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**LONG TERM SUPERVISION**  
**DISCUSSION PAPER**

September 30, 1994

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# LONG TERM SUPERVISION

## DISCUSSION PAPER

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This discussion paper was prepared by the Policy Branch of the Secretariat of the Ministry of the Solicitor General for the use of the Federal/Provincial/Territorial Task Force on High-Risk Violent Offenders.

## INTRODUCTION

The Task Force on High Risk Violent Offenders was asked to make recommendations to the Federal/Provincial Committee of Deputy Ministers Responsible for Criminal Justice as to the legislative and policy changes that would improve public protection from high risk violent offenders. One of the areas of focus was to include a review of the possible use of Long Term Probation/Supervision (LTP/LTS) as a new sentencing option.

The purpose of this paper is to facilitate the Task Force members' consideration of the issue. Prior to drafting the discussion paper, Minutes of Task Force meetings and conference calls were reviewed to obtain a sense of preliminary discussions on this topic. Although the Task Force had not as yet systematically addressed the LTP/LTS option, there were clear indications that the scheme should be limited in its application to certain categories of offenders, possibly as an alternative to indeterminate incarceration at the front end, or as an alternative to what would otherwise have been a longer period spent in prison. Similarly, it was evident from reviewing the Minutes that the Task Force wished to prevent indiscriminate use of the scheme by restricting its application to a defined target population. As well the scheme would have to be one likely to increase community safety, or at least not pose an increased threat.

This discussion paper first describes the context and underlying problem to be addressed. Next, the assumed main objectives of the proposed new scheme are made explicit. This is followed by a brief look at patients under Warrants of the Lieutenant Governor in Canada prior to the 1992 Mental Disorder amendments (Bill C-30) of the *Criminal Code*—a group governed by a legislative scheme from which ensued actual experience in managing risk to the community, long term supervision and gradual release. As well, some information about relevant developments in the USA is presented. The paper next raises some issue areas and then presents some possible models that could be considered in the Canadian context.

The paper is seen as a catalyst or first step to help the Task Force consider the feasibility of a long term supervision sentencing disposition. If it is determined to be worthwhile to design some model(s) in detail, the Task Force might make recommendations as to which model(s) to pursue further, or perhaps other avenues to explore.

## BACKGROUND

In recent years, recommendations for creating a new sentencing option that would address the longer term community supervision needs of some classes of offenders have been proposed by various quarters (see Annex A).

Presently in Canada probation may be imposed in connection with a sentence of imprisonment of two years or less, or in addition to a fine. It must be imposed where the imposition of a sentence of incarceration is suspended for a period of time, or where a sentence of incarceration is ordered to be served intermittently. The maximum duration of a

probation order is three years. There is no probation scheme at the federal level, although statutory release plays a somewhat comparable role.

Various types of conditional release including temporary absence, day parole, full parole, and statutory release are applicable to offenders receiving a sentence of two years or more, i.e., a federal sentence. Also, federal offenders may, where appropriate, be confined in provincial hospitals under Exchange of Service Agreements with provincial jurisdictions. Sex offenders both in provincial and federal correctional systems often pose a particular problem when all intervention by the corrections system ends with the warrant expiry date, but the offender is deemed to present a continuing risk to public safety. Experts in the field claim that sex offenders cannot be considered "cured" as a result of treatment but that protection of the public is best enhanced through relapse prevention. This implies a key role for concerted supervision and support in the community that is longer than generally applied under regular conditional release or probation.

In the interest of community protection, at the time of sentencing and upon application by the crown attorney, a court has the power to declare an individual a "Dangerous Offender" and to impose an indeterminate sentence. The National Parole Board conducts periodic reviews and has the authority to subsequently grant parole. Most of the persons who have received this designation are sex offenders. On December 17, 1992 there were 111 Dangerous Offenders (DOs) with indeterminate sentences under federal supervision; 106 were incarcerated in federal institutions and one was incarcerated in a provincial facility; there were four on conditional release (one was on day parole and three were on full parole). Categorizing DOs by their major admitting offences (the offence for which they could have received the longest sentence if not given an indeterminate sentence), one finds that about one half were sex offenders. However, the actual number of DOs with sex offences on record is understated using this definition. A closer look at the Correctional Service of Canada's offence base revealed that 90% of all DOs had sex offences in their background.

The Dangerous Offender provisions of the *Criminal Code* have been upheld by the Supreme Court of Canada. Some observers posit that the degree of infringement associated with the indeterminate nature of the sentence may have a number of untoward effects such as a reluctance by prosecutors to submit the application to the court. The possibility is also raised that the threat of a Dangerous Offender application may be used by the Crown to induce an offender to plead guilty with agreement that a definite sentence will be recommended.

### DEFINING THE PROBLEM

It is widely believed that the maximum of three years' probation is not enough for some offenders who are thought to pose a serious long term risk to the public. Similarly, a potential gap has been identified with respect to existing federal correctional and conditional release schemes. Some offenders continue to present a significant risk to the community at the time of their warrant expiry when the criminal justice system no longer has any

jurisdiction over them. Very few of these individuals meet provincial civil mental health involuntary commitment criteria, and even where they do, a certificate of involuntary admission typically is effective only for a period of two weeks to a month; most simply return to the community without being subject to any kind of supervision even though correctional and/or mental health professionals are of the view that much longer supervision and possibly treatment (which could consist of day-to-day coping skills, counselling, and in some cases following a medication regime) are indicated. As well, for some offenders community supervision may be preferable to a long time in custody—cases where this would be more effective than lengthy incapacitation in bringing about desired behavioural changes and thus in the long run enhancing public safety.

On the other hand, indeterminate sentences under the dangerous offender provisions of the *Criminal Code* tend to result in indeterminate incarceration. Increased flexibility in sentencing would, at the time of original sentencing, give the court an option (LTP/LTS) other than indefinite sentences available under the Dangerous Offender provisions of the *Criminal Code*, for offenders at significant and protracted risk for violence but whose risk is thought to be controllable in the community.

## OBJECTIVES

The primary objective of the LTP/LTS sentencing option is to enhance the safety of the public by targeting those offenders for whom this approach is thought, based on the best scientific and clinical expertise available, to be the most effective approach in helping to reduce violent criminal acts and to foster and help maintain prosocial behaviour.

