considered dangerous are not often considered for "halfway" type release - normally by day parole to a CCC or CRC - because of a

perceived need to prolong incarceration as long as possible and because these programs, as a whole, could be jeopardized by the greater probability of spectacular failures among dangerous MS cases. Many MS cases leave penitentiary with little or nothing by way of a release plan: where they will live, how they will earn a living (Atack, 1978). Further, MS offenders sometimes receive less attention and are subject to less stringent demands while on supervision than parole cases. Little premium is put on intervention with MS cases, a phenomenon resulting from various factors including other demands on the time of parole officers, the aftermath of the "nothing works" doctrine, a perception (more in some areas than in others) of NPB reluctance to "back up" the parole officer by revoking suspended MS cases, especially the "revolving door" ones who are reaching warrant expiry, and the higher overall perceived hostility of MS cases to supervision.

One of the primary objectives of corrections ought to be to reduce as much as possible the potential for violence by offenders still under warrant of committal. The Committee feels that not enough operational priority has been given to this matter. Merely holding the offenders until warrant expiry is frequently proposed, but the Committee believes this only delays the problem of the offender's release, a delay which could increase risk to the public by failure to provide a transitional period of supervision after release. It is, we believe, better to work within the current law and deal with the offender and his potential violence in the community. Of course, some offenders will, undoubtedly, offer so little cooperation that nothing beyond the administration of tighter surveillance will result. But, for others, an increased capacity for further intervention could and should be created.

Under this first option which the Committee is considering, a more formal process would be instituted for identifying and "streaming" offenders whom authorities believe will be a serious danger on release. Under this model, CSC case management staff would indicate to NPB if they feel a particular inmate will, when released, be physically dangerous to others. NPB members would determine, where possible not later than one year before the offender's MS date,\* the cases in which there is convincing evidence that the offender will be physically dangerous when released. (We

\* Making the designation not later than a year before the MS date permits the authorities to move these offenders into what may be more appropriate security status for preparing for their eventual release. For example, once the designation was made, authorities would become alerted to the possible desirability of moving an inmate into medium security, or from a Special Handling Unit into general population. Of course, this designation cannot always be made at such an early date. On occasion, threats or other behaviour suggesting the inmate may harm someone when released will not surface until a time much closer to release. The designation would then be made as soon as it is warranted.

would prefer a fairly tough standard for this finding -- clear and convincing evidence -- but we would leave it to NPB to develop the specific criteria and procedures for making the determination. These criteria and procedures should of course be public information.) The operational meaning of this NPB designation would be to mandate CSC case management staff to prepare a day parole submission for the offender which, if accepted by the offender and granted by the Board, would take effect four months prior to his MS release date. The day parole plan should include residence in a CCC or CRC and attempts -- though not a requirement -- to have a job available for the offender upon release. NPB would grant the day parole if they felt there would be some benefit to it within the philosophy enunciated here. The Committee fully realizes that many offenders would refuse to cooperate with the planning of the day parole, and would in fact refuse the day parole if offered, but CSC case management staff should prepare day parole plans in such a way as to maximize the release's practical benefits to the offender (within the limits of protection of society) in order to encourage offender acceptance of the release. Many offenders would be willing to leave a traditional institution for a CCC or CRC, even for only four months and under the highly active surveillance of parole officers. For corrections, placing difficult MS cases in a CCC or CRC just prior to release allows the parole officer to get to know and work with the offender in a situation where there are perceived advantages for the offender, greater structure in and control on his life than routine supervision, and some amelioration of the immediate practical problems which can contribute to failures under such supervision (for instance, trying to find a job and an affordable residence).

Not all privately - or even publicly - operated community centres will be eager to deal with the kinds of offenders this initiative will bring or offer them. For some of the privately operated Community Residential Centres, in fact, it may not be possible or feasible to offer the level of constant security within the house which may be thought necessary for the addition of this type of offender to the program. These offenders may both significantly disrupt the equilibrium of the house and take up a large portion of staff time, which otherwise could be spent with other residents. Finally, NPB may simply be unwilling to use CRC's for this type of day parole, since a lesser level of security and available resources is often involved for CRC's than for the CSC operated CCC's. This would be at NPB's discretion. However, in order to encourage CRC's to accept these cases in appropriate instances, the Committee would expect that a significantly higher per diem rate be paid. This higher rate would recognize the increased time and resources that would need to be devoted to these cases.

For the CCC's too, the introduction of a greater number of potentially dangerous persons would necessitate some reorientation

of the program. It is in part to respond to this anticipated shift that we recommend elsewhere in this report that more special project funds should be available (to purchase specialized services such as counselling) and a greater recognition given to the need for innovative community development and experimental approaches among the centres and parole offices which would be handling significant numbers of these and other difficult cases.

The Committee also recognizes that not enough CCC or CRC bedspace will be available in all areas. In many areas, in fact, there is none at all, though the need may not be great; in other areas, such as Toronto and Montreal, there will not be enough to meet the greater need. Furthermore, some lower-risk cases will be unable to find a space in a day parole/CCC/CRC program because of this proposal. Day parole to a community residence is now, however, a program used primarily for testing offenders being considered for full parole. Day parole is described in NPB public-information pamphlets in terms of a means for preparation for a more liberal form of release and as a testing ground for further release. The Committee believes it should be adapted a little more towards intensive preparation for the mandatory release of offenders who may be a physical danger to the community. We do not presume to suggest what proportion of the available CCC bedspace should be used for this type of case. This should be done by the responsible authorities, who should also observe how it operates for the first two years. By the same token, we do not presume to indicate how many of these potentially violent cases would or should be identified, but suggest that the designation process be implemented and meticulous records kept of its apparent accuracy of identification and case handling.

If the offender refuses or is not granted this type of day parole prior to MS date, his case would be reviewed by NPB and CSC case management staff no later than four months prior to MS date, in order to discuss any special program, conditions, or services which should attach to the case while the offender is on MS. If felt to be beneficial, residence in a CCC or CRC should be discussed with the offender as a possible approach or even, with CRC's, a condition of MS (in the case of CCC's, this would not be possible: CCC's are institutions, and requiring residence in them on MS is unlawful). It goes without saying that a very specific understanding of what can and will be made available at the offender's destination would be required for this stage.

Also under this model, all inmates still designated as dangerous by NPB at their MS dates would be placed on an especially intensive program of community supervision. Parole officers' caseloads should, where possible, be adjusted to allow greater than the "minimum standard" attention to these cases. Experimentation with specialized caseloads made up of these offenders should be

encouraged. Special cash funds should be made available for assisting the offender and purchasing goods and services for him in the community which are not normally affordable by him or by the parole office (such as vocational courses, tools for working a learned trade, or counselling), or for allowing the fulfillment of any special conditions which NPB may have placed on the case. (The Committee heard of cases of special conditions, such as that the offender see a psychologist, which neither the offender nor the system had the financial capacity to fulfill.)

