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Prisoner Leave and Victim-Offender Relationships What Section 42 Means to You

by

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Issues surrounding prisoner leave and prisoner release programmes have periodically featured in the media and continue to be a matter of some public concern. This paper has been commissioned by the Department of Justice and Industrial Relations (DJIR) as a public discussion document. The intention of the paper is to provide a summary outline of key issues for victims and offenders in relation to prisoner leave programmes. The paper is also intended to enhance the opportunity for informed discussion about how best to manage such programmes in the Tasmanian context. The Criminology Research Unit welcomes feedback on the information and recommendations contained herein. RW.

Introduction

This paper has been prepared on behalf of the Department of Justice and Industrial Relations in order to highlight issues and concerns pertaining to the use of prison leave programmes. While the particular focus is on provisions as set out in Section 42 of the Corrections Act 1997, the paper necessarily has to consider broad questions regarding prisoner transitions from prison to community, and victim rights in the course of these transitions.

The paper has three main themes. These are:

- That we have to live with those we punish** (so how do we or should we prepare prisoners for release back into the community?);
- That we have to support those who have been harmed by crime** (so how do or should we involve victims in the criminal justice system?);
- That victims and offenders have different rights, needs and responsibilities** (so how do or should these interact in relation to specific issues such as release and the conditions of release?).

The paper is intended to clarify issues and to stimulate informed discussion of issues

relating to victim-offender relations in the Tasmanian context. The impetus for this discussion has been periodic media stories that have tended to present a negative and somewhat sensationalised account of prisoner leave programmes and events. It is hoped the presentation below will assist in informing members of the public of the rationale for such programmes, and of the ideal place and role of victims in regards to these programmes.

Offender Reentry

The successful reentry of offenders into the community is neither a linear process, nor one that can be accomplished by a single agency. It requires collaboration and commitment from literally anyone concerned about public safety, as well as a commitment to ensuring that victims' rights are consistently enforced and victim services are consistently provided. It requires communities – including crime victims – to be open to, and involved in, partnerships that provide a wide range of opportunities for offenders to return to the community ... (Seymour, 2001: 2)

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Prisoner Release Programmes: living with those we punish

Early Release Systems

There are different kinds of release available to inmates, some of which are tied to temporary absence (e.g., for funerals of family members) and others which constitute transitions towards reintegration back into the community (e.g., structured pre-release programmes). Access to different forms of early release varies across state and international jurisdictions. For example, in Queensland the use of a **Halfway House** was initiated in the early 1990s as one possible way of dealing with increasing prison populations. The idea behind this facility is to provide a quasi-normal community setting that recognises the varying risk levels that inmates present to the community, and that allow them opportunity to contribute to their reintegration.

In effect, the various facilities proposed would operate as a stepped security system involving self-contained accommodation units with prisoners remaining on the premises except when engaged in approved activities (for example, work, medical, special purpose courses). At the same time whilst in the facilities, inmates would be obliged to voluntarily participate in self-management and discipline exercises involving cleaning, cooking, budgeting, education, self-esteem and other such programmes of self-development. (Begg, 1990: 274).

The Halfway House is designed for those inmates who are low to medium risk offenders. It is meant to provide a cost efficient yet proactive response to reducing recidivism rates by assisting prisoners in breaking the cycle of their offending behaviour.

In Canada there are a number of different systems of early release in which inmates are moved into community settings. For example, **Day Parole** is the earliest form of conditional release, which is

accompanied with strict conditions which dictate where the candidate will live, (e.g., approved Community Correctional Centre), the type of treatment or vocational and educational facilities they may attend and adherents to strict curfews (Grant & Gillis, 1999:1).

Generally speaking, the key mechanism of transition from prison to community life is parole. In Tasmania the only early release systems are **Parole** and **Section 42** of the Tasmanian Corrections Act. Section 42 is a temporary leave of absence, with or without custodial accompaniment, that allows the inmate to attend various forms of family, vocational, educational or work related activities. However, these are only up to 72 hours and as a matter of policy are granted only when the inmate has 6 months or less to serve prior to parole eligibility (Tasmanian Corrections Act 1997).

The relationship between temporary release and parole, and temporary release and recidivism, is important. For example, Ellis and Marshall (2000) have given weight to the importance of these relationships in a recent study by comparing re-conviction rates for paroled and non-paroled inmates in the UK. Generally the findings indicate that the use of supervised release has a positive effect on the reduction of recidivism (Ellis & Marshall, 2000:304). In similar research Grant and Gillies (1999) studied the Day Parole outcomes of federal inmates in Canada. Day Parole is a programme designed to introduce inmates to the outside world prior to their ability to apply for full parole. This programme allows an inmate to move into a community housing setting, and to attend educational, vocational or treatment programmes but he or she is required to return at a set time (Grant & Gillies, 1999:1). The study found a significant relationship between the use of the day release programmes and the successful completion of full parole (Grant & Gillies, 1999:45). Indeed, 85% of inmates that successfully completed day parole went on to fulfil

the full parole obligations without any intervention from the criminal justice system (Grant & Gillies, 1999:45).