LTP/LTS is to provide a humane and cost-effective community based sanction, the design of which is believed to have the best possible degree of success in modifying behaviour. It aims to advance the best interests of both the community and the offender through decreasing the severity and frequency of relapses/reoffences.

It may be of equal importance to state explicitly the kinds of impacts LTP/LTS aspires to avoid. The scheme is not geared to an end result which, for all practical purposes, turns out to be long term or indeterminate incarceration. The focus here would instead be to exert all possible effort, short of incarceration, in stabilizing a situation whenever precursors to offending are identified. This could mean a short term placement in an appropriate environment, not necessarily exclusively a correctional facility—depending on the particular situation.

The scheme is not to have a net-widening effect. A clear definition of the target population would prevent indiscriminate use of LTP/LTS for offenders for whom a less intrusive sentence (in terms of impact on personal liberty) under existing schemes would have been adequate and appropriate.

## EXPERIENCE IN OTHER JURISDICTIONS

### Canada

While there is some literature with respect to the period prior to the 1992 Mental Disorder amendments to *Criminal Code* on patients in Canada held indeterminately under Lieutenant Governors' Warrants (LGW), very little can be found about actual supervisory practice for the subset of patients on a "loosened" warrant. Under the earlier *Criminal Code* provisions, cases were reviewed by provincial Boards of Review which could advise the lieutenant governor if in the opinion of the Board the person had recovered sufficiently to stand trial, or in the case of a person found not guilty by reason of insanity, whether the person had recovered, and if so, whether in its opinion it was in the interest of the public and of that person for the lieutenant governor to order that he or she be discharged absolutely or subject to such conditions as the lieutenant governor may prescribe.

In making release decisions, Review Boards made recommendations to the lieutenant governor, the acceptance of which was decided by the latter. A person thus placed on a loosened warrant would be subject to specific terms, e.g., they could be transferred to a less secure psychiatric facility, permitted to attend outside daytime activities and return to the hospital each night, reside in a half-way house where support services and counselling were readily available, reside in the community and return for periodic outpatient visits to the hospital, etc. If there were serious breaches of conditions, or if the person's mental condition seriously deteriorated, he or she could be returned to hospital.

A 1992 Department of Justice Working Document entitled The Canadian Database: Patients Held on Lieutenant-Governors' Warrants (part of a three year project) looked at a number of questions including how long patients spent on Warrant until the Warrant was fully vacated and what portion of the time was spent in hospital. The findings indicated that patients found unfit to stand trial were hospitalized, on average, for 9.3 months, and held on Warrant, on average, for 8.6 months (on average, one month elapsed between the Review Board's declaration that they were fit to return to trial and the actual trial). Patients found not guilty by reason of insanity were hospitalized on average, for 53.0 months, and were under Warrant, on average, 78.2 months. Time on Warrant for both groups varied considerably among provinces. Ontario, Quebec and British Columbia had the largest LGW populations. The most common Review Board recommendation (77% of cases) in Ontario in the period examined by the report was that of hospitalization in the same institution. The most common recommendation (33% of cases) in Quebec was that permission be granted for the patient to live outside the hospital.

A 1988 article<sup>1</sup> includes in its description of 48 Alberta LGW patients in 1984-85 information about services provided, review procedures used, and helps to portray the system of gradual release.

Sheer number of patients on warrant or even the amount of time each has spent on warrant does not give a clear impression of how patients in the WLG group are functioning. The more useful criterion is the amount of restriction under which the patients are living. Restrictions come from the Board of Review and from the Clinical Director. The Board sets the upper limits at its regular reviews, but the Clinical Director, upon advice from other members of staff, will see fit in some cases not to grant those privileges fully. It goes without saying that if the hospital staff consistently and for no good reason fail to implement the Board's plan they will have to answer to that body. It is necessary therefore to know what privileges the Board has allowed and which of these is in actual effect. At the time of the present study the Board had restricted three of the 48 to the hospital with no privileges. All three were new admissions who had been in the hospital for only days or a few weeks at the time of the study. A fourth person so restricted was there because of a decision by the Clinical Director. The patient had seriously violated his privileges. Twenty-six patients were living in the hospital without Board-Given authority to live off the premises. Twenty-three of those had grounds privileges and/or authority to proceed on escorted passes. The balance, 22, had been cleared by the Board to live in half-way houses or other approved housing in the community. Eight of those 22 persons authorized to live off the hospital grounds were in fact doing so at the time of the study. One, as has been noted, had been recalled to the hospital by the Clinical Director. The remaining 13, though continuing to live in the hospital, were using the Board-given permission to experiment with visits to family, weekends in the half-way house, and the like.

Short of conducting a file review or systematically gathering information in some other manner, there does not appear to be ready access to comprehensive documented material describing and analyzing the kinds of conditions generally attached to loosened Warrants and how the practice tends to work, the supervision approaches used, how breaches of conditions are handled, stabilization efforts involved, and any observations instructive for a correctional context.

## United States

The USA has been increasingly using probation as an alternative and/or a supplement to incarceration. During the 1980s, many states in the USA engaged in studies and public debate about the overcrowded prison situation. Interest in more flexible sentencing options, approaches tougher than traditional probation but less stringent and less costly than incarceration, led to increasing popularity and implementation of various models of intensive supervision probation (ISP). While enormous variation is found among the jurisdictions in terms of the program's design, purpose and operations, a common feature is that greater control is applied under ISP than under regular probation through measures such as frequent contacts, house arrest and electronic monitoring. While ISP is still in the experimental stage

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<sup>1</sup>S. De St. Croix, R. Dry, and C.D. Webster, "Patients on Warrants of the Lieutenant Governor in Alberta: A Statistical Summary with Comments on Treatment and Release Procedures," *Canadian Journal of Psychiatry*, Volume 33:14-20.

in terms of US sentencing policy, current research suggests that its main success seems to lie in the area of control with less success seen in terms of its deterrent and rehabilitative potential.

The various forms of ISP, with one recent exception, are used within the framework of up to five years' duration for probation. A quick search, largely through telephone contact with key individuals in the USA, identified Oregon as the only jurisdiction that has initiated a long term supervision scheme, although there was some suggestion that one or two other jurisdictions may also be examining the issue.

