



ANGUILLA

A BILL FOR
PAROLE OF PRISONERS ACT, 2008

Published by Authority

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Schedule 1: Offences

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I Assent

Andrew Neil George
Governor

ANGUILLA

NO. / 2008

A BILL FOR

PAROLE OF PRISONERS ACT, 2008

[Gazetted:] [Commencement: section 21]

An Act to provide for the creation of a Parole Board charged with the duty of making decisions or recommendations regarding the release of prisoners on licence and the release of terminally ill prisoners without conditions, to provide for the post-release supervision of prisoners released on licence and for the revocation of licences, and to provide for related matters.

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act unless the context otherwise requires —

“belonger” means a person regarded as belonging to Anguilla in accordance with the provisions of the Constitution of Anguilla;

“Board” means the Parole Board established under section 2;

“case”, means a case concerning a prisoner who is eligible for parole;

“Chairperson” means the Chairperson of the Board;

“chief probation officer” means the person holding the public office of chief probation officer;

“Court” means the High Court;

“Department of Probation” means the department responsible for probation and parole;

“eligible for parole”, in relation to a prisoner, means that the Board or Governor, as the case may be, may order the release of that prisoner on licence in accordance with section 11(2) or 12(2);

“earliest possible parole date” means the earliest date on which a prisoner eligible for parole may be released on licence;

“incapacitated prisoner” means a prisoner who no longer poses a threat to the safety of the public by reason of his affliction with a disease, medical disability or other infirmity and who cannot be cared for appropriately in prison as result of that disease, medical disability or other infirmity;

“licence” means a licence granted to a prisoner under section 11, 12 or 14;

“member” means a member of the Board and includes the Chairperson;

“officer”, in relation to the Department of Probation, means a person holding the public office of probation officer and who has been selected by the chief probation officer to carry out the duties imposed on the Department of Probation under this Act;

“prisoner” means a person serving a sentence of imprisonment for the commission of an offence;

“Prison Regulations” mean the Prison Regulations;

“Superintendent” means the Superintendent of Prisons appointed under the Prison Act; and

“victim” means—

- (a) the person to whom harm is done or who suffers financial, physical or emotional loss as a result of the commission of the offence for which the prisoner is serving the sentence of imprisonment; and
- (b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making representations referred to in section 7(4), the spouse or any relative of that person, anyone who in law or fact has the custody of that person or is responsible for the care or support of that person, or a dependent of that person.

Constitution and Procedure of Board

2. (1) The Parole Board is established.

(2) The Board shall consist of 5 members appointed by the Governor and shall include each of the following—

- (a) a lawyer formerly engaged in the practice of criminal law;
 - (b) a social worker, psychologist, psychiatric nurse, or other mental health professional;
 - (c) a religious leader;
 - (d) a person with experience in law enforcement but who is not a public officer; and
 - (e) a member of the general public.
- (3) The Governor shall appoint one member as the Chairperson.
- (4) The members shall serve for a term of 2 years and shall be eligible for re-appointment.

(5) A member may at any time resign his office by notice in writing to the Governor.

(6) When a vacancy occurs in the membership of the Board, the Governor may appoint a person to fill that vacancy for the unexpired portion of the period in respect of which the vacancy occurs, and that person shall be from the same category of persons specified in subsection (2) as the member in respect of whom the vacancy occurs.

(7) When any member is absent from Anguilla, ill, or otherwise unable to discharge his functions, the Governor may, for the period of the absence, illness or other inability appoint any person he thinks fit to be a member in the place of the member who is so absent, ill or otherwise unable, and that person shall be from the same category of persons specified in subsection (2) as the said member.

(8) The Governor may revoke the appointment of a member who is unable or unwilling to perform his duties as a member, or in such other circumstances as the Governor considers appropriate.

(9) At a meeting of the Board—

(a) when the matter concerns a prisoner serving a sentence of imprisonment for an offence set out in Schedule 1, all members must be present to constitute a quorum; and

(b) in any other matter, any 3 members shall constitute a quorum;

but subject thereto the Board is not disqualified from carrying out its functions by reason of any vacancy in membership.

(10) The Chairperson shall preside at meetings of the Board, but in the event of his absence from a meeting, the members present shall appoint another member to preside at that meeting.

(11) Subject to the provisions of this section and section 7, the members of the Board may regulate the conduct of the proceedings of the Board in such manner as they think fit, but on any matter on which the votes of the members present are equally divided the person presiding at the meeting shall have a second or casting vote.