The issue of allowing inmates the ability to re-enter the community in controlled conditions such as day release has had considerable debate within the community in Australia and overseas. Much of the argument has been based on the issue of having convicted offenders being able to access the general community before their full sentence has been completed or they are eligible for full parole. Many of these day release schemes are to allow the inmates to attend educational and vocational training that is not supplied by the prison authorities or within the prison environment. In a recent study by the Correctional Service of Canada, Grant and Gillis (1999:49) concluded that day release does not substantially increase the risk to the community. Furthermore, they argued that the goal of corrections is to reintegrate the offender into the community and having some of the sentence completed in the community setting is useful. Such programmes also have implications with regard to possible employment connections for offenders in the transition from prison to community.

Tasmanian reviews of the system of classification of prisoners in Tasmania and the administration of the prisoner leave programme agree that such programmes are considered an essential part of the transition process. For instance, the Honourable F.M. Neasey commented in 1993 that:

The Tasmanian prison system is on the whole a very safe, small, quiet, prudently conducted system. But we are more conservative than practically all other Australian regimes are in the extent to which we take (or fail to take) measures to try to prepare long-term prisoners for anticipated release and re-integration into the community, and to enable them to keep their family ties together while they are in prison. Both of these are desirable objectives to be pursued in the cause of conducting a humane and just

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Section 42 of the Corrections Act 1997

Leave permits

(1) The Director may grant to a prisoner or detainee a leave permit authorising the prisoner or detainee to be absent from a prison for any of the following purposes:

- (a) To visit a near relative or a person with whom the prisoner or detainee has had a longstanding relationship if that relative or person is seriously ill or in acute personal need;
- (b) To attend the funeral of a near relative or a person with whom the prisoner or detainee has had a longstanding relationship;
- (c) To attend interviews and discussions in relation to the prisoner's or detainee's proposed employment;
- (d) To attend a place of education or training in connection with a course of education or training;
- (e) To perform unpaid community work;
- (f) In the case of a prisoner or detainee who is an Aboriginal person, to attend events of special cultural significance to the Aboriginal community;
- (g) To take part in a programme approved by the Director that is designed to facilitate:
 - (i) The rehabilitation of the prisoner or detainee; or
 - (ii) The reintegration of the prisoner or detainee in the community; or
 - (iii) The preparation of the prisoner or detainee for release; or
 - (iv) The maintenance of the family ties of the prisoner or detainee;
- (h) With the Minister's approval, any other purpose which the Director considers appropriate.

(2) For the purposes of subsection (1)(a) and (b), the question whether a person is a near relative of a prisoner or detainee and has had a longstanding relationship with the prisoner or detainee is to be determined by the Director.

(3) A Leave permit:

- (a) Is to specify the period during which a prisoner or detainee may be absent from a prison in pursuance of the permit; and
- (b) Is subject to such conditions and restrictions as the Director considers appropriate and as are specified in the permit.

(4) Without limiting the generality of subsection (3)(b), the conditions and restrictions to which a leave permit may be subject may include a condition that the prisoner or detainee to whom the permit is granted is, while absent from prison during the currency of the permit, to be in the custody of

- (a) A correctional officer; or
- (b) A probation officer; or
- (c) Any other person authorised by the Director for that purpose.

(5) A leave permit may authorise the absence of

- (a) A prisoner or detainee on one occasion or a number of occasions; or
- (b) A prisoner or detainee for one purpose or a number of purposes; or
- (c) A number of prisoners or detainees for the same purpose on one occasion or a number of occasions.

(6) A leave permit may authorise a number of absences within the period of 31 days from its granting but no one absence is to be for more than 72 hours.

(7) As soon as possible after granting a leave permit, the Director is to cause a copy of the permit to be given to both the person to whom it is granted and the person's custodian (if any).

(8) If the custodian of a person to whom a leave permit is granted is of the opinion that that person has failed to comply with a condition or restriction to which the permit is subject or that he or she is likely to fail to comply, the custodian may return that person to a prison.

(9) For the purposes of facilitating the exercise of a custodian's powers under subsection (8), a custodian may request any person to give such assistance as the custodian may require.

(10) A request made by a custodian to a person pursuant to subsection (9) is sufficient warrant to that person to assist the custodian in accordance with the terms of the request.

prison system, and also improving the chances of prisoners staying free of crime when released. (Neasey, 1993: 40).

While observers have periodically noted administrative problems in the delivery of prisoner leave programmes (Neasey, 1993; Leggat & Baohm, 1999), there has largely been no questioning of the strategic value of such programmes in preparing prisoners for life on the outside. Expert criticism has generally been directed at policy and procedural issues. These have included, for instance, issues relating to clarification of the purpose and objective of each category of leave, and explicit and detailed listing of the criteria for eligibility to participate in each category of leave (see for examples, Leggat & Baohm, 1999).