### Georgia

Several examples of ISP programs in the USA provide a sense of how they function. The Georgia ISP program has been used as a prototype by other jurisdictions.<sup>2</sup> Judges sentence an offender directly to ISP. Caseloads are small, 25 per two-person team (separate role for probation officer and surveillance officer). Features include curfews, employment and community service, drug and alcohol monitoring, and a minimum of five face-to-face weekly contacts. Recidivism rates are reportedly low. It is interesting to also look at the offenders selected for this sanction. The majority chosen for the pilot program had not committed a violent offence.<sup>3</sup> The profile of the 2,322 offenders involved includes the following: 43% were convicted of property offences, 41% of drug and alcohol-related offences, and 9% were convicted of violent personal crimes. Tonry and Morris question Georgia's claim that their program has led to a 10% reduction in percentage of convicted offenders who are incarcerated. The authors point out that Georgia has tended to imprison a larger proportion of convicted felons than many other states, making it difficult to gauge whether or not a net-widening effect is present. Possibly some offenders who would have been placed on regular probation are instead placed on ISP.

### New Jersey

Tonry and Morris look also at the New Jersey ISP program as another model. Here the offender having already been sentenced to prison and incarcerated may apply to a resentencing panel for placement on ISP. Only certain defined categories may apply, and those convicted of violent offences are excluded. In this program there are 31 contacts (12 of these are face-to-face), 7 curfew and 4 urinalysis checks per month. The model also includes development of a life plan including work, study and community service. The offender is required to be employed or in vocational training full time. As well, a

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<sup>2</sup>Norval Morris and Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (New York: Oxford University Press, 1990).

<sup>3</sup>Billie S. Erwin and Lawrence A. Bennett, *New Dimensions in Probation: Georgia's Experience With Intensive Probation Supervision (IPS)*, Research in Brief (U.S. Department of Justice, National Institute of Justice, January 1987).

community sponsor is used as an extension to the control and support provided by the probation officer. Again, the authors indicate the difficulty in assessing any net-widening effect. The model assumes that judges ignore the possible resentencing procedure when they impose incarceration at the time of original sentencing.

California

Research with high risk offenders on ISP serves to further help illustrate USA experience.<sup>4</sup> Three distinct ISP programs located in Los Angeles (these programs were probation enhancement rather than prison diversion programs) used a random selection protocol whereby eligible offenders were assigned to either routine probation or one of the three ISP programs. The study covered a one year follow-up period. The initiative targeted offenders at the high end of a spectrum arrayed according to probability of a new serious offence as measured by the National Institute of Corrections' or NIC scale, a statistical assessment instrument that categorizes offenders by risk of recidivism and need for services. The characteristics of the offenders are shown in the table below.

	Site #1	Site #2	Site #3
<b>Target Population</b>	Adults convicted of drug offences	Adults convicted of felonies	Adults convicted of felonies
<b>Selection Criteria</b>	Felony, or misdemeanour drug conviction, or drug-related conviction  No sex offence history	High-risk score on NIC scale, or serious offence override, or probation revocation for felony plus high-risk score	High-risk score on NIC scale, or serious offence override, or probation revocation for felony plus high-risk score  No sex offence history

The findings of the study raise a number of complex issues and questions. In interpreting the findings, the researchers also comment on policy implications, the main ones being:

- ISP probationers in the California experiment had much higher failure (technical violation and arrest rates) than those in other states.

The researchers explain this by virtue of the fact that the California participants were higher risk offenders than those who participated in most of the previously evaluated ISPs. They therefore caution that as higher risk offenders are placed in such

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<sup>4</sup>Joan Petersilia and Susan Turner, "An Evaluation of Intensive Probation in California," *The Journal of Criminal Law and Criminology*, 82 (Fall 1991:610-656).

programs, higher violation rates must be expected, particularly where conditions are vigorously enforced. "The importance of this lesson cannot be overstated: States that are considering implementing ISP programs must look closely at their candidate pools."

- For the three California sites, arrest rates between the ISP and control probationers were virtually identical—a finding in direct contrast to other ISP program results in other jurisdictions.

The researchers attribute this to the fact that previous evaluations were not based on random assignment, and it may have been that judges had sentenced lower risk offenders to ISP programs. Hence, differences in outcomes might have resulted from differences in populations rather than ISP programs. However, because the California experiment used random assignment, the outcomes ought to reflect differences in programs as opposed to population effect. The authors conclude that the findings challenge the assumption that ISP through increased monitoring and greater probability of detection acts as a deterrent to crime. The question is also raised as to what good the increased monitoring does. "The California ISP programs intensified supervision, but they did not produce the expected effects. More supervision, without a substantive treatment component, evidently had little effect on probationers' underlying criminal behaviour, as manifested in their arrest rates."

- The findings suggest that even very rigorous ISP programs are not any more effective than routine probation for high risk offenders if effectiveness is judged only by recidivism rates. "The most compelling reason for continued development of ISP programs is the criminal justice system objective of just deserts, i.e., making the punishment fit the crime."

The researchers indicate that one of the most important findings was that probationers who had technical violations were no more likely to have new arrests than those who did not. This finding puts in question the assumption that technical violations are proxies for criminal behaviour, and that revocation for technical violations therefore helps prevent crime. The study concludes that jurisdictions must discern the potential of ISP in the light of their intended candidate pools, their resources and political context.

Readers wishing to obtain a more comprehensive overview of ISP experience across the USA, may wish to refer to the US Department of Justice, National Institute of Justice May 1993 issue of *Research in Brief*, entitled "Evaluating Intensive Supervision Probation/Parole: Results of a Nationwide Experiment (copy attached).

## Oregon

As alluded to earlier, Oregon appears to be the only jurisdiction where about a year ago the state legislature acted in the area of long term supervision. Time constraints did not permit detailed information to be obtained, but it was possible through informal telephone contact to ascertain that any observations as to actual experience might reasonably be expected only about one to two years hence, at the earliest.

An April 1994<sup>5</sup> report indicates as follows:

The Legislature has acted in this area to require terms of supervision for certain sex offenders to equal the maximum indeterminate sentence for the offense minus time served. O.R.S. 144.103 and O.R.S. 137.012 apply to offenders convicted of certain sex offenses committed on or after September 29, 1991. These statutes impose parole and post-prison supervision terms of 20 years upon conviction of a class A felony sex offense, 10 years for a class B felony sex offense, and 5 years for a class C felony sex offense, and probation terms of at least five years.