(12) The person holding the office of senior clerical officer at Her Majesty's prison shall be the recording secretary to the Board and shall provide general secretarial assistance to the Chairperson and keep accurate and complete minutes of each meeting of the Board including particulars of—

(a) the notice to members of each meeting;

(b) the members in attendance and the members not in attendance;

(c) any decision or recommendation made and the members voting on it or abstaining from voting on it

(13) In carrying out its functions under this Act, the Board shall have regard to the regulations made under section 20.

Immunity of members of the Board

3. No action for damages or other proceeding may be commenced against a member of the Board for anything done or not done in good faith by the member while carrying out his functions or exercising his powers under this Act.

Functions of the Board

4. It is the duty of the Board—

- (a) to make decisions with respect to—
 - (i) the release of prisoners on licence, save for prisoners sentenced to a term of imprisonment for life and prisoners sentenced to detention during the Court's pleasure,
 - (ii) the conditions of such a licence, and the variation or cancellation of any such conditions,
 - (iii) the revocation of such a licence, and
 - (iv) any other matter which is connected with the release on licence or revocation of the licence of such a prisoner;
- (b) to make recommendations to the Governor regarding the release on licence of a prisoner sentenced to a term of imprisonment for life and the conditions of such licence;
- (c) at the request of the Court, to conduct reviews of the continued detention of a prisoner sentenced to detention during the Court's pleasure and to make recommendations regarding the release on licence of that prisoner and the conditions of such licence; and
- (d) at the request of the Superintendent—
 - (i) to decide whether a terminally ill prisoner should be released without conditions prior to the expiration of his sentence or whether an incapacitated prisoner should be released on licence, though the prisoner may not be eligible for parole,
 - (ii) where a terminally ill prisoner or an incapacitated prisoner is serving a term of imprisonment for life, to make a recommendation to the Governor as regards the release of the prisoner, though the prisoner may not be eligible for parole, or
 - (iii) where a terminally ill prisoner or an incapacitated prisoner is sentenced to detention during the Court's pleasure, to make a recommendation to the Court as regards the release of the prisoner.

Cases to be referred to the Board

5. (1) When a prisoner makes an application for parole, the Superintendent shall refer the case to the Board 2 months before the prisoner's earliest possible parole date.

- (2) The Superintendent shall not refer a case to the Board in relation to a prisoner—
- (a) who has an appeal pending in relation to the matter for which he is serving a sentence of imprisonment; or
 - (b) against whom there are pending criminal matters.

(3) The Superintendent shall, at intervals of not more than one year from the last previous reference of a particular case to the Board, again refer that case to the Board for its decision or recommendation where the prisoner to whom the case relates—

- (a) has not been released on licence; or
- (b) has had his licence revoked and is continuing to serve his sentence.

(4) Notwithstanding subsection (3), if the Board, the Governor or the Court so directs, a particular case shall be referred to the Board at such shorter interval, not being less than 3 months, as specified by the Board, the Governor or the Court, as the case may be.

Referral of terminally ill or incapacitated prisoners

6. (1) When a request for release is made by or on behalf of a terminally ill or incapacitated prisoner in accordance with regulations made under this Act, the Superintendent may, after following the prescribed procedure, request that the Board make a decision or recommendation as regards the release of that prisoner.

(2) Where the Board, the Governor, or the Court as the case may be, decides that a terminally ill or incapacitated prisoner should not be released, or where an incapacitated prisoner released on licence has had his licence revoked and is continuing to serve his sentence, the Superintendent, shall at intervals of not more than 6 months after such decision or revocation, request that the Board make a decision or recommendation regarding the release of the prisoner.

(3) Notwithstanding subsection (2), if the Board, the Governor or the Court so directs, the release of a terminally ill or incapacitated prisoner shall be considered by the Board at a shorter interval as specified by the Board, the Governor or the Court as the case may be.

(4) Notwithstanding subsections (2) and (3), the Superintendent may again request that the Board make a decision or recommendation regarding the release of a terminally ill or incapacitated prisoner where the Superintendent reasonably believes based on medical reports that the prisoner's health has significantly deteriorated since the previous decision of the Board, the Governor or the Court as the case may be, in relation to the prisoner.

Basis on which Board to reach decisions or recommendations

7. (1) When a case is referred to the Board, the Board shall deal with the case on consideration of any documents submitted by the Superintendent and of any reports it has requested and any other information, whether oral or in writing that it has obtained.

- (2) The documents to be given to the Board in each case shall include—
- (a) the prisoner's application for parole;

- (b) a report of the nature and circumstance of the offence for which the sentence of imprisonment was imposed;
- (c) a report by the Superintendent or other prison officer as to the conduct, demeanour and health of the prisoner while in the prison, including a report by a medical officer;
- (d) details of the prisoner's criminal history, if any;
- (e) details of the personal and family background of the prisoner including information regarding his nationality;
- (f) any written representation made by the prisoner concerned, including any made by him since his case was last considered by the Board, if it had previously been considered;
- (g) an assessment of risk prepared by the Department of Probation in accordance with section 9(1)(b);
- (h) documented official or community attitudes as regards the release of the prisoner, if any; and
- (i) any other relevant documentation.