By way of contrast, and as recognised in professional literature on parole and pre-release issues (see Nelson & Trone, 2000), there is often negative media when (1) certain classes of prisoners are publicly exposed as being on certain leave programmes, and (2) particular victims are accorded considerable attention in voicing their objections to the release of 'their' prisoner. The net result of sensationalised media treatment that focuses on these types of issues is the potential de-legitimation of such programmes. This is problematic for a number of reasons, ranging from their destructive impact upon socially useful prisoner transition processes through to the undermining of newly created procedures designed to enhance victims' rights in general. Some of these issues are explored below.

Importance of Pre-release Programmes

Part of the impetus for pre-release and parole programmes both in Australia and overseas is the sheer number of people entering, and leaving the prison systems. With major increases in prison populations in places such as Australia, the United States and the United Kingdom, increasing concern and attention has been directed at what happens to inmates once they have been released (see Petersillia, 2001ab). Thus, 'If even a modest proportion of

those returning to the community become involved in new crime, the human costs in terms of victimization and community destabilization – as well as the fiscal costs in terms of reincarceration – will be staggering’ (Burke, 2001: 12). A key issue, therefore, is how best to achieve successful and safe reentry for offenders.

The goal of reducing recidivism among prisoners is acknowledged in several ways by key agencies within the Tasmanian context. For example, the Department of Justice and Industrial Relations ‘Corporate Plan’ states that improvements in offender management are expected to have a direct impact on the rate of crime in Tasmania, in particular the number of repeat offenders. In pursuit of this objective it is expected that the strategies to be adopted by the Agency to address this issue will also assist in achieving Tasmania Together Goal 2, Standards 1 and 2.

Tasmania Together Goals and Standards

Goal 2 Have a community where people feel safe and are safe in all aspects of their lives

Standard 1 – To ensure that community facilities and spaces, transport systems and private homes are, and are perceived to be, safe environments

Standard 2 – To support young people who have challenging behaviour or who are at risk

These strategies are also linked to the Government’s priority benchmarks for 2002 to 2005 in relation to the Community Safety cluster. The question of prisoner reentry is thus inextricably linked to concerns over present and future levels of community safety, and the financial and human costs of re-offending.

Getting prepared for release is essential if parole or non-parole release

is to be achieved with the most positive outcome. A big reason why pre-release is needed is indicated in the following observations:

When supervision works well it provides some of the ballast people need during their first months in the community, but many newly released inmates find it hard to meet the broadly defined conditions of probation and parole. Accustomed to being told exactly what to do and how to do it, they often expect their supervision officers to forge a path for them – get them a job, find the right drug treatment programme. Disappointed when their unrealistic expectations are not met, some people never form trusting relationships with those who supervise them. As for the officers, they begin the process with no information about how the people they have to supervise respond to authority figures and what they want to do with their lives. (Nelson & Trone, 2000: 2).

Testing the water, and getting used to forging one’s own path, are vital to offender re-settlement back into the community.

Being Clear About Programme Objectives

The public interest is served when pre-release and post-release programmes are put into place in ways that genuinely assist prisoners to adjust successfully to their after-prison lives. Public perceptions of leave and other forms of release may be negatively coloured by poor execution of programmes, or by lack of clarity regarding programme objectives and ends.

People interested in improving or developing pre-release services first need to define what exactly they want to achieve. Many interventions have the potential to reduce recidivism while being worthy pursuits on their own. And these intermediate goals – such as providing job development services, guaranteeing that all physically and

mentally ill inmates have medical insurance when they are released, and reuniting families before release – can be documented objectively and easily. (Nelson & Trone, 2000; 6).

The positive benefits of pre-release services thus need to be recognised through documentation and wide circulation of both the philosophy and outcomes of such intervention strategies.

Screening Inmates Ahead of Time

There may be different objectives involved in selecting who is or is not going to be eligible for pre-release programmes. Factors to take into account include, for example:

- Universal programmes designed so that every prisoner gets the opportunity for some type of pre-release experience (such as transition classes held outside the prison)
- Concentration of resources of certain inmates (by identifying, for instance, only those inmates who would most likely benefit from job training)
- Limiting service provision to people more likely to re-offend (such as high-risk groups identified on the basis of crime of conviction, criminal history, time served, age, and employment history)

From the point of view of recidivism, it is important that some type of pre-release transitional programme be put into place, that post-release systems be available to assist former prisoners, and that community corrections be resourced adequately in order to engage in helpful assistance.

Moreover, it is essential that the high-risk groups be an integral part of this process. Eventually, we have to live with those we punish, and this includes people with particularly bad records.

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In many jurisdictions, high-risk offenders include people serving time for violent crimes or with a history of such convictions. Serving them involves taking some political risk but makes sense from a public safety perspective. (Nelson & Trone, 2000: 6).

If no transitional pathway is allowed for, then there is much greater likelihood that these particular offenders will re-offend – and thereby create even more victims than otherwise may be the case.