2. Remove eligibility for MS (and remission) after one MS revocation

The second option which the Committee is giving serious consideration is that those MS offenders who are revoked not be re-released on MS during the remanet of their original terms. In other words, MS offenders revoked without a conviction for a new offence would not be eligible for remission on the time remaining on their sentence. They would, unless later paroled by NPB, be released to direct discharge after serving their full remanet. MS offenders revoked with a conviction for a new crime would be ineligible for remission, except on that portion of their new sentence which exceeds the remanet of their old sentence. That is, on admission to penitentiary, revoked MS offenders would (unless paroled) necessarily serve their full remanet on the original terms, and then would be eligible to earn remission on whatever time remained as a result (concurrently or consecutively) of the sentence they received for the new crime committed while they were out on MS. Only at that time could revoked MS offenders be re-released on MS - as a result of having received a new sentence for a new crime. The Committee feels that it would be important to retain remission on the new sentence in order to avoid undue complications to and misunderstanding of the sentencing process by prosecutors, judges and other key decision-makers.

Revoked MS cases would be subject to the same parole eligibility provisions as other offenders. The Committee expects that few revoked MS offenders would be re-released on parole unless they had extremely long sentences: an offender once judged unsuitable for parole, having then proved his unsuitability, is not likely to be given a parole at this consideration. As is now the practice, revoked MS cases would be considered for parole at one-third of their aggregate sentence. In many cases, the offender's remanet would in total be briefer than the case preparation time needed to bring the case to NPB's consideration. The Committee felt, however, that the importance of this parole decision in the lives of inmates with long sentences necessitates some additional safeguards to protect the inmate's interests. We recommend that the inmate be given advance written disclosure of the case preparation materials, community assessment, and other relevant reports, (consistent with the protection of other individuals and of confidential information) prior to his parole hearing after MS

revocation. We also feel that legal representation on behalf of these offenders should be permitted at hearings. NPB has, in fact, recently decided to allow inmates to be "assisted" at hearings and to see some information from their files prior to hearings. These reforms may prove sufficient for these purposes. But Committee also recommends that consideration be given to establishing a new type of appeal mechanism from these re-parole decisions, one which would be, and be seen to be, more independent, "quasi-judicial", and active. (Review by the Federal Court from parole decisions is currently available only on procedural matters.)

Finally, in keeping with our finding that no one should leave penitentiary without having some kind of help available in the community, the Committee feels that assistance to offenders released on "direct discharge" under this model should be made clearly available, should be advertised as such to offenders, and should receive recognition in person-years and other resources as soon as some estimation is available of the level of usage. A small incentive should be provided, such as a small sum of cash to be made available to any offender released on direct discharge who reports to an interview at the parole office in the area noted as his destination for release. The parole officer would, at that interview, make it clear that help is available to the offender with his practical problems such as housing, employment, and any other area agreed upon by the two.

This second change is aimed at reducing the number of violations on MS and reducing the revolving door syndrome (by retarding the re-release date) and its attendant ills, such as a greater reluctance to revoke "turnaround" cases and the resultant losses in the appearance of justice.

Together, the two major options which form "model" we are seriously considering represent an attempt to put a higher priority on intervention in potentially violent cases, and to increase the penalty (and possibility of incurring a penalty) for failure on MS. The anticipated impact of the model is discussed in greater detail in the next section.

#### Advantages and Disadvantages of this Model

The model discussed above, and under serious consideration by the MS Committee, is not uncontroversial. While it would prove beneficial in some cases, it also inevitably involves certain disadvantages.

In brief, the following are some of the foreseeable advantages and disadvantages of this model. They are explored in more detail in the next section ("Significance and Implications"), but are presented here to stimulate further comment. The advantages are:

- It ensures that persons whom NPB or CSC case management staff believe will be physically dangerous when released are identified early enough in the sentence to permit some release planning, but not so early in the sentence that the label of "dangerousness" will be applied too quickly and will unfairly influence a large number of other decisions made about the inmate in the interim.
- This identification process not only alerts the incarceration and releasing systems to certain potentially violent cases, but it permits, and should result in, evaluative research on the accuracy of violence prediction, and the ability of the system to create and maintain community and half-way programs to deal with these cases. The information resulting from this evaluative research will be of help in formulating policies about assessments of dangerousness.
- It emphasizes the responsibility of the corrections and release processes to give attention to offenders who may be dangerous and who often receive little or no attention other than that which is directed towards keeping them in secure confinement.
- While it does not mandate that potentially violent cases be released "gradually" through a transition period of day parole to a CCC or CRC prior to MS date, it encourages greater attention to the use of that option in instances where a structured release may be considered of potential benefit.
- Residence in a community-based facility allows a more incremental approach to re-entry into society, including the assurance of a place to live and a regulated régime in that facility, the provision of some resources which would not otherwise be available to the offender, relatively close supervision of the offender's movements and other behaviour, and the attempt to provide some type of counselling and life skills.
- It encourages the "cascading" of offenders into lesser forms of security, where feasible, prior to release.
- Unlike MS alone, it would not be seen as having almost entirely negative effects from the offender's point of view. For the offender, there is the advantage of obtaining release from a higher-security environment four months earlier than could otherwise have been expected, together with the benefits that accrue from CCC or CRC residence, such as inexpensive available housing and cash allowance. Unlike MS, this day parole release would involve a positive discretionary decision made on the offender, and would carry the benefits which are sometimes alleged to result from this kind of positive decision.
- It will reduce the revolving door syndrome to the extent that this is caused by the earning of remission credits after revocation from MS.

- It allows for a lengthier reconfinement after revocation from MS for those offenders who have committed a serious breach of conditions or who represent a serious threat.
- Because of the lengthier reconfinement which would result and because of concern over potentially violent cases, it could encourage the correctional system to revoke more of these types of offenders from MS and day parole.
- It should serve to contribute to the further articulation and objectification of suspension and revocation criteria.
- It would simplify sentence calculation for revoked MS offenders.

The disadvantages are:

- It could encourage overprediction of violence by placing increased emphasis on identifying and "streaming" the potentially violent offender.
- It could result in the "labelling" of offenders as "violent" and in a self-fulfilling prophecy for these persons.
- We really do not know how to treat or handle potentially violent persons, nor the potentially violent situations in which they may find themselves, but the option is based on legitimating our efforts to treat or handle violence.
- Day parole just prior to MS date will not be suitable for a large number of persons who will be considered potentially violent, and so the option will make no difference in these cases (i.e., would not be used).
- There will be failures, some of them violent, of these offenders on day parole prior to MS date, thus causing adverse public reaction to the release program.
- Many of these offenders day paroled to a CCC or CRC prior to MS date will cause significant problems for the management of those facilities.
- Day parole prior to MS date for these offenders could be received with hostility by other members of the inmate population, who may see themselves as more deserving, but rejected, candidates.
- NPB will be extremely leery about releasing, even just four months earlier, any offender who is perceived as a significant risk, and the option may be rarely used for that reason.