(3) The Board shall give the prisoner to whom the case relates an opportunity to make representations in person before reaching a final decision.

(4) Where, in accordance with regulations made under this Act, a victim wishes to appear in person to make oral representations before the Board, the Board shall give the victim an opportunity to do so before reaching a final decision.

(5) Save for a decision or recommendation regarding the conditions of a licence, a decision or recommendation of the Board made pursuant to section 4 shall—

- (a) where the matter concerns a prisoner serving a sentence of imprisonment for an offence set out in Schedule 1, be based on the unanimous votes of the members of the entire Board; and
- (b) in any other matter, be based on the affirmative votes of the majority of the members of the entire Board.

Considerations of the Board

8. In carrying out its functions under the Act, the Board shall consider the following—

- (a) whether it is no longer necessary for the protection of the public that a particular prisoner be imprisoned;
- (b) whether the prisoner is sufficiently rehabilitated that his continued rehabilitation can be safely carried out in the community;
- (c) whether the prisoner is capable of adhering to the conditions of a licence; and

- (d) the risk of the prisoner re-offending.

Duties of Department of Probation

9. (1) For the purposes of this Act, the Department of Probation shall—
- (a) interview a prisoner who is eligible for parole, whose detention is being reviewed or who is being considered for release and interview the victim of the relevant offence if provided for in regulations made under this Act,
 - (b) prepare and submit to the Board a report containing information necessary to comply with such requirements of section 7(2) as the Superintendent may specify, and such report shall include an assessment of risk regarding—
 - (i) whether the prisoner is a suitable candidate for release on licence,
 - (ii) the risk of the prisoner re-offending and risk of the prisoner endangering the community,
 - (iii) the risk of the prisoner harming himself and his vulnerability to possible retaliation by the community,
 - (iv) the suitability of the prisoner's proposed residence if released on licence and, if necessary, a proposed alternative residence,
 - (v) a proposed programme for the prisoner's rehabilitation and recommendations with respect to conditions to be included in his licence, if the prisoner is in fact considered a suitable candidate for release on licence, and
 - (vi) if applicable, any representations made by the victim in accordance with regulations made under this Act;
 - (c) implement an appropriate programme for the rehabilitation of the prisoner;
 - (d) supervise a prisoner released on licence with a view to assisting the prisoner's rehabilitation and reintegration into the community as a law-abiding person;
 - (e) where appropriate, prepare and submit to the Board, on behalf of a prisoner released on licence or of its own accord, a request to vary or cancel a condition of the licence along with a report setting out the grounds for such variation or cancellation;
 - (f) where appropriate, prepare and submit to the Board a report of a prisoner's breach of the conditions of a licence which shall set out the basis of the allegation of breach; and
 - (g) perform any other duties required by this Act.
- (2) The duties imposed on the Department of Probation under this Act shall be exercised by the chief probation officer or any officer of the Department of Probation selected by the chief probation officer.

(3) For the purpose of ensuring the effective supervision of prisoners released on licence, the chief probation officer shall—

- (a) assign officers to serve in such areas and for such matters as he determines;
- (b) direct and supervise the work of officers;
- (c) formulate and implement methods of investigation and supervision of such prisoners, record keeping and reporting;
- (d) develop policies and procedures for dealing with prisoners released on licence; and
- (e) prepare and submit to the Board biannually, a report regarding the prisoners under its supervision during the period covered by the report.

Submission of the Attorney General

10. (1) When a prisoner who is sentenced to a term of imprisonment of 10 years or more or sentenced to detention during the Court's pleasure applies for parole, the Attorney General may make a written submission to the Board supporting or objecting to the prisoner's application.

(2) The Attorney General shall forward his submission under subsection (1) to the Superintendent not less than 14 working days before the date set for hearing and the Superintendent shall within 1 day of receiving such submission—

- (a) submit it to the Board; and
- (b) provide a copy to the prisoner to whom it relates.

Release of prisoners on licence

11. (1) This section does not apply to prisoners sentenced to a term of imprisonment for life or to prisoners sentenced to detention during the Court's pleasure.

(2) The Board may order the release on licence of a prisoner who is sentenced to a term of imprisonment of more than 1 year, after the prisoner has served not less than one half of his sentence.