Felony sentencing guidelines were adopted in Oregon in 1989 (a copy of the grid is found as Annex B). The guidelines contain eleven categories of crime seriousness and define presumptive sentences based on the seriousness of the offence and the offender's prior criminal history. Despite this framework for sentencing decisions, the above-named study concludes that there is a need to develop more specific statutory definitions of sex offences so that better targeting can improve the fit between offenders and sanctions.

## KEY FACTORS

Before presenting some LTP/LTS models which might be considered in the Canadian context, some of the constraints and variables that would impact on the model design are identified.

### Target Population

The LTP/LTS scheme is based on the assumption that there are identifiable classes of offenders who although they pose a considerable risk to the community, are thought to be able to be adequately managed in the community with appropriate, concerted, but cost effective supervision and intervention, possibly including treatment.

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<sup>5</sup>Teri K. Martin and John L. Hutzler, *Adult Sex Offenders in Oregon: Trends and Characteristics*, Oregon Criminal Justice Council, April 1994.

Selection criteria would have to be carefully defined to ensure that the imposition of this sentence would be restricted to appropriate cases such as those where a well established offence cycle with observable cues is present, and therefore a long term relapse prevention approach might be indicated. For example, consideration could be given to targeting offenders who perpetrate violent acts of a "medium" level of seriousness (this would have to be defined) in comparison to acts of "high" levels of seriousness.

It will be crucial to identify as accurately as possible the target population for whom LTP/LTS might be expected to be an appropriate and cost effective approach. Selection criteria to give meaningful guidance to the court are essential if indiscriminate use of this sanction is to be avoided. However, although it is relatively easy to conceive of individual cases it is quite another matter to try to identify eligible offenders by category of offence and on a case-by-case basis by means of specialized assessments. State-of-the-art limitations exist in both clinical and scientific prediction of future violent behaviour. Furthermore, given the pronounced lack of agreement among experts as to the validity and reliability of assessment tools either individually or as a battery of predictors, one can readily envision a number of experts giving contradictory testimony in court regarding whether or not an offender fits the selection criteria. A diagnosis or definition of personality disorder or psychopathy is one such example.

Assessment and prediction methods have been improved in recent years such that we can reliably distinguish between the lowest and the highest risk offenders. No prediction methods are completely accurate, however, and making decisions regarding the management of high risk sex offenders still requires weighing the estimated cost of releasing some who will reoffend against the estimated cost of constraining others who would not reoffend if given the opportunity to do so. Typologies of sex offenders (e.g., gender, age and variety of victims) although still in the early stages of development are proving useful in distinguishing levels of risk among sex offenders.

Issues related to special needs of sub groups of offenders such as adolescent sex offenders, offenders of diverse ethno-cultural backgrounds, aboriginal offenders, offenders who also have a mental illness known to influence their criminal behaviour, female offenders, offenders who are developmentally challenged, etc. would also need to be addressed. The adequacy of predictive tools, risk/needs assessment instruments, and community correctional programming strategies would need to be confirmed.

### **Treatment Issues**

It is reasonable to expect that the majority of offenders who would fit the intended target description would be sex offenders and offenders with a diagnosis of psychopathic personality disorder. In general both categories present persistent risk and hence might be suited to long term monitoring and relapse prevention efforts.

The etiology of sexual deviance is not well understood, but it is apparent that there is no single cause of sexual offending. Experts do not claim to have a "cure" for sexual offending; rather the treatment strategy is to manage the risk of reoffending. Sex offenders often deny or minimize their offence and are initially reluctant to participate in treatment. Addressing the denial is usually the first stage of treatment.

Relapse prevention, a relatively new treatment model developed in the '80s as a maintenance program for addictive behaviours such as alcohol/drug abuse and cigarette smoking, has been more recently applied to sex offenders. More about the relapse prevention model is outlined later in the paper. Although the model has gained prominence in the field in recent years, it is important to keep in mind that the results of its application to sex offenders is still to be evaluated. There is not as yet any empirical support attesting to its efficacy.

There is some evidence that treatment can be effective for some sex offenders, but there is a continuing debate about the efficacy of treatment. Research is currently under way in several centres to evaluate treatment programs and, in particular, to determine what changes in offenders are associated with a lower risk of sexual reoffending. Notwithstanding the evidence that treatment may be effective, it is important to recognize the limitations of treatment. For some of the highest risk offenders, their recidivism risk would be expected to remain unacceptably high even when provided with the best treatment methods currently available.

The literature on treatment of psychopathy is discouraging. To-date, there is no known treatment shown to be successful in modifying the criminal behaviour of psychopaths. Comments from therapists indicate that treatment may actually worsen recidivism in the community by having enabled the treated psychopaths to increase their manipulative skills.

A focused legal opinion would be possible once an LTP/LTS scheme to be pursued has been precisely set out. In the meantime, however, the federal Department of Justice has commented on a number of *Charter of Rights* issues that arise in designing any probationary system that anticipates treatment as one of the conditions of probation. The remainder of this section presents those observations.

The right to life, liberty and security of the person (s.7) and the right not to be subjected to any cruel and unusual treatment or punishment (s.12) come into play. Section 15 equality rights may also be relevant to the extent that there is different treatment of offender groups.

The *Criminal Code* (s.737) provides for the setting of probation conditions and the case law flowing from these provisions is useful in assessing the limits of treatment conditions. A new system of long term probation, however, with a goal of more-or-less individualized treatment and supervision of groups of offenders such as serious sex offenders, may require a fresh examination of what treatment regimens are acceptable.

On the positive side, the connection between a long period of probation and the kind of long term treatment needed by the target group makes such a probation scheme appear reasonable. This argument, however, should be supported by evidence of an ability in the health system to treat the offender, lest treatment conditions be interpreted as a guise for excessive control, or even as punitive measures. Also, the issues of consent and the nature of treatment still apply.

Canadian law, both before and since the *Charter* has strongly protected personal liberty, individual autonomy and bodily integrity of the person. For example, the Law Reform Commission of Canada maintained in its Working Papers on *Medical Treatment and the Law* (#26) and *Behaviour Alteration and the Criminal Law* (#43) that the Code should "recognize the right of every competent individual to refuse treatment or demand its interruption, thus affirming the autonomy of the person regarding decisions affecting one's own body."