- Many members of the public and the correctional system will oppose the option on the grounds that potentially violent offenders should simply be kept in high security as long as possible.
- It could result in lengthier reconfinement of revoked day parole and MS cases who may not "deserve" to spend the extra time in penitentiary.
- It would increase offender hostility to MS, since the penalties for MS failure would now be even greater.
- It could increase the correctional system's willingness to revoke potentially violent MS and day parole cases.
- It would eliminate any beneficial effects gained from remission for those offenders (revoked from MS) who are no longer eligible to earn remission.
- It would mean that certain offenders (those released on direct discharge after MS revocation) would not be subject to compulsory community supervision after release.

SECTION VIII  
SIGNIFICANCE AND IMPLICATIONS OF THE MODEL UNDER CONSIDERATION

The main feature of the model under consideration is that it maintains the principle that all offenders, even those refused parole, are allowed one chance to prove themselves on the street and have the opportunity for access to some assistance in re-establishing themselves. However, it provides additional controls on those who show persuasive signs of being dangerous when released or who, having had that opportunity, indicate that they cannot function in an acceptable manner.

It is virtually impossible to estimate the impact of the first part of the model - that potentially dangerous MS offenders be given special consideration for structured release to a CCC or CRC through a day parole just before MS, and that they receive especially intensive supervision until warrant expiry. For instance, we do not know how many offenders would be officially designated for this program, how many would accept or could obtain CCC or CRC accommodation, how many would be granted this type of day parole prior to MS, nor precisely how effective this more structured release and intensive supervision would be. If implemented, therefore, the program should be rigorously studied throughout its first few years of operation.

Certain procedural implications of the model would have to be worked out. It is clear that amendments to the Penitentiary Act would be required, so that no further earned remission could be accumulated following MS revocation without a new indictable offence, and no remission accumulated on the remanet, or any part of a new concurrent sentence which overlaps the remanet, following MS revocation with a new indictable offence. It should be noted that calculation of parole eligibility date remains as it is now, on the basis of aggregate sentence.

Retroactivity rules would have to be developed for offenders already in penitentiary, or on MS or in penitentiary following an MS revocation upon the coming into force of the proposed model. A related consideration concerns the question of earned remission accumulated before 15 October 1977, which is presently re-credited automatically on revocation.

Under this model the consequences to the offender of an MS revocation are markedly more severe than they are now. For this reason, the Committee feels that this model requires the development of additional safeguards, particularly in the cases of MS revocation without conviction of an indictable offence. These safeguards are required at both ends of the revocation process. The criteria for revocation should be significantly clarified, and the conditions leading to a possible revocation narrowed and made more specific. While this would mean that certain offenders now being revoked would no longer be subject to revocation, it is in line with the Committee's principle that

the model should have differential effects: more severe on those presenting more evidence of risk, and less severe on those presenting less evidence of risk. Additional attention is also required to increasing due process safeguards during revocation proceedings and improving mechanisms for review and redress following a revocation decision.

The Committee by no means believes that this model is the perfect solution to the question of Mandatory Supervision. Indeed, there is no perfect solution, only several alternatives of varying degrees of effectiveness, depending on which aspect of the problem requires most emphasis: security, costs, fairness, social integration, etc.

In our opinion, this model is the best available because it has been developed after consideration of all these factors and appears to provide the most balanced improvements while having the fewest or least significant negative features. However, there is no doubt that even this model will aggravate some of the existing problems and may create others. Therefore, this section will examine the impact of the model on each of the concerns described in Section IV. The Committee urges that these issues be carefully weighed when the model is considered.

Offender Attitudes

There is no question that the model under consideration does nothing to mitigate offender concerns about the MS program, or the fundamental inequity they perceive in being required to serve under supervision the time which they consider they have "earned" off their sentences.

This concern will, in fact, probably be intensified under the model, since offenders would actually be liable to serve in an institution the remitted period of sentence. Offenders will almost certainly feel - even more than they do now - that the cards are stacked against them. The same system that refused to grant them release on parole would now have the authority to take away their release on remission and make them remain in prison until warrant expiry. Offenders may fear that it would be too easy in this system for that authority to be used malevolently. However, the proposed tightening of revocation criteria, due process and redress safeguards may do something to alleviate this concern.

For those offenders identified for special, intensive MS supervision, it is not clear what the attitudinal impact may be. Perhaps some frustrations will be reduced due to the availability of extra resources to purchase services; on the other hand, if offenders believe that the only result of this designation is increased surveillance, heightened frustration and hostility may result.

There is a possibility that the motivating effect of earned remission may be further reduced by this model, since remission leading to a form of release which entails a particularly burdensome supervision program may lose its incentive value. Further, those inmates who have been revoked and are not eligible to earn remission may pose additional behaviour control problems. This may be partially offset if these inmates redouble their efforts to attain parole as the only avenue left for early release. However, it is likely that these inmates either will not want to deal with the release system again or will believe that their chances of being paroled are not good enough to warrant the attempt.

Finally, it should be noted that this model may be perceived by some as being more severe for those revoked without offence than for those revoked with offence. This of course is not the case, since earned remission cannot be accumulated on any remanet, including remanet which runs concurrently with a new sentence. However, the fact that offenders revoked with a new sentence may eventually achieve another release on MS, (as a result of remission earned on the non-overlapping portion of the new sentence) may lead some to conclude erroneously that they least have nothing to lose by committing a new offence.

#### Public Attitudes

The model under consideration should, in the opinion of the Committee, have a moderating effect on public fear about the MS program, particularly if it is well publicized. Concerns about the program can, we believe, be assuaged to some extent if it is pointed out that proposed modifications will result in increased control over, and longer periods of incarceration for, those offenders who have indicated they cannot function acceptably on the street.

However, as long as there are violent incidents involving offenders released on MS, there will always be some public discontent with the program. Although the model will prevent the occurrence of some violent incidents on MS, it will not prevent all of them: some will occur on the first release on MS both among those designated for intensive supervision and among those not so designated, and some will occur on subsequent release for those initially revoked with offence who are still capable of earning some remission. In fact, the Committee estimates that if the part of the model that addresses re-release on MS had been in effect since 1977, it might have been able to prevent only 33 "serious"\* offences in 1977 and 8 in 1978. (These estimates will be discussed further under the heading Other Effects.)

\* "Serious" offences were defined quite broadly to include any of the following offences: murder, attempted murder, manslaughter, rape, attempted rape, other sexual offences, kidnapping, abduction, wounding, assaults, robbery, arson and dangerous offenders.

Further, it should be noted that for those who are dismayed to see offenders who have been revoked from MS being re-released on MS, this model is not a complete solution. Offenders revoked without a new offence will not be re-released on MS, but those revoked with a new sentence will still be eligible for an MS release in the future.

#### Parole Officer Concerns

Parole officers may find that the model makes their job a little less difficult. It may make the threat of revocation a more powerful tool in controlling offender behaviour, and the especially difficult offender on MS will only have to be dealt with once (i.e. until he has been revoked). In addition, the provision of a special intensive supervision designation for certain MS offenders may both legitimate the extra time the parole officer may feel he requires for these cases and supply him with additional tools by way of community services he can purchase.