(3) For the purpose of determining under subsection (2) the length of that part of the sentence which a prisoner has served, a period spent in custody—

- (a) before conviction;
- (b) between conviction and sentence; and
- (c) pending the determination of an appeal against conviction or sentence;

shall not be taken into account unless the relevant court directs otherwise on passing the sentence or determining an appeal.

(4) Notwithstanding subsection (2), the Board may order the release on licence of an incapacitated prisoner or the release without conditions of a terminally ill prisoner, though the

prisoner may not be eligible for parole and in deciding whether to make such an order, the Board shall act in accordance with sections 7 and 8.

(5) A licence granted to a prisoner under this section may be made subject to such conditions, if any, as appear to the Board to be desirable either generally or in any particular case, and any such conditions may be varied from time to time or cancelled by the Board, after considering the report of the Department of Probation prepared in accordance with section 9(1)(e).

(6) A prisoner released on licence under this section shall comply with such conditions, if any, as may be specified in the licence.

(7) A licence granted to a prisoner shall, unless earlier revoked, remain in force until the expiration of three quarters of the term of his sentence.

(8) When the Board releases on licence a prisoner who is not a believer, the Board may recommend to the Governor that the Governor make an expulsion order in relation to that prisoner under the Undesirable Persons Expulsion Act.

Release of life prisoners

12. (1) When sentencing a prisoner to a term of imprisonment for life, the Court may specify the period of imprisonment the prisoner must serve before he can make an application for parole, the period being such as the Court considers appropriate to satisfy requirements of retribution and deterrence.

(2) The Governor shall, if the Board so recommends, order the release on licence of a prisoner sentenced to a term of imprisonment for life—

- (a) after the prisoner has served the period of imprisonment specified by the Court under subsection (1); or
- (b) where no period of imprisonment has been specified by the Court under subsection (1), after the prisoner has served not less than 15 years of his sentence.

(3) Notwithstanding subsection (2), the Governor shall, if the Board so recommends, and with the approval of the Judge of the Court, order the release on licence of an incapacitated prisoner sentenced to a term of imprisonment for life or the release without conditions of a terminally ill prisoner sentenced to a term of imprisonment for life, though the prisoner may not be eligible for parole.

(4) The provisions of sections 11(3), (5) and (6) apply to a prisoner released on licence under this section, save that licence conditions may be varied or cancelled by the Governor in accordance with the recommendation of the Board.

(5) A licence granted to a prisoner sentenced to a term of imprisonment for life shall remain in force for such period as recommended by the Board, being not less than 5 years.

(6) Before making a recommendation to the Governor under this section the Board shall act in accordance with sections 7 and 8.

(7) When the Board makes a recommendation to the Governor under this section, he shall act in accordance with that recommendation.

(8) When the Governor releases on licence a prisoner sentenced to a term of imprisonment for life who is not a believer, the Governor may make an expulsion order in relation to that prisoner under the Undesirable Persons Expulsion Act.

Review of prisoners sentenced to detention during the Court's pleasure

13. (1) The Board shall review the continued detention of a prisoner sentenced to detention during the Court's pleasure at such intervals as ordered by the Court at the time of sentencing the prisoner or thereafter.

(2) Notwithstanding subsection (1), the detention of a juvenile prisoner during the Court's pleasure shall be reviewed annually by the Board until the juvenile prisoner attains the age of 18 years, and thereafter that prisoner's detention shall be reviewed at such intervals as ordered by the Court.

(3) The Board shall record and forward to the Court, its findings in relation to the review of the continued detention of a prisoner sentenced to detention during the Court's pleasure.

Release of prisoners sentenced to detention during the Court's pleasure

14. (1) If requested to do so by the Court, the Board shall make a recommendation to the Court regarding the release on licence of a prisoner sentenced to detention during the Court's pleasure.

(2) Without prejudice to the generality of subsection (1), when a prisoner who committed an offence while being a juvenile, has been sentenced to detention during the Court's pleasure in relation to that offence and has been so detained for 15 years, the Court shall request that the Board make a recommendation regarding the release on licence of that prisoner.

(3) Notwithstanding subsection (1), if requested to do so by the Superintendent, the Board shall make a recommendation to the Court regarding the release on licence of an incapacitated prisoner who is sentenced to detention during the Court's pleasure or the release without conditions of a terminally ill prisoner who is sentenced to detention during the Court's pleasure.

(4) Before making a recommendation to the Court under this section, the Board shall act in accordance with sections 7 and 8.

(5) After considering the recommendation of the Board under this section, the Court may order the release on licence of a prisoner sentenced to detention during the Court's pleasure and the provisions of sections 11(5) and (6) apply to that prisoner, save that any functions of the Board specified in those sections shall be carried out by the Court.

(6) After considering the recommendation of the Board under this section, the Court may order the release without conditions of a terminally ill prisoner sentenced to detention during the Court's pleasure.

