

APPENDIX "B"

NATIONAL PAROLE BOARD

COMMISSION NATIONALE
DES LIBÉRATIONS CONDITIONNELLES

Ottawa 4, August 11, 1970.

MEMORANDUM TO ALL PAROLE SERVICE OFFICERS

(with copy to Board Members)

Re:

Exception from Regulatory Time
Rules Ordinarily Governing
Parole Eligibility
—our file No. 62298

I. INTRODUCTION

At a recent meeting, the Parole Board considered the question of exceptions to the time regulations. The Board endorsed the criteria set out in a memorandum brought to their attention by the Executive Director, as well as his proposal to give a directive to the staff. The Board expressed its concern that deserving cases not be overlooked, having in mind that the more articulate inmates are in a better position to argue the value of their cases as exceptions.

This memorandum then is intended as a reflection of the Board's policy and a directive for implementation of the policy.

Appropriate changes in the Operational Procedures Manual will follow in due course.

II. THE PERTINENT REGULATIONS AND THEIR IMPLICATIONS

(1) Parole Regulation 2(1)(a) specifies the arbitrary portion or arbitrary absolute minimum period of a sentence that shall ordinarily be served before parole may be granted. Where the Board feels "special circumstances" exist, however, Regulation 2(2) states that it may grant parole to an inmate before he has satisfied these arbitrary requirements.

(2) Regulation 3(3) provides for Board review at any time during a term of imprisonment. Therefore, an exception from the Regulations occurs only in the establishment of a date at which a release on parole may be effected prior to normal eligibility. Accordingly, no exception is involved in any of the following circumstances:—

(a) where a review date, by itself, is set earlier than ordinary parole eligibility (although it may lead to an exception);

(b) where a case is brought to Board attention in advance of a further review date it earlier established upon deferring consideration of parole;

(c) in the establishment of any review date following a revocation of parole.

(3) The Service has a responsibility to bring to Board attention cases which appear to offer "special circumstances", with a view to determining (a) if the Board wishes to make an exception from the time rules that

ordinarily govern parole eligibility, or (b) set an earlier review date to determine at that later time whether special circumstances exist.

(4) While Day Paroles are routinely effected before the ordinary eligibility date has been reached, this situation is not deemed to represent an exception. The processing of such applications, therefore, is not subject to the provisions of this directive. However, the absolute amount of time in custody and the proportion of the sentence served may be a factor in the consideration of Day Parole.

(5) Cases involving a sentence of death commuted to life imprisonment, or life as a minimum punishment, are not eligible for exceptional consideration under the Parole Regulations. Persons sentenced to life as a minimum punishment prior to January 4, 1968 (coming into force of new law in capital punishment) can be considered for an exception in the normal way. The only way in which a person subject to Cabinet authorization for parole could be released prior to ten years would be the extraordinary action of an Order in Council overriding the Parole Regulations.

(6) "Special circumstances" can never be precisely defined in advance. Any evaluation of what single factor, or combination of factors, in a particular case at a particular point in time may constitute "special circumstances" is of course a matter of individual discretion and judgment.

(7) A general principle is that no deserving case shall be allowed to suffer through rigid adherence to arbitrary time rules, where the best interests of the inmate and community would be served by this earlier release on parole. The case concerned should offer a unique justifiable ground which could not be contemplated by the Regulations. It is not, of course, the Board's duty to review the propriety of sentences.

(8) It is essential that every effort be made to avoid misunderstandings by the public or those responsible for the administration of justice in the event of the Board making an exception. It should be understood that the Board's action is not a response to subjective representations from any source but an exercise of its prerogative following an evaluation of "special circumstances".

III. GUIDELINES FOR SELECTION

(1) Over the years, individual cases have offered factors that have been considered to have sufficient significance to warrant the establishment of a release earlier than normal eligibility date. These have been categorized below for use as guidelines or yardsticks against which to assess circumstances in future cases to aid in determining whether they offer "special circumstances".

(a) *Clemency or Compassionate Grounds*

—death in family, involving close relationship and/or tragic or traumatic circumstances

—dependent suffering from cystic fibrosis or other debilitating ailment

—extraordinary hardship to dependent of inmate, more extensive and extreme than normally encountered