On the other hand, there are aspects of the model that may make the parole officer's job more difficult. If offender resentment of the program caused problems for the supervisor before, this resentment will probably be intensified, not only among those first offenders who disagree with the principle that there be additional controls on their good time, but also among those who have already experienced an MS revocation on a previous term (or a revocation with offence on their present term) and found themselves serving their complete remanet.

In addition, the tightening of revocation criteria and procedural safeguards, which are so necessary because of the severity of the consequences, will surely hamper the parole officers' ability to generate "technical" revocations.

#### "Automatic" Release of Potentially Dangerous Offenders

The model can do little to allay this concern over the "automatic" nature of release on MS, since all offenders will still be given one chance on MS. The Committee feels that, given the small number of potentially dangerous offenders and the notorious inaccuracy of mechanisms to predict dangerousness, the prevention of first release on MS rightfully belongs with dangerous offender sentencing provisions and civil commitment procedures.

The model does, however, address - at least in part - concerns about potentially dangerous offenders. It does this by providing for special intensive supervision for certain cases, and by enabling offenders to be returned to penitentiary to serve the remainder of their terms if they fail on MS.

### The "Revolving Door Syndrome"

The model under consideration should have some impact on the revolving door syndrome, but it is difficult to determine how significant this will be. It should reduce it somewhat by retarding the re-release date, but there are a number of factors which combine to suggest that some aspects of the problem would persist.

It is true that, for MS revocations without offence, the complete remanet would have to be served before re-release, and, for MS revocations with offence, it would be the complete remanet plus approximately 2/3 of the non-overlapping portion of any new sentence. However, because street time is now counted against the sentence (since October 1977) these remanets are often very short. For example, for 1977 releases the mean portion of the MS period served before revocation/forfeiture was 53%, and the mean number of months was 5.\* This suggests that the mean remission period would have been just under 9½ months, leaving a mean remanet of about 4½ months.

Furthermore, it appears that new sentences for indictable offences are either very short or are awarded concurrently. For example, for MS releases in 1977 who were revoked with a new indictable offence, a sentence length for the non-overlapping portion of the new sentence was calculated by subtracting the remanet from the new aggregate sentence on readmission. This revealed that about 67% of these offenders had a non-overlapping portion of 12 months or less.\*

In addition, some of the offenders who are released on MS shortly after admission will be those who violated a previous parole release, and under this model would still be eligible for a release as a result of remission.

Finally, it is assumed that some (although probably few) of the offenders who have violated MS will be released on parole, eligibility for which is still set at one-third of the aggregate sentence on readmission. As we have seen, many of these aggregate sentences (or simple remanets) are very short.

Thus under the model, being considered, concerns about the rapid re-release from penitentiary of offenders revoked from MS may remain, notwithstanding the reduction in the number of such cases.

### Effects on Parole and Sentencing Decisions

If it is true that judges award longer sentences to take into account the effects of remission, it is not likely that this practice will change as a result of this model, which retains remission except for the remanets of those revoked. Judges will probably not be influenced by the knowledge that under this model there is an

\* Source: OPS Historical Reporting System, June 1980.

increased probability that the remitted portion may have to be served in a penitentiary.

It is also not likely that the proposal would have much effect on NPB decision-making for first release, which, as we have seen in Section IV, may have become more conservative on the introduction of the MS program. However, it is possible that the increased severity of the MS program could act as an added incentive for inmates to seek release on parole. In that case, pre-release planning might be done more effectively and the NPB may find it possible to release more inmates on parole as first release.

A related issue pertains to how this model might impact certain statistics which are used as indicators of the operation of the release program. For example, after MS revocation, offenders will be serving longer periods, and parole will, for some, be the only form of early release. Since the NPB will probably be less likely to grant parole to these offenders, the statistics on overall grant rate may go down, which may create the faulty impression that the Parole Board has become even more conservative.

In a similar way, the proposed model may affect statistics on successful completion of parole. Because parole is the only means of subsequent release before warrant expiry, it is likely that it will be granted to a larger proportion of offenders revoked on MS than is currently the case, to ensure that a degree of supervision is provided on release. If these offenders truly are poorer risks, the statistics reflecting the success of the parole program may therefore go down. Statistics on the success of day parole may also be affected by the possible increased use of day parole for higher-risk offenders.

### Assumptions on which Program is Based

The Committee believes that supervision can have rehabilitative, reintegrative or controlling effects, at least for some inmates, and that such effects can be increased. This assumption is implicit in the recommended intensification of supervision for certain offenders. There is an irony, however, in the fact that, despite this belief, the Committee has recommended that revoked MS offenders not be eligible for further MS releases on the same term. Such offenders, unless they are subsequently released on parole, will thereafter not receive a supervised release nor be subject to the three major aspects of release: assistance (however defined) in re-establishing themselves in the community, continued correctional control, and police knowledge of their whereabouts.

### Costs

It is not expected that this model will reduce the costs of the MS program. There may be a slight reduction in costs if the number of technical revocations diminishes, because of the reluctance of parole officers to initiate a process with such grave consequences, and because of the stricter revocation criteria the model demands.

These same safeguards will probably result in increased costs in terms of NPB time, required both to ensure due process during revocation proceedings and especially to provide adequate avenues for review and redress.

Other additional costs include extra man-years for the intensive supervision cases, funds for the purchase of special community services, and, possibly additional CCC/CRC space for an expanded pre-MS day parole program.

It is not expected that the model would have any significant impact on penitentiary population levels. An estimate of effects in 10 years using the Federal Corrections Simulation Model (see Canfield, 1980 for further details on methodology, assumptions and results) projected that populations may drop somewhat if revocations without offence were to be reduced. If revocation remained basically the same, there would be little effect on population levels. Since, under this model, some offenders would have to serve more time in penitentiary, it is not clear why projected populations failed to increase. We suggest that the numbers of offenders involved are too small (especially taking into account that some will be released on parole) and the remanets too short for the model to significantly affect population levels.

### Other Effects

The model under consideration is designed to increase the incapacitative effects of the MS program by allowing certain offenders to be returned to penitentiary to serve out the remainder of their terms. As with most incapacitation models, the proposal must be considered in terms of the number of crimes it could possibly prevent and the number of individuals it might incarcerate for longer periods of time.

The Committee has attempted to estimate these parameters by examining what might have been the impact if the model had been in effect in 1977. For the purposes of this examination, we assumed that only subsequent crimes committed on MS by those whose previous return was for MS revocation without offence might have been prevented. These projections are in one way an underestimate, since they exclude crimes committed on MS by those whose previous return was for MS revocation with offence. These were excluded because the model allows these

offenders another, albeit later, release on MS based on remission earned on any over-lapping portion of the new sentence. It was not possible to determine whether the actual offences on re-release would have occurred under the new model for these offenders.

It is also important to note that in other ways these projections overestimate the number of offences that might have been prevented by the model. In assuming that the model might have prevented all the subsequent crimes committed on MS by those whose previous return was for MS revocation without offence, we are in effect ignoring the fact that some of these offenders might have been re-released on parole following their MS revocation and that some might not have been revoked at all under the tighter criteria and safeguards prescribed in the new model.