(7) A licence granted to a prisoner sentenced to detention during the Court's pleasure shall remain in force for such period as determined by the Court, being not less than 5 years.

(8) When the Court releases on licence a prisoner sentenced to detention during the Court's pleasure who is not a believer, the Court may recommend that the Governor make an expulsion order in relation to that prisoner under the Undesirable Persons Expulsion Act.

Revocation of licence for breach of condition

15. (1) When the Department of Probation has reasonable grounds for believing that a prisoner released on licence is in breach of a condition of that licence, the Department shall submit to the Board, a report of the alleged breach prepared in accordance with section 9(1)(f).

(2) On receipt of a report submitted in accordance with subsection (1) the Board shall meet to determine whether the information presented in the report establishes a prima facie case that there has been a breach of the condition of the licence.

(3) If on review of the information presented in the report under subsection (1), the Board is not satisfied that a prima facie case has been established, the licence shall be allowed to continue.

(4) If on review of the information presented in the report under subsection (1), the Board is satisfied that a prima facie case has been established, the Board shall forward its findings to the Commissioner of Police and the Commissioner of Police shall apply to the Magistrate's Court for a warrant to arrest the prisoner.

(5) If it appears to the Magistrate on information on oath that there are reasonable grounds for believing that a prisoner has breached the conditions of his licence, the Magistrate shall issue a warrant for the arrest of the prisoner and upon his appearance, shall—

(a) inform the prisoner of the licence conditions he is alleged to have breached; and

(b) remand the prisoner to prison until the Board determines whether or not the prisoner's licence should be revoked.

(6) A prisoner returned to prison under subsection (5) assumes the status of a remand prisoner.

(7) On the return of a prisoner to prison under subsection (5), the Superintendent shall—

(a) provide the prisoner with any documentary evidence in support of the allegations of breach of the licence conditions; and

(b) inform the prisoner of his right to obtain legal representation and to present evidence and make representations before the Board.

(8) Within 5 working days of the remand of a prisoner under subsection (5), the Board shall meet to conduct a hearing to determine whether or not his licence should be revoked.

(9) At a hearing referred to subsection (8), the Board shall receive documentary and oral evidence and shall give the prisoner or his attorney at law an opportunity to show cause why his licence should not be revoked.

(10) If the Board is satisfied that the evidence presented under subsection (9) proves on a balance of probabilities that the prisoner is in breach of the conditions of the licence, the Board may—

- (a) revoke the licence;
- (b) order the release of the prisoner subject to the imposition of additional licence conditions;
- (c) if the prisoner was sentenced to a term of imprisonment for life, recommend that the Governor take action under paragraph (a) or (b); or
- (d) if the prisoner was sentenced to detention during the Court's pleasure, recommend that the Court take action under paragraph (a) or (b).

(11) On the revocation of the licence of a prisoner under this section, he resumes the status of a convicted prisoner and shall continue to serve the unexpired portion of his sentence.

(12) If the Board is not satisfied that the evidence proves on a balance of probabilities that that prisoner is in breach of the conditions of the licence, the Board shall—

- (a) recommend that the Governor release the prisoner, if the prisoner was sentenced to a term of imprisonment for life;
- (b) recommend that the Court release the prisoner, if the prisoner was sentenced to detention during the Court's pleasure; or
- (c) in any other case, release the prisoner on licence;

and upon release, the licence of the prisoner shall continue unless or until it has expired or unless it is subsequently revoked in accordance with this Act.

(13) When a recommendation is made by the Board under this section—

- (a) to the Governor, he shall act in accordance with that recommendation; or
- (b) to the Court, the Court may act in accordance with that recommendation.

Revocation of licence for commission of further offence

16. (1) When a police officer has reasonable grounds for believing that a prisoner released on licence has committed an offence during the period of release, the police officer shall arrest the prisoner without a warrant and as soon as practicable after his arrest, bring him before the Magistrate's Court to be dealt with according to law.

(2) On the appearance of the prisoner before the Magistrate's Court, the Magistrate shall remand the prisoner.

(3) Notwithstanding anything to the contrary in any other law, a prisoner released on licence who is charged with committing an offence during the period of release, shall not be admitted to bail by any court.

(4) A prisoner remanded in accordance with subsection (2) assumes the status of a remand prisoner and his licence is automatically suspended.

(5) The Board shall revoke the licence of a prisoner who is convicted of an offence committed during the period of release on licence, and that prisoner shall continue to serve the unexpired portion of his sentence for the original offence, in addition to any new sentence of imprisonment imposed by the relevant court in relation to the offence committed during the period of release on licence, unless that court directs otherwise.