Who Is a Victim?

'Victims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.

Victim Rights: supporting those who have been harmed

The services available to victims vary greatly, as do the service providers (see White & Perrone, 1997). A range of initiatives to assist victims have developed worldwide over time. These vary in nature, depending upon the state and country of jurisdiction.

Victim Services & Participation

Victim Notification - victims are kept informed in relation to the developments of the case and the hearing date.

Victim Impact Statements (VIS) - these include written statements, subdivided

into either those which are formally structured and formatted, and others which are unstructured and open-ended. In some cases, there is facility for victims to verbally present their experiences in the court.

Court Orientation - victims are introduced to the court system, so that they are able to identify the main players, and feel comfortable with the court layout.

Transportation - services are provided to victims to enable them to physically get to and from the court.

Escorting - this is basically a support service or 'hand-holding' exercise so that the victim is not left alone in the court and has someone to refer to throughout the proceedings.

Compensation - some forms of physical and emotional injury may be compensated via state agencies such as a Crimes Compensation Tribunal. Alternatively, victims may receive compensation either through civil proceedings (e.g., under the law of torts), or criminal proceedings where a court orders that compensation be paid.

Victim-Offender Mediation - these are programmes which are aimed at involving the victim in direct contact with the offender so that the offender

can see for themselves the harm they have caused, and so that victims and offenders can jointly be involved in attempts to resolve the harm which has been perpetrated.

General Support Services - these would include such things as counselling services, youth and women's refuges, alcohol and drug services and so on. They are meant to centre on the immediate and long term needs of the victim.

Main orientations of victim support programmes and procedures:

- A focus on **prosecution processes** which centre on the court case itself and the offender. Thus, the use of victim impact statements is to assign penalty, and to assist in the prosecution of offenders. It is not necessarily victim-centred per se, even though the victim may possibly gain some sense of satisfaction by doing a victim impact statement and being more actively involved in the court case.
- A focus on **conflict resolution** processes which involve some form of mediation and 'restorative justice'. The intention here is on restoring dominion or personal liberty, both for the offender and the victim. Rather than focusing exclusively on the prosecution process, there is promotion of more active victim participation, and attempts to 'make good the harm' in a way which rectifies or improves relationships and resources for all concerned.
- A focus on **compensation** so that the victim gains some type of financial recompense for harms suffered. The victim may be actively involved in determination of the level and nature of compensation. However, how payments are organised and administered is largely a matter for the courts and/or state compensation agencies to determine.
- A focus on provision of **support services** which refers to areas such

Victim Rights & Needs

It is clear that often appeals to 'victims rights' are really a code for calls for harsher penalties and reduced rights for offenders and suspects, rather than a means for addressing the practical concerns of victims, like compensation, counselling, assistance and information. The rights and needs of crime victims should be taken extremely seriously. This, however, is not possible when they are viewed only in contrast or opposition to the rights of offenders. (Beyond Bars: Alternatives to Custody, 2002).

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as counselling, funding of safe and secure refuges, the provision of information to victims so that they are better able to understand their victimisation in a wider context, and so on. Central to this orientation is the idea of meeting victim needs directly, rather than dealing with the offender.

It is useful to distinguish between varying kinds of victim 'rights' and victim 'needs'. The latter, generally speaking, do not involve civil liberty issues, in the sense that they refer to provision of services and support structures that address the emotional and practical issues faced by victims. Victim needs may also include such things as compensation, and the right to be treated with dignity and respect by criminal justice officials. Other types of rights, however, have an impact on offender rights directly, and are frequently seen in competition with victim rights (see below). Moreover, it is often the case that there is a perceived competition for community service funding, especially between victim and offender services, and this likewise can impinge upon how 'rights' issues are dealt with politically and administratively (see Anderson, 1995).

Issues of **access to justice and fair treatment on the part of victims** have been addressed in provisions such as the following in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:

6. *The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:*

- (a) Informing victims of their role and scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected,

without prejudice to the accused and consistent with the relevant national criminal justice system;

- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

Rights within criminal justice systems can broadly be distinguished in terms of 'rights to information', and 'participation rights'. How these are interpreted and acted upon in practice depends in part upon how certain needs, such as the need for security and safety, are evaluated in relation to the balance of rights between (1) the victim, (2) the offender, and (3) the state. Three categories of victim rights have been identified (see Karmen, 1996; Garkawe, 2002):

- *those gained only at the expense of offenders* (e.g., where a victim's consent or willingness to participate can influence the rights of prisoners, as in the case of a parole process

that negatively values applications in which some kind of restorative victim programme has not taken place)

- *those gained only at the expense of the state* [i.e., the criminal justice system and associated human services] (e.g., right to certain information and notification, as well as services and support workers)
- *those gained at the expense of both offenders and the state* (e.g., right to have input into system decision-making processes, such as bail or parole)

With regard specifically to issues of impending release, it is notable that in New South Wales the victim has two kinds of rights (Garkawe, 2002: 261):