Appendix B outlines the data and methodology used to derive these estimates. This suggests that if the model had been applied to offenders released on a second or subsequent MS in 1977, it might have prevented 92 returns with indictable offence, of which 33 were "serious offences"\* and 4 were "very serious offences".\*\* In achieving the prevention of these offences, however, we would have held to the end of their terms 503 offenders: all 92 returned on revocation with offence following a revocation without offence, all 117 returned on revocation without offence following a revocation without offence, and all 294 not returned again following a revocation without offence.\*\*\* Furthermore, an additional 144 indictable offences, of which 35 were "serious" might not have been prevented, since they were committed by individuals whose first return was for MS revocation with offence and therefore could have achieved another release on MS.

A similar projection was made applying the model to releases on a second or subsequent MS in 1978. It indicates that 43 returns for indictable offences of which 8 were "serious" and 0 "very serious" might have been prevented under the model. This would have been accomplished at the cost of holding to the end of their terms 468 offenders: 43 plus 98 plus 327. An additional 126 indictable offences, of which 28 were "serious" might not have been prevented.

\* Serious Offences were defined to include any of the following: murder, attempted murder, manslaughter, rape, attempted rape, other sexual offences, kidnapping, abduction, wounding, assaults, robbery, arson, and dangerous offender. (They thus include all offences also defined as "very serious offences", below.)

\*\* Very Serious Offences were defined to include any of the following: murder, attempted murder, manslaughter, rape, attempted rape, and dangerous offender.

\*\*\* The impact of this for the individual offender should not be underestimated. Although the mean remanet is relatively short (about 4½ months for 1977 returns), for some offenders it can be, and has been, very long (e.g. 8 years on a 24 year sentence).

The Committee feels it is not their prerogative to decide whether the crimes prevented warrant the incapacitative costs to individual offenders. We have prepared the estimates above in order to underline the careful attention that must be paid to this issue in any consideration of the model under consideration.

#### Summary

The model described above allows all offenders serving determinate sentences in federal penitentiaries one opportunity for release on MS. Unless they are subsequently paroled, those who are revoked on MS with or without conviction of an indictable offence are required to serve their remanet without accumulating remission; those revoked with an indictable offence can earn remission and a subsequent MS release on the non-overlapping portion of a new sentence. Offenders who show persuasive signs of being potentially dangerous will receive special consideration for a pre-MS day parole and intensive supervision on MS. Rigorous study will be required to determine the impact of this change.

Certain procedural implications, such as legislative changes regarding the crediting of remission, rules on retroactivity, and additional due process safeguards and redress mechanisms have still to be developed.

While the model may ameliorate certain problems related to the MS program, it may aggravate and even create certain others. These issues must be carefully weighed, therefore, when the proposal is considered.

Offender resentment and hostility to the program will probably be intensified, and this could lead to increased behaviour problems in institutions and under supervision.

Public concerns about MS may be only partially alleviated by the model. Such concerns derive mostly from the fact of automatic release based on remission (retained in this model at least until the first MS release), and reaction to any violent incidents involving offenders released on MS (many of which the model cannot prevent). However, as the model will make it possible to revoke some offenders and prevent any subsequent automatic releases, this should help to allay some of the public concerns.

The model may make the threat of revocation a more powerful tool for parole officers, and may provide them with additional time and services for certain cases. On the other hand, offender hostility and the narrowing of revocation criteria may pose some additional difficulties for them.

The model does not respond to concerns about the "automatic" nature of release of potentially dangerous offenders, but it does allow

return to penitentiary for longer periods for those who have demonstrated their risk. It also provides for additional controls and services during MS for certain offenders who may be dangerous.

The "revolving door syndrome" may be somewhat moderated by the model, but it cannot be entirely eliminated.

It is not likely that the proposal will greatly impact parole or sentencing decisions, but it may affect parole release and success statistics.

The model implies that special intensive supervision can increase the rehabilitative, reintegrative or controlling effects of supervision. At the same time, it denies supervision on release to what some may consider the "riskiest" offenders, and thus denies post-release assistance, continued correctional control and additional police intelligence for those offenders.

Costs of incarceration may be reduced by the model if the number of revocations decreases, but other costs (e.g. NPB, parole supervision, services) would be likely to increase. Penitentiary population levels should not be significantly affected.

Finally, retroactive estimates of the impact of the model on the prevention of serious crime, suggest that the ratio of incapacitative costs to crime prevented is fairly high.

The Committee believes that all these issues should be carefully weighed in any consideration of the model. At the same time we would like to re-iterate our belief that, even though some problems will persist under this model (as they will under any release model), it nonetheless represents a worthwhile advance over the existing model. If the recommendations are carried out, an improvement in the effectiveness of the MS program should result, along with a somewhat greater degree of public security -- and this, we believe, is the primary criterion by which any model should be evaluated.

SECTION IX  
OTHER RECOMMENDATIONS

The MS Committee was unable to consider a number of options seriously because of the lack and poor quality of the information available to assess the impact which the more sweeping models would have on such major processes as sentencing and penitentiary discipline. We feel, however, that there is a need to explore some of these more far-reaching models further. The Ministry's Release Study is expected to be able to consider in greater depth the workability of some of these models which involve changes in the interrelationships between individual release processes. The criminal law review exercise being undertaken by the federal government as part of a fundamental review of the Criminal Code would also be expected to consider a wide range of possible sentencing models.

In particular, we recommend that the following be further explored:

1. The Release Study should consider the feasibility and desirability of abolishing remission altogether, and the possible effects, initially on average time served in penitentiary and latterly on average sentence length, which might result.
2. The federal government's Criminal Law Review exercise should examine the workability of clear, reliable guidelines for sentencing. It should also review sentencing with a view to the effects which would result from abolishing remission, MS and parole.
3. As noted above, the CSC should actively encourage and directly support (through the availability of a special fund of discretionary money) action research projects designed to try innovative strategies for community supervision, and should measure their effectiveness in relation to "standard" supervision. A sound evaluative design should be considered essential for project start-up.
4. The Ministry should maintain a "watching brief" on major sentencing and release reforms in the United States, including the "justice model".
5. CSC and NPB should assign a high priority to improving the quality and speed of the information which they need to have regularly fed back to them in order to perform effective self-monitoring. The statistical risk prediction devices available to the Ministry should be revalidated against federal offender data to ensure their current efficiency and should update or improve them as needed, with the best of

them being calculated and made available on every inmate at such stages as reception, classification, re-classification, and parole decision-making. "Risk" is a key factor in a vast number of correctional decisions which have to be made, and the best available means should be used for assessing risk. In particular, priority should be assigned to trying to improve the efficiency of violence predictors.