(6) If a prisoner charged with an offence allegedly committed during the period of release on licence is not convicted, the prisoner shall be released and remains subject to the conditions of his licence unless or until it has expired or unless it is subsequently revoked in accordance with this Act.

(7) If a prisoner to whom this section applies was originally sentenced to a term of imprisonment for life, then the functions of the Board under this section shall be carried out by the Governor.

(8) If a prisoner to whom this section applies was originally sentenced to detention during the Court's pleasure, then the functions of the Board under this section shall be carried out by the Court.

Revocation of licence of incapacitated prisoner

17. (1) Where an incapacitated prisoner is released on licence and the Superintendent reasonably believes based on medical and any other reliable reports that the prisoner's medical condition has improved to the extent that he is no longer an incapacitated prisoner, the Superintendent shall request that the Board make a decision or recommendation regarding the revocation of the licence of the prisoner.

(2) In making a decision or recommendation as requested in subsection (1), the Board shall be entitled to—

- (a) examine any medical reports and any other reliable reports in relation to the prisoner;
- (b) request that the prisoner undergoes, at his own expense, such medical examination as the Board may direct;
- (c) request and review an assessment of risk prepared by the Department of Probation.

(3) If the Board is satisfied based on the information obtained under subsection (2) that the prisoner is no longer an incapacitated prisoner, the Board shall—

- (a) recommend that the Governor revoke the licence, if the prisoner was sentenced to a term of imprisonment for life;
- (b) recommend that the Court revoke the licence, if the prisoner was sentenced to detention during the Court's pleasure; or
- (c) in any other case, revoke the licence of the prisoner.

- (4) When a recommendation is made by the Board under this section—
- (a) to the Governor, he shall act in accordance with that recommendation; or
 - (b) to the Court, the Court may act in accordance with that recommendation.

(5) Where the Board, the Governor or the Court as the case may be, revokes the licence of a prisoner whom they believe is no longer an incapacitated prisoner, the prisoner shall—

- (a) be served personally with a notice of such revocation;
- (b) be returned to prison by a police officer appointed for that purpose; and
- (c) continue to serve the unexpired portion of his sentence;

but the return of the prisoner to prison does not affect his eligibility for parole, if applicable.

Reports of the Board

18. (1) When a prisoner is released on licence, a licence is revoked, or a terminally ill prisoner is released without conditions prior to the expiration of his sentence, the Board shall forward to the Governor a report of its decision to release the prisoner or revoke the licence.

(2) The Board shall, within 3 months after the end of each calendar year forward to the Governor an annual report of the operation of the Board during that calendar year.

(3) The annual report referred to in subsection (2) shall specify any requests made by the Court under section 14(1) or the Superintendent under section 14(3).

(4) The Governor shall as soon as possible after receiving the annual report, cause copies of the annual report to be laid before the House of Assembly by the Minister responsible for prisons.

Expenses of the Board

19. Members of the Board shall receive such remuneration or allowance as may be prescribed by the Governor in Council and the cost thereof and any other expenses of the Board shall be defrayed out of money authorised for that purpose by the House of Assembly.

Regulations

20. The Governor in Council may make regulations for carrying out the purposes of this Act.

Citation and commencement

21. This Act may be cited as the Parole of Prisoners Act, 2008 and shall come into force on such date as the Governor may appoint by Notice in the *Gazette*.

Transitional provisions

22. (1) Subject to subsection (2), this Act applies to a prisoner serving a sentence of imprisonment which began before, on or after the commencement of this Act.

(2) Section 12(2)(a) does not apply to a prisoner sentenced to a term of imprisonment for life before the commencement of this Act.

(3) Where before the commencement of this Act, a prisoner is sentenced to detention during Her Majesty's pleasure, that prisoner is deemed to have been sentenced to detention during the Court's pleasure for the purposes of this Act and may apply to the Court for an order under section 13.

Consequential amendments

23. The Act set out in Column 1 of Schedule 2 is amended to the extent set out opposite in Column 2 of that Schedule.

Speaker

Passed by the House of Assembly this day of 2008.