- (1) the right to be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody (i.e., **right to information**). This right has implications for system management, but does not present any civil liberty concerns as such in relation to the inmate.
- (2) the right to make submissions with respect to decisions on whether 'serious offenders' are eligible for unescorted leave of absence (i.e., **right**

What victims indicate they are most concerned about or in need of when their offenders reenter the community:

Need or Concern	Percentage
Information about whom to contact if victim has concerns	75%
Notification of offender location	75%
Notification of offender status	65%
Protective or 'no contact' orders	64%
Input into conditions of release (Victim Impact Statement)	33%
Financial/legal obligations	29%
Information about referrals	22%
Offender programming that creates awareness	19%
Input into interstate compact	16%
Input into conditions of community service	15%
Victim/offender programming (mediation)	12%

Source: Seymour, 2001: 4

to participation). This right can have an impact on prisoner rights, in that victim submissions may influence the relevant authority (e.g., parole board, prison officials) either to disallow, defer or place more stringent conditions on any external leave granted to the prisoner.

Given the impact that the exercise of different rights may have, it is essential to explore the rationale behind how such rights ought to be implemented in practice. For instance, Garkawe (2002) discusses the specific contexts within which different rights ought to be exercised. It is acknowledged by most commentators that the 'right to information' concerning criminal justice decision-making processes and outcomes is desirable and should be encouraged. However, the use of the 'right to participate' does require certain qualifications. For example, the right of victims to present a submission to a parole hearing needs to be based upon the requirement that any evidence so presented must be legally relevant and factually verifiable. In other words, participation by victims is bounded by consideration of whether the evidence is 'legally relevant' to the decision-making task at hand (e.g., documented threats or negative behaviour directed toward the victim on the part of the prisoner).

Somewhat more contentiously, there are a range of subjective matters that also need to be evaluated. For example, it may well be that the victim is fearful of the offender, that they perceive the offender to be untrustworthy, and they may not have forgiven the prisoner. The question arises, therefore, as to how or if the criminal justice system ought to respond to the emotional responses of victims. Here it is argued by Garkawe (2002: 271) that the victim's views may be of some relevance in a small minority of cases where the conditions of parole [or day release] are being determined. In other words, conditions relating to contact with victims or members of the

victim's family, and place of residence or movement, might be subject to imposed special conditions as a result of victim submissions.

For many violent victims, the thought of living in the same community as the person who caused them such terrible harm and deep psychological trauma is foreboding. Reentry partnership professionals and volunteers must accept this factor and find ways, to the degree possible, to honor the victim's wishes. This may mean establishing a geographic 'safe zone' perimeter around the victim (for example, in California it is 30 miles from the victim's place of residence), and developing strict conditions of supervision that center on the victim's need for safety. (Seymour, 2001: 8).

Victim Impact Assessment and Pre-release: Parole

The use of Victim Impact Statements in proceedings within court has engendered considerable debate in recent times (see Seymour, 2001; Herman and Wasserman, 2001; Erez and Rogers, 1999). Many of the arguments revolve around the use of victim impact statements as an objective rational account of the harm done by the offender to the victim, or the emphasis on the harm and fear felt by the victim. Traditionally, the courts have held that the subjective accounts of the harm and suffering by the victim should not be the only consideration when passing sentence (Erez & Rogers, 1999).

The use of victim impact statements in the parole process poses additional potential problems. For instance, there is the possibility that their use will pass sentence on the offender for a second time, in effect extending the period of imprisonment beyond the period envisioned by the sentencing court. This would constitute a form of 'double jeopardy' for the inmate. However, in practice, it would appear that, at least in the Tasmanian case, the potential contribution of victims

to Parole Board decisions does not relate so much to whether or not parole is granted, but the sort of conditions imposed on a parole order (see Black, 2003). What may be more important in the use and debate about victim impact statements is that it may create classes of victims. This may well affect the parole selection criteria and parole conditions for inmates (see John Howard Society, 1997). If this were so, some prisoners would be disadvantaged in applying for parole depending on the social status, educational level, and the ability to articulate the consequences of the offence on the victim's life, since victims vary greatly in their skills to express the harm done (John Howard Society, 1997; White & Perrone, 1997). More generally, Black (2003: 5) points to a range of procedural issues that also require further attention:

What should be done with new allegations against an offender? How should inflammatory or prejudicial material be dealt with and how should the veracity of victim submissions be determined? Should an offender have a right of rebuttal? These questions have serious ramifications, particularly if victim submissions are influential in parole decision-making (Black, 2003: 5).

Similar kinds of questions can be raised in relation to victim input into day release and other Section 42 types of release from prison.