6. The Ministry should enter into discussions with police officials to determine whether MS cases might be coded differently from parole cases on CPIC.
7. The CSC should survey its NPS field operations to determine where relations with local police are particularly good or bad, in order to see what changes to handling police/parole relations might be tried. Some NPS offices have what appear to be productive monthly meetings with police.
8. CSC should give consideration to allowing local District Offices to relax the minimum standards for supervision in cases of manifestly uncooperative and unamenable offenders, on parole or M.S., in order that resources may be used for the amenable cases with real needs. Offenders designated by NPB for the special intensive supervision program which forms part of our model would not, of course, be subject to relaxed supervision other than through NPB approval. Decisions about relaxing minimum standards would also, of course, take into account concern for protection of the public.
9. Consideration should be given to designating more jails as "penitentiaries" for the purpose of revocations, in order to permit revocation at lesser costs in transportation, especially in MS "turnaround" cases. This of course would require the approval of the affected provinces.
10. Every effort should be made to make offenders eligible for unemployment insurance and provincial health insurance from the date of all releases, including day parole.

MANDATORY SUPERVISION: CONCERNS & OPTIONSSUMMARY OF WRITTEN CONSULTATION TO DATE

CSC AND NPB REGIONS; PSAC;  
NATIONAL JOINT COMMITTEE OF CACP/FCS

INTRODUCTION

The Ministry Committee on MS, in the process of evaluating current concerns about MS and obtaining views on possible modifications for the program, sent out a "brief" on MS recently, and has now received responses from staff and offenders in the five regions of the CSC and NPB, from the Union of Solicitor General Employees, and the National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services. This summary includes all anticipated responses received to date.

In all, we received 130 separate "individual" or "group" responses to the brief. Of these 130 responses, 32 were from individual penitentiary staff; 29 were from individual parole (CSC) staff; 17 were from groups composed mainly of parole (CSC) staff, at times with others invited; 4 were from groups of penitentiary staff; 2 were from unidentified CSC staff members; 10 were from individual inmates; 6 were from inmate committees or groups (including one group of 243 inmate "ballots" gathered in a polling process of some sort); 18 were from individual offenders out under community supervision; 9 were from NPB staff and Board members; 1 was from the USGE (The USGE response was based primarily on briefs from members working in the parole field, most of which were forwarded directly to the MS Committee as well. The USGE response/summary coincides with Committee perceptions of the overall staff feelings.); 1 was from the National Joint Committee; and 1 was from an individual police officer. There was a great deal of agreement on the beneficial and detrimental aspects of the MS program (other than from offenders), and on the nature and level of concern about MS. A great deal more diversity of opinion surfaced on the subject of what should be done about MS.

The Committee has compiled the following summary of what the national consultation appeared to be saying. Summaries are also available of the NPB responses and the responses received from staff and offenders in each of the CSC regions. Reaction to the following summary is welcome from any group or individual.

A GENERAL NOTE OF CAUTION  
ABOUT INTERPRETATION

Two points of caution about interpreting the following information should be observed. First, though 130 group and individual responses to the brief may seem like a lot (they did, to us, during the process of analysing them), we do not know exactly how representative they are of the universe of opinion "out there", nor what the strength of feeling among non-respondents might be. The second point is that not all

respondents expressed opinions about all the aspects of the "brief" discussed below, especially on the possible options available. Most of the 17 possible options listed in the brief received fewer than 15 clear-cut "reactions" from among a possible 130 responses. Whether this suggests indecision, indifference, hostility or "silence as consent" to any of these ideas, is impossible to say. What this would not appear to suggest is a strong consensus on options.

WHAT THEY SAID ABOUT  
POSITIVE AND NEGATIVE EFFECTS OF MS

Most Ministry employees who spoke on the subject thought MS had positive effects on offender recidivism; most offenders disagreed. Parole staff seemed somewhat more positive overall than institutional staff. Many staff qualified their endorsements with the view that MS will only be beneficial in some cases. Belief in the value of MS seemed lower overall in the Ontario region. The CACP/FCS National Joint Committee position speaks only to the question of "potentially dangerous" offenders on MS; it claims that "existing resources" are inadequate to handle such cases on MS and that "enforcement" of "constraints upon the movement" of such cases is inadequate.

A certain amount of endorsement was found in every region for most or all of the possible positive aspects of MS referred to in the brief. Offenders who spoke well of MS seemed most likely to cite the parole officer's practical help during the period of transition from penitentiary to community. Every region of CSC expressed at least some reservation about the help that MS was or could be to the police; within some regions, marked differences appeared in police/parole relations from area to area. Various reasons for limitations in MS's utility to the police were cited: poor communication; police misunderstanding of the role and objectives of parole officers; police lack of time to use MS information; and the superiority of police's own information systems.

Additional benefits from MS not discussed directly in our brief, but noted by respondents, were: its delaying effect on recidivism (until Warrant Expiry Date or close to it); its incapacitative effect in "getting off the streets" offenders who could not have been touched through other criminal justice processes; its punitive or deterrent capacity (through the strategic use of suspensions or revocations); its impact on savings in formal criminal justice processing for crimes planned or executed under supervision; and its effect on penitentiary populations (by letting offenders out after two-thirds of their sentence).

Some detrimental aspects of MS were also acknowledged by most respondents. Staff and offenders seemed to agree that MS had the undesirable effects of engendering offender bitterness, making parole officers' jobs more difficult in many cases, and increasing public concern about parole generally. The CACP/FCS response refers to the "police/corrections discord" caused by "current police and general public concepts of the operation of MS; and the differences between

TA, Temporary Parole (sic), Day Parole and Parole (being) misunderstood (and) misinterpreted". The police response qualifies this problem by saying that "the police concerns are, in fact, occasioned by the very small percentage of potentially violent or dangerous offenders".

With the exception of concern (particularly in the Prairies region) about the effect of MS failures on public support for parole generally, staff were not likely to regard any of the actual or possible detrimental effects of MS as critical or controlling factors. Offender bitterness was, in fact, seen by many to be diminishing or to dissipate soon after release. Some, but not all, MS cases contribute to the difficulties of a parole officer's job, but that is seen to be necessary and, to some, a "challenge" since many MS cases present real needs for help. Most respondents had no response to, were undecided about, or disagreed over the other detrimental effects of MS mentioned in the brief (impact on penitentiary populations, parole rates, and motivating effect of earned remission).

Further detrimental effects offered by the staff respondents included the "paperburden" involved, especially for "revolving door" offenders; complications to sentence administration; and the creation of "unrealistic expectations" for MS offenders, which result in a "no-win" situation. Effects mentioned by offenders included the impact on offenders' anxiety about succeeding in the community; due process violations in revocation proceedings; and the "major impact" of MS on institutional "rioting" and inmates' willingness to participate in penitentiary programs.

CONCERNS ABOUT MS

Varying numbers of respondents spoke directly to the eight concerns raised about MS in the brief. Generally less concern was expressed over offender resentment, NPB getting blamed for MS "failures", the effect of MS on the parole rate and on the penitentiary population, and the dollar costs of MS.

Difficulties experienced by parole officers in dealing with MS cases is still a concern, especially in Ontario. Specific difficulties mentioned were the lack of offender motivation and pre-release plans, the scarcity of resources to help persons under supervision, the diminishing of controls over offenders as WED approaches, and the "paperburden" especially in "revolving door" cases, placed on parole officers.