Clerk of the House of Assembly

SCHEDULE 1

(sections 2(9)(a) and 7(5)(a))

OFFENCES

Where the matter being considered by the Board concerns a prisoner serving a sentence of imprisonment for one of the following offences, the entire Board must be present to constitute a quorum and the decision or recommendation of the Board must be unanimous :

Offences under the Criminal Code —

| | |
|-------------------|--|
| Section 53 | Treason |
| Section 54 | Concealment of treason |
| Section 55 | Treason felony |
| Section 57 | Incitement to mutiny |
| Section 60 | Piracy Iure Gentium |
| Section 74(1) | Unlawful oath to commit serious offences |
| Section 124(1)(a) | Rescue from lawful custody |
| Section 142 | Sexual intercourse with person under 14 years of age |
| Section 143 | Sexual intercourse with person between 14 and 16 years of age |
| Section 144 | Sexual intercourse with minor suffering from mental disorder |
| Section 145 | Sexual intercourse with dependent child |
| Section 146 | Indecent assault on minor |
| Section 147 | Procuration of minor |
| Section 148 | Living on earnings of prostitution of minor |
| Section 149 | Failure to disclose HIV infection prior to sexual intercourse with person between 14 and 18 years of age |
| Section 150 | Causing or encouraging prostitution of minor |
| Section 151 | Householder, etc., permitting defilement of minor on his premises |
| Section 152 | Forcible taking or detention of minor with intent to have sexual intercourse |

| | |
|----------------------|--|
| Section 153 | Unlawful detention of minor with intent to have sexual intercourse |
| Section 154 | Abduction of unmarried person under 16 years of age |
| Section 155 | Abduction of unmarried person between 16 and 18 years of age |
| Section 158 | Sexual harassment of minor |
| Section 161 | Rape |
| Section 162 | Sodomy and bestiality |
| Section 163 | Incest |
| Section 164 | Unlawful sexual intercourse with a woman with intent to marry, etc |
| Section 165 | Sexual assault by husband |
| Section 166 | Attempted buggery, and indecent assault, on a man |
| Section 167 | Indecent assault on a woman |
| Section 168 | Abduction or kidnapping of woman with intent to marry, etc |
| Section 169 | Causing prostitution of woman |
| Section 170 | Procuring woman by threats or false pretences |
| Section 171 | Administering drugs to facilitate sexual intercourse |
| Section 172 | Detention of woman in brothel, etc |
| Section 185 | Child destruction |
| Sections 186 and 188 | Murder |
| Section 190 | Attempted murder |
| Section 191 | Manslaughter |
| Section 193 | Infanticide |
| Section 194 | Threats to murder |
| Section 195 | Conspiracy to murder |
| Section 196 | Aiding, abetting, etc., suicide |

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| Section 203 | Wounding or causing grievous bodily harm with intent |
| Section 204 | Wounding or inflicting grievous bodily harm |
| Section 206 | Attempting to choke in order to commit an offence |
| Section 207 | Using anaesthetic to commit an offence |
| Section 208 | Administering poison so as to endanger life or inflict grievous bodily harm |
| Section 209 | Administering poison with intent to injure, etc |
| Section 210 | Causing grievous bodily harm by corrosive or explosive substance |
| Section 211 | Using explosive or corrosive substance with intent to do grievous bodily harm |
| Section 212 | Placing explosive near building, etc., with intent to cause bodily harm |
| Section 213 | Causing explosion likely to endanger life or property |
| Section 214 | Setting traps, etc., with intent to inflict grievous bodily harm |
| Section 215 | Unlawful use of firearms |
| Section 222 | Assault causing actual bodily harm |
| Section 223 | Assault on person protecting wreck |
| Section 225 | Assault on female or male under 14 years of age |
| Section 228 | Impeding escape from shipwreck |
| Section 229 | Neglecting apprentice or servant |
| Section 230 | Failure to supply necessaries |
| Section 231 | Abandoning or exposing child under 2 years of age |
| Section 232 | Cruelty to children |
| Section 235 | Kidnapping |
| Section 236 | Abduction |
| Section 238 | Child stealing |
| Section 249 | Robbery |
| Section 250 | Burglary |

Section 251 Aggravated burglary

Section 302(3) and (4) Damaging or destroying property by fire

Section 308(1) Acts tending to the destruction of aircraft and ships

Section 309(1) Casting away ships, etc

Attempting, aiding, abetting, counselling or procuring, the commission of any of the above offences and conspiring to commit, and being an accessory after the fact with respect to, any of the above offences.

Offences under the Firearms Act—

Section 23 Restrictions relating to the discharge of firearms and ammunition

Section 24 Possessing firearm with intention to injure

Section 25 Use or possession of firearm or imitation firearm in certain circumstances

Attempting, aiding, abetting, counselling or procuring, the commission of any of the above offences and conspiring to commit, and being an accessory after the fact with respect to, any of the above offences.