Victims' Rights in the Reentry Process

Victims have an interest in the reentry process of offenders across several domains (see Seymour, 2001). These include:

Victim Notification: information about rights, processes, resources, options and services

Victim Protection: personal safety and security concerns, feelings of safety, actual fear and perceived fear

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Victim Impact

harms or hurt suffered by the victim, physically, emotionally and financially

Victim Restitution

financial compensation from offender, government compensation, dialogue with offender

The view of VICTIM SUPPORT AUSTRALASIA is that Corrective Services should:

- Provide or facilitate restorative justice programs;
 - Create a Victims Register so that crime victims are kept informed of developments in the management and release of 'their' offender
 - Provide victim awareness programs for prisoners and staff; and
 - Ensure the effective rehabilitation of offenders with the aim of preventing re-offending
- Source: Cook, David & Grant, 1999: 63

Notification of offender status

The ways in which information is provided to victims and families of victims can vary. The National Probation Service in the United Kingdom, for example, will normally write to particular victims (e.g., those who have suffered a sexual or violent offence for which the offender has been sentenced to one year or more in prison) within two months of the offender being sentenced. They will offer to meet with the victim for the following purposes:

- To give you [the victim] information about prison sentences in general and how prisoners can proceed through the system.
- To ask you whether you would like them to contact you at key stages in the criminal justice process and tell you when the prisoner is being considered for final release.

- To check whether you have any concerns which you would like them to take into account when they are considering the conditions for the prisoner's final release.

- To give you the name of someone you can contact at the Probation Office which covers your area.

- To explain how they will use any information you provide.

- To tell you about any other services that may be able to help.

The official position of the Parole and Community Corrections Officers Association of Australia is that notification of victims is important and needs to be formally recognised (2003). However, it is also acknowledged that any notification system has to balance several competing interests.

A primary victim's right to information about the status of an offender's progress through the criminal justice process should be balanced with that offender's right to privacy of personal information. In general, on victim request, offers of status and other information should be made pro-actively to the primary victim.

The sort of information that should be made available to a victim should include:

- general information about the role and meaning of court orders, and conditional release orders from prison or custody and the victim programmes within these settings,

- information about reparative, restorative and restitution programmes offered for victims and offenders,

- notifications of post-sentencing release decisions or outcomes including work release, parole, pardon, community supervision orders, security classification and changes, placements, transfers and milestones, commitment to a mental health facility or escape, and

- notifications of relevant dates, such as review dates, release dates, and expiry or cancellation and suspension dates, and the implications (if any) of those dates.

Unless legislation provides for otherwise, PACCOA will only support the release of information on the proviso that:

- it will not be publicly disseminated in any way, including through the media, the internet or any other form,

- it will not be used for any unlawful purpose that could cause harm or detriment to any person,

- such information will not enable unwanted contact between offender or victim, and,

- information divulged by victims to other third parties be restricted to the purposes of:

- self protective measures to minimise risk of harm to themselves or immediate family,

- enhancing their healing within the confidentiality of treatment environments, or

- disclosure to statutory authorities for legitimate business.

In general, PACCOA does not support the concept of issuing release notifications to communities, only to primary victims or their personal representatives (or statutory authorities where there is perceived risk to any individual in the community). PACCOA believes that victim services and probation / community corrections share the responsibility of both protecting their clients and assisting them to deal with the fear and mistrust that each may hold for the other.

Garkawe (2002) points out that information about things such as the prisoner's place of detention, where the prisoner will reside after being released and details of their treatment or participation in prison programmes may breach the prisoner's privacy and may be used by some victims or their

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families to harass the prisoner or the prisoner's family. In the light of this, it is suggested that the privacy rights of prisoners should prevail in the absence of victims' genuine security needs.

These concerns are also obliquely reflected in the Victim's Register used in Tasmania at present. The Registration Form includes the following section:

I understand and accept that the information supplied through the Victim's Register is confidential. I agree not to release this information for the purpose of public dissemination without approval from the Department. I agree not to use this information for any unlawful purpose which could cause harm or detriment to any person.

One question raised by the inclusion of this proviso is whether or not, and how, it might be enforced. Aside from moral pressure not to engage in a breach of 'good faith', there appear to be two other options: to charge those who do not abide by these rules with an administrative offence (e.g., perhaps resulting in a fine) and/or to exclude the victim from further notification and participation rights due to their transgression of the guidelines. Enforcement and compliance concerns, however, also beg the issue of how such breaches are to be investigated, what degree of proof and evidence is needed before penalty is assigned, and whether mitigating circumstances can and ought to be taken into account.

Victim protection

The PACCOA Statement on Victims (2003) also makes several comments relevant to the issue of victim safety, security and protection.

Contribution to victim protection, including protection from intimidation, harassment and harm

One of the most effective ways to encourage victim participation in the entire criminal justice process is to ensure their safety from intimidation or

harm by offenders or those associated by offenders. Correctional agencies have an important obligation to protect victims from intimidation and harassment and/or harm from offenders under their supervision.

A combination of sound policies, supervision procedures and modern technology may offer many innovative approaches to increasing and enforcing victim protection measures.

Allowing for the consideration of victims views and concerns into correctional management decisions

In addition to providing information, it is important that all opportunities are provided by community corrections to enable victims to make representations to releasing bodies that are timely, and as far as is possible, informed.