Compulsory medical treatment is constitutionally suspect, even for the mentally disordered where there is doubt of competency, and the courts have so ruled, e.g. *Fleming v. Reid* (1991) 82 DLR (4th) 298 (Ont. C.A.):

Few medical procedures can be more obtrusive than the forcible injection of mind-altering drugs which are often accompanied by severe and sometimes irreversible side effects. To deprive involuntary patients of any right to make competent decisions with respect to such treatment when they become incompetent, and force them to admit to such medication against their competent wishes and without the consent of their legally-appointed substitute decision-makers, clearly infringes the Charter right to security of the person.

This rule applies probably more strongly to our target group who, almost by definition, are capable of consent, having been convicted of criminal acts.

A significant case involving probation is *R. v. Rogers* (1991) 2 C.R. (4th) 192 (B.C.C.A.) which held that "a probation order which compels an accused person to take psychiatric treatment or medication is an unreasonable restraint upon the liberty and security of the accused person" and contrary to s.7 of the *Charter*. The court was sympathetic, however, to a probation order that would have required the accused to maintain himself in such a condition that his mental illness would not likely cause him to be a danger to himself or others; thus, he could be required to attend for counselling or treatment but he could still refuse therapy or medication.

There is a possibility of consensual treatment as part of probation, as long as the treatment does not amount to cruel or unusual punishment. This raises the possibility of a catch-22 situation, where an offender has the choice of accepting a treatment condition or else being incarcerated for refusing. The courts may find this acceptable if it can be shown that public protection and risk management have been carefully assessed in structuring the probation scheme.

In general, if probation is viewed as a targeted scheme where supervisory controls and treatment programs are designed to keep dangerous impulses under control, then it will be important to link treatment conditions to risk assessment and the individualized needs of the offender.

Finally, there may be a constitutional issue of Parliament's authority to legislate a probation treatment scheme where the goal is curative, but such a scheme is probably constitutional as ancillary to the exercise of the criminal law power.

### **Enforcement/Modification**

The literature suggests it is the certainty rather than the severity of punishment that is most likely to deter—also, punishment should follow swiftly after the behaviour being punished. Minor, moderate and serious breach should be able to be addressed with appropriate flexibility, and not necessarily by the court in each instance. The supervising officer in the community would oversee and mediate the enforcement of conditions of treatment and control. Consequences of breach might range from informal resolution through to prompt incapacitation and would include the offence of "breach of condition". There should be enough flexibility at the administrative level to permit appropriate exercise of discretion. For instance, technical violations such as failing to keep an appointment, should not mean an automatic return to court. The appropriate use of discretion would help to avoid a self-perpetuating cycle whereby the individual becomes perceived by the criminal justice system as repeatedly failing, which would likely lead to closer scrutiny and more breaches, regardless of the fact the offender had committed no further substantive crimes.

Some offenders, where mental illness is a factor, might be more appropriately channelled through a mental health facility or other specialized forensic unit or perhaps a supportive home style environment instead of a penitentiary for stabilization or until there is a spontaneous remission.

### **Information Requirements**

At sentencing, the judge would need to know in some detail the risk/needs associated with that individual, and to have reasonable assurance that effective intervention while under supervision in the community would occur as planned.

In addition to being fully informed about the offender, the offence, special assessments, mitigating/aggravating factors, and risk/needs assessment of the offender, judges would also need to know in some detail that appropriate and effective community-based interventions (assistance, treatment and control) would be available and assured on a sustained basis in the receiving jurisdiction. The courts would also be required to become versant with the issues of predictability of violent behaviour. As well, while the findings of a risk/needs assessment may be the best possible information at the time of sentencing, a number of other factors

affect the long term outcome. During the period of incarceration, an offender may undergo various forms of treatment with uncertain outcomes, and may be affected by events from both within and external to the prison experience. These factors pose serious challenges to assigning, at the time of sentencing, treatment conditions to take effect upon release on long term supervision.

### **Supervision**

The sanction should probably include a range of intensity of supervision, based on risk assessment and the behaviour of the offender while in the community.

Harm inflicted through reoffending means serious repercussions. Effective risk management strategies, informed by research, would be necessary to help identify which approaches tend to work for which groups on LTP/LTS in the community. As indicated earlier, the knowledge base is limited in terms of what are known to be effective interventions for persistent violent offenders such as sex offenders.

Caseloads might need to be reduced. The approach to supervision would need to be examined to see, for example, if monitoring for some individuals was necessary during high risk times such as evenings and weekends, and if the control aspects of community supervision might best be carried out by someone other than the worker carrying out the assistance role.

In the event a model is pursued where LTP/LTS supervision is to be carried out by CSC parole officers, the practical considerations would have to be examined of having the same officers carry out community supervision for offenders on parole and statutory release as granted by the NPB and the possibly more intensive and differently oriented form of LTP/LTS supervision for the court.

### **Financial Implications**

Cost implications for CSC and for provincial/territorial corrections and probation services would have to be considered once preferred approaches have been identified. Resource implications are likely to include areas throughout the process such as training, pre-sentence information requirements, special assessments, possibly post-sentence information feedback to the court, enhanced community supervision, treatment intervention, enforcement of conditions, and costs associated with generally longer periods of supervision. Possible savings in terms of cost offsets of reduced length of time in custody could be estimated, where applicable.

### **Charter Concerns**

A sentence of probation is, *per se*, an established mode of sentencing that need not violate the *Charter* but the nature of the conditions attached to probation, and even the length of

probation itself, may raise *Charter* issues. The right to life, liberty and security of the person (s.7), the right to not be arbitrarily detained (s.9), the presumption of innocence (s.11(d)), the right not to be tried or punished twice for the same offence (s.11(h)), the right not to be subjected to any cruel or unusual punishment or treatment (s.12) and mobility rights (s.6) all may be relevant.

A sentence of incarceration combined with probation amounts to a single integrated sanction and therefore the connections among the offence, the misconduct and the sanction are direct and unambiguous. Long term probation for serious offenders implies a structured set of conditions that could include intensive supervision, stringent controls on the offender's movement and associations, and treatment conditions. In terms of section 12 of the *Charter*, it is important that such conditions not be grossly disproportional to the offence committed and, in effect, to the circumstances of the individual case. The punishment should fit the crime. In this regard, is a lifetime term of probation reasonable, serving a valid correctional purpose? What reasonable limits can be imposed on movement? employment? contact with children?