Police, public and correctional concern about "dangerous" offenders being "automatically" released on MS was seen as significant, but not susceptible to easy solutions. This concern was seen by several respondents as a "court problem": A sentence is awarded by a judge who is (or should be) aware of the existence of earned remission and MS; almost all sentences eventually result in release to the community anyway. The alternatives were generally seen as worse: releasing risky offenders without any community supervision; having two systems of earned remission,

one for the "dangerous" and the other for the "non-dangerous"; or placing all releases up to WED in the hands of NPB. The CACP/FCS response was concerned, in the preamble, exclusively with concern over dangerous offenders and poor police/parole communications, and proposed placing all releases up to WED with NPB on these grounds.

Concern over the "revolving door syndrome", of rapid re-releases from penitentiary of revoked offenders, varied a great deal from region to region, with the Prairies showing the most concern. Respondents offered views on possible causes of the syndrome: re-parole of revoked offenders, accumulated "old" earned remission (still subject to automatic recrediting), NPB recrediting of new ER, and the granting of credit for street time spent under supervision in the community (presumably applicable largely in instances of revocation close to WED).

Offender resentment of MS was acknowledged by most respondents but was seen as a critical concern only by offenders, and by some staff in the Ontario, Quebec and B.C. regions.

NPB concern about being "blamed" for MS failures was also not seen as a significant concern. "That seems to be the reality of today" was a frequent view, and more public education was seen as a solution by many.

Concern over MS's contribution to the penitentiary population, except among offenders, was minimal. A frequent response was that technical revocations for MS were usually serious and justified, though a few CSC staff in Quebec and NPB staff in Ontario advocated reducing technical violations and relaxing supervision conditions for MS cases, some Ontario CSC and NPB respondents preferring to reduce conditions to a simple requirement to "obey the law".

Concern about MS's effects on the parole rate, when expressed at all, was not strong.

The costs of MS were generally seen to be "worth it", except to most offenders. These costs were, moreover, seen as small compared to the cost of incarceration for the equivalent time period, or to the costs of the new crimes and criminal justice processing costs prevented by MS.

#### OPTIONS FOR CHANGING MS

As mentioned above, most of the 17 options listed in the MS brief were not discussed directly by more than a few respondents in all. The most frequently mentioned option received just over 25, out of a possible 130, comments.

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However, even among those responses which did not directly address many options, implied positions were usually fairly apparent. On this basis it is fair to say that most respondents, other than offenders, favoured the continuation of some system of control of offenders after the approximate two-thirds date which presently forms the usual mandatory release date.

The following is a brief description of the options which attracted the most attention (favourable or otherwise) and a listing, not weighted according to the number of comments received, of some of the arguments raised as to these options. The options are presented here not because of the strong consensus obtained for them (since so few comments were made on any of them), but to stimulate discussion and further comment.

OPTION 14. Abolish MS but retain remission (return to pre-1970 status)  
This option was favoured by a majority of offenders, plus eleven federal correctional staff responses, many of them from Ontario. The principal reasons advanced in favour were that fairness demanded it (since remission is "earned time off your sentence"); that MS can contribute to offender failures through raising anxiety levels, demanding unfair standards of behaviour without adequate resources for helping, and allowing "technical violations"; that MS is costly and contributes little other than to the penitentiary population. The arguments against returning to the pre-1970 status were that MS is in fact effective in reducing recidivism; helping offenders and the police; incarcerating offenders who might not otherwise be liable to re-imprisonment; and providing some supervision and help for offenders who would otherwise be released without resources, often from a highly secure and controlled environment. Seen in these latter terms, concern over the "dangerous offender" is translated into a concern that he especially should not be released "outright onto the street".

OPTION 15. Abolish MS and remission (place all releases in the hands of NPB)  
Twelve respondents endorsed this option, including the CACP/FCS Committee, and twelve rejected it. The principal argument in favour was that "dangerous offenders" could be kept in penitentiary for the last one-third of the sentence and, in general, NPB would not be blamed by police or public for cases of failure on community supervision which they had no hand in releasing. Arguments against were that too many offenders would needlessly (and expensively) spend considerably longer in penitentiary before their first full release; that the retention of earned remission is essential to penitentiary discipline; that it is not possible to accurately identify who will and will not be "dangerous" if released; that penitentiary populations would rise dramatically; that such a system is an over-reaction to a problem (spectacular failures) which involves relatively small numbers of incidents annually; that the identification of "dangerous" offenders is a court, not a corrections, function; and that such a system is an inappropriate response to a problem which is really one of bad press and poor communication with police and the public.

.../6

OPTION 12. Remove eligibility for MS after one (or more) revocations from MS Seventeen endorsements of this proposal were obtained, along with six rejections and five "maybes". Advantages of this option which were mentioned: incapacitation of the recalcitrant offender; reduction of the "revolving door syndrome" and the attendant staff investment in time and paperwork; expected police and public support, and the attendant reduction in "spectacular failures" committed by re-released offenders; and an expected reduction in revocations in less serious cases. Disadvantages of this option were: inflexibility of mandatory provisions of this sort; an expected reduction in the controlling effects of earned remission in the penitentiary; and an expected reduction in the willingness to revoke or suspend.

OPTION 1. Retain MS as is Fourteen responses specifically advocated this option, and three others said it might be the least undesirable alternative. Elaboration of the arguments pro and con does not seem necessary.

OPTION 2. Increase the level of supervision of MS cases; or Increase the level of supervision of problematic cases (of any type) and decrease the level of supervision for others The Committee's brief raised only the first of the above two parts, and while that notion aroused little interest, it did attract the suggestion that less attention could be paid to supervising low-risk cases or cases with fewer needs, and that more attention could be paid to higher-risk offenders with greater needs. In addition, a few advocates suggested that difficult or "borderline" cases should be more frequent targets for programs like day parole, CCC's and CRC's. A need for more CCC's and CRC's was expressed a number of times. Some respondents said that all offenders should serve their last few months in a CCC or CRC.

OPTION 17. Abolish MS and change remission to a means of earning eligibility for parole Eight responses endorsed this idea, seven rejected it, and four said "maybe". Most of the respondents saw this option as largely indistinguishable from Option 15, with the same kinds of arguments available on each side. The retention of remission as a "means of earning eligibility for parole" was seen as very similar to abolishing remission altogether, as proposed in Option 15. While many respondents criticized remission severely in different parts of their responses, few were willing to dispense with it entirely, on grounds primarily of its perceived necessity to penitentiary discipline.

OPTION 9. Permit offenders to earn "remission" for good behaviour while under supervision Twelve respondents endorsed this, and three rejected it. Its advantages were seen as an incentive to good behaviour on supervision; a means of reducing the amount of time offenders serve under supervision; and a more equitable arrangement vis-à-vis the earning of remission by persons still incarcerated. Its disadvantages were seen as its expected ineffectiveness as an incentive and its contribution to an accelerated "loss of control" over offenders as WED approaches.