Similarly, probation / community corrections should maintain accurate information on offender files about restrictions to the offender/victim relationship. For example, whether a protection or other court/releasing authority order is in existence and the conditions to it.

It is important that victims' needs be fully considered when assessing offenders' risk. Various detailed question-based systems have been developed in the USA that provide simple but effective ways to assess risk (see Seymour, 2001). Sample questions include such queries as: *Did the offender know the victim? Does the offender know where the victim lives? Was the offence committed at the victim's home or place of business? and Did the offence involve personal violence, or threats of violence?*

Impact of Crime on Victims: Offender Focus

One of the great misfortunes accompanying victimisation is that all too often the emotional needs of the victim are forgotten in the criminal justice process. To some extent this is a matter of providing adequate counselling and other support services,

to guide victims through the difficult stages of transition and victim recovery. It is also vital that offenders be given the opportunity to be exposed to the victims' plight.

No one can fully understand the victim's feelings or experience. Thus, one must allow victims to speak from the heart and let them know that we are listening with the heart as well. They have things to say that we might not understand; they often need answers to irresolvable questions; they have expectations that might not be met. We have to assume that what they say is important for us to hear and that we learn from our hearing it. Sometimes victims prove remarkably frank, blunt, or direct. It is important to respect these exchanges and the victim who shares them. (Nicholl, 2001: 27).

There are two key issues here. One is how best to give victims a forum in which they can best and most positively voice their feelings. The second is how to arrange for offenders to 'hear' the victims' voice, without compromising their own safety, future opportunities and rehabilitation processes. Options can range from face-to-face meetings between individual victims and individual offenders (in the community, or in prison confines), family or juvenile group conferences that involve family members and support people, through to 'surrogate victims' in the form of panels of victims telling their stories to offenders (see Nicholl, 2001).

The PACCOA Statement on Victims (2003) highlights the importance of offenders realising the extent, nature and hurtfulness of the harm experienced by victims. Support is given to the development and implementation of 'victim awareness programmes' for offenders to enable offenders to understand the impact that their criminal behaviour has on victims, their families and their communities.

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PACCOA supports programme components that address offending behaviour for prisoners and offenders that enable them to gain insight into and acknowledge the impact of crime on victims. PACCOA also recognises that many offenders have themselves been victims and that in some cases this experience is directly linked to their offending behaviour.

Raising consciousness among prisoners of the harms that they have caused can be achieved in different ways.

Classes designed for adult and juvenile offenders, both nonviolent and violent, in diversion, probation, incarceration, detention, parole and offender reentry settings (see Seymour, 2001).

Course Description:

The objectives students of this kind of class are to:

- explore how they view the rights of other people
- raise their awareness of the long-term impact of their actions
- recognise their own possible victimisation as children and how that abuse might impact them today
- provide opportunities to help them become nonabusive parents, and good spouses/partners
- discuss their tendency to depersonalise the people they injure
- consider how they are accountable for the crimes they have committed

Victim Impact Panels that involve a small panel of volunteer victims addressing a group of offenders, in different settings (see Fulkerson, 2001).

VIP Description:

- victims and offenders are provided with an opportunity to meet in a group to discuss the nature of the harm
- victims are not allowed to speak on any panel in which the offender in

their case is present

- subjects meet with a panel moderator for an orientation prior to the panel session
- a security officer is present to ensure the safety of all victims
- victims get the chance to express their hurt and the effects of the harm on them
- offenders have an opportunity to learn from victims directly about the effects of their behaviour
- offenders may see things in a different light, since they are not directly threatened by their own victims, but are forced to deal with victim issues nevertheless

Discussion of the preparation of prisoners for release, including via pre-release leave programmes, requires that offenders at least begin to understand the impact of their actions on victims. More than this, however, many jurisdictions also now demand some kind of involvement in restitution, reparation or restorative justice activities, both while an offender is in prison and while they are on leave from prison or on parole. The importance of 'restorative justice' in particular is emphasised by the PACCOA (2003), among other organisations. Where appropriate, and where suitable human and material resources have been put into place, restorative justice mechanisms can be usefully applied in relation to pre-release programmes and strategies.

Conclusion

If victims and offenders understand that people in their communities are paying attention – that the community has a vested interest in making sure that the reentry process goes smoothly – it would change the whole dynamic. Victims would be less vulnerable, offenders would be more responsible, and the community would be looking out for its own people, actively engaging in maintaining a safer and healthier culture. (Melissa Hook, victim advocate, in Seymour, 2001: 9).