The decision of the British Columbia Court of Appeal in *R. v. Heywood* (1992) 77 C.C.C. (3rd) 502 is interesting for its discussion of the need to structure prohibitions appropriately. The case concerns s.179 of the *Criminal Code* which creates an offence of vagrancy for anyone who has been convicted of an enumerated sex offence and who "is found loitering in or near a school ground, playground, public park or bathing area." Although the decision did not address s.12 of the *Charter* (cruel and unusual punishment), it did strike down the vagrancy law because it prescribed measures that were neither fair nor carefully designed to achieve the objective of public protection. The "reasonable limits" clause in s.1 of the *Charter* did not save the law. The court was also concerned about the lack of notice to the individual, since this was a separate offence rather than a prohibition imposed at sentencing. The case is now before the Supreme Court of Canada.

To summarize, it is important from a *Charter* point of view that the conditions of any probation scheme reflect the severity of the offence and that judicial discretion and procedural rights of the offender be built into the structure.

### Miscellaneous

Federal inmates approaching parole eligibility under existing conditional release provisions might be adversely affected if priority for treatment programs is given to those who have been sentenced to a relatively short initial period of incarceration to precede LTP/LTS—assuming their numbers turn out to be significant. For those receiving the latter disposition, there would be pressure for timely initiation of treatment which, as ordered by the judge at sentencing, would be continued in the community. Treatment program resources, however, are limited, and waiting lists for programs and services are not unusual particularly given the significant overcrowding that CSC is experiencing. The potential implications for the general inmate population caused by this increased demand would need

to be examined since, for example, the NPB is unlikely to release sex offenders (for whom existing conditional release provisions apply) on parole if they are still awaiting treatment. However, this should not pose a problem if the LTP/LTS model targets a very limited federal offender population.

There may arise situations in remote or small communities where the sole community professional providing the necessary treatment/counselling relocates, leaving the offender on LTP/LTS unable to meet the required conditions of supervision. Contingency planning would help to bridge circumstances of this type.

Advance thought and planning would have to be carried out about possible implications for the LTP/LTS scheme when offenders being supervised in this manner reoffend. Recidivism will inevitably occur giving rise to expressions of public outrage that such high risk violent offenders are under community supervision instead of being incarcerated. The viability of LTP/LTS could be jeopardized.

## POTENTIAL MODELS

Before presenting some potential LTP/LTS models, a brief description is provided to illustrate what is meant by relapse prevention.

Relapse prevention is rooted in social learning theory.<sup>6</sup> This intervention model is designed to facilitate maintenance of change of compulsive behaviours.

RP is a self-control program designed to teach individuals who are trying to change their behaviour how to anticipate and cope with the problem of relapse. In very general terms, relapse refers to a breakdown or failure in a person's attempt to change or modify any target behaviour. The RP program focuses on enabling the person to prevent relapse and thereby to maintain the newly adopted behaviour pattern. Based on social cognitive principles, RP has a psychoeducational thrust that combines behavioral skill-training procedures with cognitive intervention techniques.

The emphasis is on self-management. Individuals are taught to cope constructively with their ongoing risk for relapse (in the present context, this would be the ongoing risk to reoffend). They are taught to identify and respond appropriately to the early warning signals that they have learned to recognize to move them closer to high risk situations. The starting point for relapse prevention training is a good understanding of the offender's offence cycle, e.g., the sequence of events and behaviours that precede sexual offending. The strategy is to teach offenders to avoid high risk situations, and coping skills that they can use when they are confronted with the situations and the emotional states that are the danger signs for repeat

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<sup>6</sup>D. Richard Laws, *Relapse Prevention with Sex Offenders*, ed. (New York: The Guilford Press, 1989).

offending. Continuity of treatment from the institution to the community is important for implementing the relapse prevention strategy.

Outlined below are two conceptual models of LTP/LTS, with some accompanying considerations intended to help Task Force members review the schemes and also to help elicit suggestions for other models the Task Force could consider. Model A below represents an extension to the current Dangerous Offender provisions of the *Criminal Code*. Model B addresses the non-DO population.

#### **Model A: Extension to Current Dangerous Offender Provisions of the *Criminal Code***

This model would modify the existing DO scheme by providing the court an added option to the existing authority to impose an indefinite sentence, with periodic reviews by the NPB.

- Under the model, where a person has been determined to be a DO, the court could choose to impose at the time of initial sentencing a combination of a stipulated period of incarceration to a maximum of 10 years followed by a defined period of long term supervision in the community of up to 10 years. This would be subject to the offender agreeing at the time of sentencing to the conditions imposed by the court including consent to participate in treatment, as deemed appropriate by the medical practitioner, during incarceration and the community supervision phase.
- In situations where, without the approval of the court, the treatment is stopped either in the absence of or upon the advice of the medical practitioner, the court would retain authority to reincarcerate the offender until appropriate new treatment arrangements are made. Any other breach of LTP/LTS conditions would be treated as a new offence—that of "breach of condition", for which the court would determine the sanction, with a six month term of custody being the maximum disposition. As is the practice now with the current probation scheme, the supervising officer in the community would have the discretion to initiate the process leading to court review upon any breach. Policies governing supervision under LTP/LTS would set out acceptable parameters within which administrative flexibility could proactively be applied (e.g., changes in reporting requirements, disciplinary interviews, referral to other members of the relapse prevention team, etc.) in the attempt to stabilize the situation without unnecessarily resorting to the court.
- The model would also include a provision that either side (Crown or offender) could make an application to the court to have the LTP/LTS terms modified or lifted.
- CSC would be responsible for administering the court imposed supervision.

## CONSIDERATIONS

This scheme might encourage judges to make a Dangerous Offender declaration in difficult cases where the appropriateness of an indeterminate sentence is not manifestly evident, yet the circumstances of the case are sufficiently perturbing that exceptional measures seem warranted. If the judge could have this model as an option, it might result in improved use of the DO provisions since a longer term but less severe penalty would be available.

Net widening would not be a problem because the target group could be identified as a subset of offenders already declared DOs.

It is not clear whether consent on the part of the offender to court imposed conditions within this scheme can be construed as fully voluntary, meaningful consent. One analogy to this type of consent might be the consent obtained from a person to the interception and admission of an intercepted private communication pursuant to s.189(1)(b) of the *Code*. In *R. v. Goldman* 51 C.C.C. (2d) 1 (S.C.C.) p. 23-24 a co-conspirator, in exchange for lenient treatment, consented to the interception of his conversations with the accused. The accused argued that a consent obtained in exchange for leniency was not a valid consent. The Supreme Court of Canada disagreed.