SCHEDULE 2

(Section 23)

CONSEQUENTIAL AMENDMENT

| Act | Extent of Amendment |
|--------------------------------|--|
| Jury Act, R.S.A., c. J15 | Part 1 of Schedule 1 is amended in Group 2, by inserting immediately after “extramural prison officers”, the following new category of persons “Members of the Parole Board established under section 2 of the Parole of Prisoners Act, 2008”. |

OBJECTS AND REASONS

- Clause 1: defines the terms used in the Bill.
- Clause 2: provides for the establishment of a Parole Board (“the Board”) consisting of five members, four of whom should have particular areas of expertise and one of whom is to represent the public interest. This clause also gives guidelines as regards what occurs when there is a vacancy in board membership as well a basic outline as regards Board meetings.
- Clause 3: makes provision for the immunity of members of the Board while carrying out their functions.
- Clause 4: outlines the functions of the Board which include making decisions about the release of prisoners and recommendations regarding the release of those sentenced to life imprisonment or sentenced to detention during the Court’s pleasure.
- Clause 5: provides for the Superintendent of Prisons to refer to the Board the cases of prisoners who are eligible for parole and also prisoners who have been refused parole or who have had their licences revoked.
- Clause 6: provides for the Superintendent to request that the Board consider the release of terminally ill or incapacitated prisoners and also such prisoners whose release was not favourably considered previously, or in the case of an incapacitated prisoner, whose licence has been revoked.
- Clause 7: outlines the basis on which the Board is to reach decisions, including the documents to be given to the Board in each case. The clause makes provision for the prisoner to appear in person before the Board and also for the victim to make representations to the Board.
- Clause 8: lists the matters the Board will consider in carrying out its functions, which include matters such as the protection of the public and the risk of the prisoner re-offending.
- Clause 9: outlines the duties of the Department for Probation, which under the Act will be responsible for parole. The Department will conduct a risk assessment of the prisoner, supervise his parole and submit reports, including reports of breach of licence, to the Board.
- Clause 10: allows the Attorney General to make a submission to the Board when considering the case of a prisoner who is sentenced to imprisonment for 10 years or more or who is sentenced to detention during the Court’s pleasure.
- Clause 11: applies to all prisoners save for those sentenced to life imprisonment or sentenced to detention during the Court’s pleasure. Under this clause, prisoners sentenced to imprisonment for more than 1 year are eligible for parole after they have served half their sentence. The clause also empowers the Board to release on licence prisoners who are incapacitated and to release terminally ill prisoners

without conditions, even though not eligible for parole. Under this clause, the Board is empowered to impose licence conditions.

- Clause 12: empowers the Court to specify a period which a life prisoner must serve before he can apply for parole. It also gives the Governor the power to release life prisoners (after they have served the period specified by the Court, or where no period is specified, after they have served 15 years of their sentence) if the Board recommends their release. Under this clause the Governor can also release on licence life prisoners who are incapacitated and release terminally ill life prisoners without conditions, even though not eligible for parole.
- Clause 13: empowers the Board to periodically review the detention of persons sentenced to detention during the Court's pleasure and to submit reports of their status to the Court.
- Clause 14: empowers the Board, at the Court's request, to make recommendations as regards the release on licence of prisoners sentenced to detention during the Court's pleasure. Under this clause the Court may order the release of such prisoners after receiving a recommendation from the Board.
- Clause 15: outlines the procedure to be followed when a prisoner breaches the conditions of his parole licence. The clause provides for the submission of a report from the Department of Probation, the review of that report and other information by the Board, the arrest of the prisoner (if necessary), the remand of the prisoner and a hearing to determine whether there was in fact a breach. If breach is established, the licence is revoked. If not, the prisoner is released and the licence continues.
- Clause 16: outlines the procedure to be followed when a prisoner is charged with the commission of another offence while on parole. Provision is made for the prisoner's arrest, appearance before the Magistrate's Court, and his remand until the new charge has been dealt with. The prisoner is not entitled to bail in these circumstances. If convicted, the prisoner's licence is revoked, but if the prisoner is acquitted, the licence continues.
- Clause 17: provides a mechanism for the revocation of a licence of an incapacitated prisoner whose medical condition improves to the extent that he can no longer be considered incapacitated
- Clause 18: provides for the Board to submit reports of its operations to the Governor and for tabling of its annual report before the House of Assembly.
- Clause 19: provides for the payment of the expenses of the Board.
- Clause 20: provides for the Governor in Council to make regulations.
- Clause 21: cites the Act and provides for its commencement
- Clause 22: makes the Act applicable to prisoners serving sentences of imprisonment which began before, on or after the commencement of the Act, makes section 12(1)(a) inapplicable to life prisoners sentenced before the commencement of the Act, deems prisoners currently detained at Her Majesty's pleasure as being sentenced

to detention during the Court's pleasure for the purposes of the Act and enables them to seek review of their detention.

Clause 23: provides for a consequential amendment. The amendment is made to the Jury Act to exempt Board members from jury service.

Wilhelm C Bourne
Honourable Attorney General