OPTION 5. Provide supervision and assistance on a voluntary-only basis Thirteen responses, seven from staff, especially in Ontario and B.C., endorsed this idea. Advantages were that staff time would be freed to work on cooperative and amenable cases; that offenders who voluntarily seek assistance are more likely to profit from it; and that supervisory personnel would be spared the trials of dealing with openly or passively hostile cases. Disadvantages were that few cases would in fact volunteer for help, and that those who did would most likely be those least in need of it.

APPENDIX B<sup>1</sup>: SECOND<sup>2</sup> RELEASES<sup>3</sup> ON MANDATORY SUPERVISION 1977-1979

The following tables were used to device the estimates discussed on page 65 of the Report.

Table B-1: Number of second releases on MS  
by type of return from first MS release

Type of return from first release	Year of second release	1977	1978	1979	Total for 3 years
Revocation without offence		503	468	373	1344
Revocation with offence/forfeiture <sup>4</sup>		466	533	392	1391
Total second releases on MS		969	1001	765	2735

<sup>1</sup> All data in this appendix is from Inmate Record System, July 1980.

<sup>2</sup> Due to the way data are coded, "second" releases are used throughout to refer to second or subsequent MS releases on the same term. "First" release refers to the immediately prior MS release on the same term.

<sup>3</sup> The data do not refer to individual offenders. Individuals may be counted more than once if they receive a third or subsequent MS release (within the same term) during the three-year period.

<sup>4</sup> After October 15, 1977 forfeiture was replaced by revocation with offence.

TABLE B-2: Number of returns from second release on MS by type of return from first MS release 1977

Type of return from first release \ Type of return from second release	Revocation without offence	Revocation with offence/forfeiture	TOTAL
Revocation without offence	117	92	209
Revocation with offence/forfeiture	120	144	264
TOTAL	237	236	473

TABLE B-3: Number of returns from second release on MS by type of return from first MS release 1978

Type of return from first release \ Type of return from second release	Revocation without offence	Revocation with offence/forfeiture	TOTAL
Revocation without offence	98	43	141
Revocation with offence/forfeiture	119	126	245
TOTAL	217	169	386

TABLE B-4: Number of returns from second release on MS by type of return from first MS release 1979\*

Type of return from first release \ Type of return from second release	Revocation without offence	Revocation with offence/forfeiture	TOTAL
Revocation without offence	68	25	93
Revocation with offence/forfeiture	85	83	168
TOTAL	153	108	261

TABLE B-5: Number of convictions for "serious offences" as major offences on revocation from second release on MS by type of return from first release on MS

Type of return from first release \ Year of second release	1977	1978	1979*	TOTAL
Revocation without offence	33	8	7	48
Revocation with offence/forfeiture	35	28	19	82
TOTAL	68	36	26	130

\* Not enough time has elapsed since second releases on MS in 1979 for these figures to be reliable

\*\* "Serious offences" were defined to include any of the following: murder, attempted murder, manslaughter, rape, attempted rape, other sexual offences, kidnapping, abduction, wounding, assault, robbery, arson and dangerous offenders.

TABLE B-6: Number of convictions for "very serious offences" as major offence on revocation from second release on MS by those revoked without offence from first release on MS

Year \ Offence	Murder	Attempted Murder	Manslaughter	Rape	Attempted Rape	Dangerous Offender	TOTAL
1977	2			1		1	4
1978							0
1979*		1					1
TOTAL	2	1	0	1	0	1	5

\* Not enough time has elapsed since second releases on MS in 1979 for these figures to be reliable.

APPENDIX C

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BRIEF AND QUESTIONNAIRE ON MANDATORY SUPERVISION

Mandatory Supervision (MS) has been a controversial program from the beginning, and partially as a result of this, there have been numerous calls to have MS evaluated. These calls for evaluation have come from various parts of the criminal justice system, and concern has been expressed about numerous aspects of MS, as well as about certain processes which are connected to MS, such as remission.

This consultation is intended to yield information from staff and offenders in the field about the current concerns with regard to MS: these concerns are, how important they are in relation to the program as a whole, and what can be done about them. We would like your views on the MS program, and what should be done about it.

The attached materials are intended to give you some notion about what some of the current concerns and options might be. They are intended to suggest only; your ideas and opinions are the important thing now.

1. In your view, are there any beneficial (positive) effects from the MS program as it now operates? In considering your answer, you should bear in mind not only the relevant aspects of the program itself, but also the offenders to whom it is directed and the environment in which it operates.

1a. For example, do you think that MS actually reduces the likelihood of or seriousness of new criminal behaviour among MS clients? If so, what are the aspects of MS which accomplish this end: i.e., is it the surveillance function; is it the helping function (job counselling, etc.); is it the casework relationship between the officer and the offender; is it the enforced compliance with the conditions of supervision; is it the threat of revocation?

1b. As another example, do you think that MS has a beneficial effect in helping clients through the difficult period between imprisonment and freedom? Does it relieve anxieties, solve practical problems, provide someone to talk to?

1c. Do you think MS is generally helpful to the police in their efforts to control and prevent crime?

2. In your view, are there any detrimental (negative) effects from the MS program as it now operates?

2a. For example, do you think that MS alienates or angers offenders by "taking away" remission time which they have "earned"?

2b. Do you think that MS decreases the motivating or other useful effects of earned remission?

2c. Do you think that MS affects the parole grant rate by ensuring that all offenders will be supervised after release anyway?

2d. Do you think that MS affects the number of people who want parole?

2e. Do you think MS makes the job of parole officers more difficult, in view of the apparent hostility or difficulty of MS offenders?

2f. Do you think that MS increases public criticism of parole in general?

2g. What is your view of the argument that MS merely creates another chance for offenders to receive "black marks" against their records?

3. In the attached materials, (Appendix A) there is a brief description of eight problems or concerns which have been identified with MS. We would like your views about each of them: Are the concerns still valid, current and important? What if anything can or should be done about them?

3a. Concern #1: Difficulties experienced and perceived by parole staff in dealing with MS cases.

3b. Concern #2: Police and NPB concerns about offenders, especially "dangerous" offenders, being "automatically" released on MS.

3c. Concern #3: Police concern about the "revolving door syndrome" of cases being released back into the community too soon after revocation.

3d. Concern #4: Inmate anger or resentment of the MS program as forcing them to serve on the street the time which they have "earned" in the penitentiary.

3e. Concern #5: NPB concern about being "blamed" by the public for having "paroled" MS cases.

3f. Concern #6: Contribution of MS to the size and growth of penitentiary population.

3g. Concern #7: Possible effects of MS on the parole grant and application rate.

3h. Concern #8: Dollar costs and effectiveness of MS.

4. Are there other concerns about MS which have not been covered? Please list any additional concerns and the importance which you

would attach to them. What if anything can or should be done about them?

5. The attached materials contain (at Appendix B) a list of possible options (choices) which could be considered for dealing with any current concerns about MS. In asking you to comment on the possible options, we are really asking you: What do you think could and should be done about the MS program, either to make it more effective, or to reduce any negative aspects which it may have? You need not restrict yourself to the options listed at Appendix B, but may present any ideas at all on the subject. Please use as much detail as possible in explaining any new ideas.

**END**