Cost and administrative implications would largely apply to the federal correctional system, although the provincial systems might bear some impact ensuing from sanctions for breach of conditions.

A new charge of breach of LTP/LTS appears to be essential because the LTP/LTS portion of the original sentence is not a part of the custodial sentence, but an addition to it. Since that initial custodial sentence would have expired by the time the offender is on LTP/LTS, a new charge would be required for breach.

This scheme might be perceived by victims groups and the general public as a leniency for the offender rather than as one ultimately providing better public protection, and therefore might not receive the requisite degree of confidence.

Regarding the question of maximum duration periods for the incarceration phase and for the community supervision phase, very little research evidence can be found to support, for example, seven rather than 10 years as being preferable from a treatment perspective. There are very few evaluations of treatment programs that have a follow-up of more than five years. (Three evaluations - an outward bound program with a five year follow-up; a psychodrama treatment with a 10 year follow-up; and a comprehensive vocational/educational/counselling program with a 15 year follow-up all showed reductions in recidivism but all dealt with juveniles.) In any event, the purpose would be not so much to place an individual in therapy for three years or five years or some other period with the hope that the longer a person is in treatment the longer the effects of treatment—psychoanalysis being an exception that requires such an investment of time. Rather, long term supervision may be

viewed as a mechanism to provide treatment when the individual is deemed in need of it at a specific point in his or her life. A typical scenario might be a case where a judge imposes 10 years of probation, the individual goes into treatment for eight months, then is in the community without treatment for two years and then circumstances change requiring another round of treatment. In recommending probationary periods of up to 10 years, the Stephenson Inquest jury gave the reason that this could be used as a tool to further monitor a particular type of offender whom the courts feel could be a threat to society.

**Model B: Exclusion of Individuals Declared Dangerous Offenders under the Criminal Code Provisions but Targeting of Similar Group Unlikely to Meet DO Criteria**

This model would be aimed at violent offenders receiving either a federal or provincial custodial sentence who are considered to be strong potential future candidates for DO applications, but who for some reason(s) do not, at the time of the offence, appear to meet the criteria for DO designation.

- The target group would be offenders who fall short of meeting the *Criminal Code* criteria threshold for DO designation, but significant concerns exist as a result of the circumstances of the case.
- Three criteria would need to be met:
  - a) conviction of a serious personal injury offence with the exclusion of summary conviction offences;
  - b) deemed by the sentencing judge, after taking into account evidence including expert clinical evidence, that the individual is likely to cause future serious physical injury to others; and
  - c) assessed as being in need of and amenable to treatment to reduce risk.
- For federal length custodial sentences, the sentencing judge could add a defined period of LTP/LTS of up to 10 years duration to take effect at the end of the current scheme of conditional release (parole, statutory release, or detention). For provincial length sentences of imprisonment, the sentencing judge could add a defined period of LTP/LTS of up to 7 years duration to take effect in place of the existing regular probation scheme.
- In situations where, without the approval of the court, the treatment is stopped either in the absence of or upon the advice of the medical practitioner, the court would retain authority to reincarcerate the offender until appropriate new treatment arrangements are made. Any other breach of LTP/LTS conditions would be treated as a new offence—that of "breach of condition", for which the court would determine the sanction, with a six month term of custody being the maximum disposition. As is

the practice now with the current probation scheme, the supervising officer in the community would have the discretion to initiate the process leading to court review upon any breach. Policies governing supervision under LTP/LTS would set out acceptable parameters within which administrative flexibility could proactively be applied (e.g., changes in reporting requirements, disciplinary interviews, referral to other members of the relapse prevention team, etc.) in the attempt to stabilize the situation without unnecessarily resorting to the court.

- The model would also include a provision that either side (Crown or offender) could make an application to the court to have the LTP/LTS terms modified or lifted.
- Provincial Probation Services would administer the court imposed supervision scheme for offenders serving provincial length custodial sentences. CSC would administer the scheme for offenders serving a penitentiary length sentence of incarceration.

## CONSIDERATIONS

### Selection Criteria

Net widening would be difficult to avoid under this scheme. Selection criteria would be essential to set out matters such as triggering offences, requisite clinical evidence, treatability, etc.

The list of eligible offences might include serious personal injury offences as set out in Section 752(a) of the *Criminal Code* but without the stipulation that the offence must be one for which the offender may be sentenced to imprisonment for ten years or more.

A relapse prevention rationale requires the targeting of eligible cases where there is a well established offence cycle with observable cues. This feature would need to be included among selection criteria that are set out; however, cases that do not meet DO criteria may often lack this very feature.

### Resource Implications

There would be significant impact on the pre-sentencing process carried out by probation services since in more cases courts would require far more comprehensive information than is now typically submitted in pre-sentence reports. Costs associated with special assessments would be incurred. There may also be a need to delay the sentencing hearing to permit preparation and ensure enough time for assessments.

Both federal and provincial systems would experience increased costs since LTP/LTS would be an "add-on". It may be possible, albeit very difficult, to identify cost offsets if the scheme reduces recidivism that would have otherwise have occurred in the absence of this added supervision.

## **Other**

The same considerations as in Model A apply here regarding the question of maximum duration periods. A shorter LTP/LTS duration period might be assigned in relation to provincial length prison sentences, although the choice of one duration length over another cannot be based on objective treatment-related evidence. An identical maximum period of duration of LTP/LTS for provincial and federal length custodial sentences appears equally plausible.

Sanctions for breach would be the same as in Model A, with a maximum sentence of a six month prison term.

This scheme entails wider use of the prediction of future violent behaviour, an area where current scientific and clinical knowledge remains limited. It has been claimed that DO legislation has targeted offenders who should not have been designated DOs and for whom preventive detention measures were not appropriate.

Model B would likely be welcomed by the general public and many special interest groups. Others would oppose the scheme as one with potential for unwarranted intrusion and control.

A highly likely outcome would be that LTP/LTS would become used on an increasingly frequent basis, fuelled by the fear of crime and public perception of the need for greater protection. Over time, LTP/LTS might become the standard practice rather than being an exceptional measure unless very stringent selection criteria can be devised.