Victims deserve and have a right to be engaged with the criminal justice system in many different ways and in relation to diverse rights and needs. How victims are involved specifically in relation to release matters, however, needs to take into account, and be bounded by, several considerations:

- That any participation by victims be subject to the proviso that what they submit be 'legally relevant' and be based upon objective evidence when it comes to considerations of release as such;
- That victim participation based upon subjective fears and misgivings about offenders be directed at the conditions of release rather than release itself;
- That the exercise of victim rights explicitly acknowledge certain responsibilities as part of this, as in the case of 'confidentiality' considerations in relation to information about offenders;
- That victim satisfaction cannot be guaranteed by the operation of the criminal justice system; only that victim needs and rights be respected within an overall climate of rights-respecting institutions and human rights considerations;
- That victim rights do not automatically mean the diminishment of offender rights; but that rights are always constituted in relation to other rights, in relation to the intrinsic needs of specific categories of people, and in relation to universal standards (such as human rights);
- That an important role of the state is to safeguard citizens, including prisoners, from community prejudices and abuse of authority, and to protect victims from becoming offenders themselves (for example, by taking the law into their own hands and engaging in violence against prisoners).

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Almost all the people in Risdon will eventually live in may society. I want to live in a safe society, so I want rehabilitation for people in prison. I am less safe whenever these programmes are placed at risk. So I resent attempts to curtail them. I want good people coming out of prison, not angry resentful people. (Peter Flint, letter the Mercury newspaper, Saturday 10 May, 2003).

Offenders, too, deserve and have a right to be engaged with the criminal justice system in many different ways and in relation to diverse rights and needs. How offenders are involved specifically in relation to release matters, likewise, needs to take into account, and be bounded by, several considerations:

- That offenders be sensitised to the real impact of their crimes on victims and appreciate the actual and ongoing damage and harm they have caused due to their actions;
- That offenders acknowledge that subjective fears and material harms to victims may well be ongoing, regardless of what has happened in their lives or what measures they may take to rehabilitate or change themselves;
- That offenders have some obligation to repair the harm, and that this can take many different forms, including various kinds of community-based contributions;
- That victim safety and perceptions of safety are paramount in relation to the conditions of their release and any subsequent activities on the part of the prisoner within certain communities;
- That prison release programmes are directed at transitional processes that are meant to bridge prison-community life, and thereby to enhance the prospects of prisoners not to re-offend, and as part of this respect for the feelings of victims and other community members is essential.

Recommendations

PACCOA (2003) supports the principle that:

- offenders have the right to peaceful re-integration into the community at the earliest time that their sentence allows, and
- the offender's reintegration enables victims to continue their lives free from further risk from that individual.

This review of issues surrounding the use of Section 42 of the Corrections Act has identified a number of concerns warranting further discussion and action. It is hereby recommended:

1. That victims be fully briefed about the issues and dynamics of prison leave programmes, and that they be cautioned about the importance of confidentiality in such processes;
2. That the Department of Justice and Industrial Relations develop explicit rules and guidelines to ensure compliance with confidentiality concerns involving victims, and mechanisms to resolve disputes emerging from victim-offender relations;
3. That victims be assured that their pain and their stories are heard by prison authorities, and that these are reflected in administrative processes (either through victim impact submissions, or via victim advocates), and that mechanisms exist for offenders to learn about the harms experienced by victims;
4. That victim impact panels be established and utilised in regards to Tasmanian prisoners, insofar as such panels enable victims to express their hurt and pain, and offenders to learn about the consequences of their actions, in a manner that de-centres the confrontation but which allows greatest positive impact;
5. That all correctional staff undertake training and ongoing staff development in the area of victim services and victimology, so that offender programmes and offender management is intrinsically linked to victim concerns, needs and rights issues;
6. That the philosophical and practical rationale and justification for offender release programmes be conveyed fully to all correctional staff, and to relevant Victim of Crime Services agencies and victim advocacy groups;
7. That selection procedures for prison leave be administered by a formally constituted Prisoner Leave Board (or equivalent), that the criteria for granting of leave be explicitly identified for each individual case, and that each individual case be assessed on its own merits without fear or favour (particularly in relation to potential media reaction);
8. That an independent body, comprised of members of the Parole Board in conjunction with members of the Prisoner Leave Board, be granted the power to approve any leave beyond the current statutory 72 hour maximum. This would enable corrections authorities greater scope for the development and implementation of innovative pre-release programmes that require more time outside of the prison than is presently allowed. Section 42 should be amended in order to permit this;
9. That the conditions of leave be assessed in the light of victims' rights, needs and responsibilities, and in the light of the offenders' experiences, rehabilitation needs and institutional history, and that any conditions be specified in terms of present, rather than past, developments;
10. That the administration of Section 42 be subject to periodic review by the Parole Board to ensure consistency, transparency and appropriate consideration of victim-offender issues;

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11. That the Department of Justice and Industrial Relations explore fully the ways in which 'restorative justice' principles and practices can be integrated into the prison leave programme (and parole programme), particularly as this would open the way for greater victim participation and satisfaction with criminal justice processes;

12. That victims and offenders be periodically surveyed regarding the processes and outcomes relating to victim notification, prisoner leave arrangements and victim-offender relationships generally.

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HAVE YOUR SAY

If you would like to comment on any of the ideas and information presented in this discussion paper please send written submissions to:

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