## **ANNEX A**

### **The 1988 Report of the Standing Committee on Justice and the Solicitor General on its Review of Sentencing**

The Committee recommended that the minimum sentence for all offenders convicted of the second or subsequent offence for sexual assault involving violence be ten years and that the parole ineligibility period be established legislatively as ten years, regardless of sentence length.

The Committee also recommended that legislation be adopted to exclude sexual and violent offenders from eligibility for community service orders unless they have been assessed and found suitable by a community service program coordinator.

### **Uniform Law Conference of Canada, 1990**

The delegates attending the meetings of the Criminal Law Section of the Uniform Law Conference held at Saint John, New Brunswick in August 1990, considered a number of resolutions submitted by the provinces and the federal government. One of the resolutions that was passed was:

That the Federal Department of Justice immediately commence a study regarding the need for long-term follow-up of sexual offenders to determine if a change should be made to the limitations on the length of and availability of probation orders for sentenced sexual offenders.

### **The Management and Treatment of Sex Offenders - 1990 Report**

This 1990 report by the Ministry of the Solicitor General Working Group, Sex Offender Treatment Review addressed the issue of limitations of treatment. The report notes that a persistent theme in discussions with experts was that it was inappropriate to talk about a "cure" for sex offenders. The authors found a strong emphasis on long term management in the community. The report went on to state: "In this regard, it was suggested that consideration be given to reviewing current law which stipulates that a prison sentence given in conjunction with a probation order cannot exceed two years (Section 737.(1)(b) of the Canadian Criminal Code)."

### **Reaching for Solutions: The Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada**

This 1990 report was submitted by Rix Rogers, who had been mandated to produce a report on the long range direction of federal initiatives regarding child sexual abuse. The report took a very comprehensive approach with a number of significant themes. One of the themes that runs throughout the report was that the criminal justice system is an important lever in our society both to deter child sexual abuse and to aid in the treatment of sex offenders.

## A-2

The report states that there is a need for more flexibility in sentencing options. It claims, in particular, that the maximum of three years' probation is not enough for many sex offenders, and that some may require lifetime supervision and control. Among the many recommendations, several are particularly relevant:

### Recommendation 40

That Parliament amend the *Criminal Code* to allow judges to order probation terms of up to life for those convicted of sexual offences; and

That probation services ensure that those on probation orders actually comply with the terms of their orders.

### Recommendation 41

That parole legislation be amended to allow longer periods of supervision and support beyond the warrant expiry date for those released from prison following commission of a child sexual abuse offence. It is important that supervision and support in the community following release from custody apply to adolescent offenders sentenced under the *Young Offenders Act*;

That parole staff and board members receive adequate training in the characteristics and treatment of those who sexually abuse children; and

That released offenders have adequate access to community-based treatment resources.

### Stephenson Inquest

An inquest into the death of Christopher Stephenson was held during 1992/93. Among the jury's 71 recommendations was the following:

### Recommendation 3

It is recommended that the Criminal Code of Canada be amended to permit the imposition of probationary periods of up to ten years in addition to any sentence of incarceration regardless of whether it is to be served in a provincial prison or federal Penitentiary for level one offenders.

# SENTENCING GUIDELINES GRID

- APPENDIX 1 -

		CRIMINAL HISTORY SCALE									
		MULTIPLE (3+) FELONY PERSON OFFENDER	REPEAT (2) FELONY PERSON OFFENDER	SINGLE (1) FELONY PERSON NON-OFFENDER	SINGLE (1) FELONY PERSON OFFENDER	MULTIPLE (4+) FELONY NON-OFFENDER	REPEAT (2-3) FELONY NON-PERSON OFFENDER	SIGNIFICANT MINOR CRIMINAL RECORD	MINOR CRIMINAL RECORD	MINOR MISDEMEANOR OR NO CRIMINAL RECORD	
		A	B	C	D	E	F	G	H	I	
CRIME SERIOUSNESS SCALE	MURDER	11	225-269	196-224	178-194	164-177	149-163	135-148	129-134	122-128	120-121
	MANSLAUGHTER I, ASSAULT I, RAPE I, ARSON I	10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60
	RAPE I, ASSAULT I, KIDNAPPING II, ARSON I, BURGLARY I, ROBBERY I	9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36
	MANSLAUGHTER II, SEXUAL ABUSE I, ASSAULT II, RAPE II, USING CHILD IN DISPLAY OF SEXUAL CONDUCT, DRUGS-MINORS, CULT/MAHUFOEL, COMP. PROSTITUTION, NEG. HOMICIDE	8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18
	EXTORTION, COERCION, SUPPLYING CONTRABAND, ESCAPE I	7	31-36	25-30	21-24	19-20	16-18	180-90	180-90	180-90	180-90
	ROBBERY II, ASSAULT III, RAPE III, BRIBE RECEIVING, INTIMIDATION, PROPERTY CRIMES (more than \$50,000), DRUG POSSESSION	6	25-30	19-24	15-18	13-14	10-12	180-90	180-90	180-90	180-90
	ROBBERY III, THEFT BY RECEIVING, TRAFFICING, STOLEN VEHICLES, PROPERTY CRIMES (\$10,000-\$49,999)	5	15-16	13-14	11-12	9-10	6-8	180-90	120-60	120-60	120-60
	FTA I, CUSTODIAL INTERFERENCE II, PROPERTY CRIMES (\$5,000-\$9,999), DRUGS-CULT/MAHUFOEL	4	10-11	8-9	120-60	120-60	120-60	120-60	120-60	120-60	120-60
	ABANDON CHILD, ABUSE OF CORPSE, CRIMINAL NONSUPPORT, PROPERTY CRIMES (\$1,000-\$4,999)	3	120-60	120-60	120-60	120-60	120-60	120-60	90-30	90-30	90-30
	DEALING CHILD PORNOGRAPHY, VIOLATION OF WILDLIFE LAWS, WELFARE FRAUD, PROPERTY CRIMES (less than \$1,000)	2	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30
ALTERING FIREARM ID, HABITUAL OFFENDER VIOLATION, BIGAMY, PARASITARY ACTIVITY, DRUGS-POSSESSION	1	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	

- In white blocks, numbers are presumptive prison sentences expressed as a range of months.
- In gray blocks, upper number is the maximum number of custody units which may be imposed; lower number is the maximum number of jail days which may be imposed.

