

*Transfer of Offenders*

of proceeding, since the sentences imposed by the foreign court are presumably determined in part by the credits which accrue to the offender.

● (1532)

For example, in the United States legislation to implement these treaties, the offender returned to that country is to be given credit for all time in custody, including time in custody before conviction. This apparently reflects the practice obtaining in most of the individual states of the union. Accordingly, when a person has been sentenced in the United States, it is reasonable to assume that the length of sentence has been set by the judge on the grounds that such credit will be extended. It would not be proper to delete any portion of that credit if the person is transferred to Canada to serve the remainder of his sentence.

The second factor, namely, the right to earned remission, has been provided for by making the offender eligible to earn remission at the same rate as a Canadian offender newly committed upon a sentence of imprisonment. In order to preserve a proper sanction against institutional misconduct, and to avoid any question as to the legality of forfeiting certain time credited by the foreign state, the bill makes remission and its equivalent credited on transfer subject to forfeiture as if the credits had been granted under Canadian law.

That brings me to the third factor, namely, eligibility for parole. This has posed some difficult problems. It has not been possible to prescribe exactly the date of eligibility for parole, but a general rule has been formulated which will take care of the vast majority of cases. This is to require the National Parole Board to determine, as nearly as it can, when the person would have been eligible for parole had the sentence been imposed in Canada. That will then be his eligibility date.

This does not, however, enable a date to be fixed for those Canadians who—in very rare instances—have been convicted abroad of murder and who wish to return to Canada. Had such an offence been committed here, the minimum period to be served before parole could even be considered would vary. For murderers governed by the latest legislation, eligibility for parole consideration would occur, if the murder were second degree murder, at from ten to 25 years, depending on the view the judge took on the case. If the murder were categorized as first degree, the period of initial ineligibility for parole would be 25 years. In either case, whether first or second degree murder, any inmate with more than 15 years of parole in eligibility would be able, after 15 years, to apply to a court to shorten such period.

[*Translation*]

Obviously, it is impossible to draw a perfect parallel. For example, a Canadian court could not examine thoroughly the case of an inmate whose offense is described in the files of a foreign court; it would also be impossible to know what decision a foreign court would have rendered had it studied the question of eligibility for parole. By way of compromise, the bill refuses to grant parole to murderers until they have served

[Mr. Blaker.]

ten years of their sentence. However, it provides for an exception when the documentation submitted by the foreign court establishes that if the crime had been committed in Canada, it would have rated as first degree murder. In such case, the duration of the ineligibility period for parole is extended to fifteen years. The inmate will be eligible for day parole and temporary leave without escort only when he is only three years away from eligibility to full parole, as is the case with Canadian convicted murderers.

In the case of persons convicted of murder abroad who are later transferred to Canada, there is one aspect of eligibility for parole that is a source of difficulty. It is the categorization of murders committed abroad between first or second degree murders. The legislation charges the Solicitor General with this function. An examination of the various possibilities has not yet allowed us to find a better solution. It does not appear that a Canadian court could properly solve the issue. Further, under that clause a minister may, through an administrative measure, require that an inmate spend five more years in prison before he may be granted parole. At the time of the transfer an inmate may receive early examination, but possibly a better way of resolving the issue might be put forward when the legislation is scrutinized in committee.

[*English*]

Before leaving the provisions that govern the treatment of offenders under sentence who are returned to Canada, I should say a few words about juvenile offenders. Any young person returned to Canada and sent to a provincial institution may be transferred to a suitable facility for juvenile delinquents, if he is within the juvenile age range at which young persons are considered to be juveniles in that province. He could not, however, be held in that juvenile institution beyond the date the foreign sentence would expire, unless of course further legal measures were taken, for example, under the provincial act for the protection of children.

Let me now turn briefly to the provisions of the bill that relate to persons returning to Canada on parole or probation. They will be equated, so far as possible, to Canadians paroled or put on probation in Canada. If paroled, they will be subject to supervision and to sanctions for breach of parole conditions. Those on probation will, when necessary, be dealt with for a breach of the terms of the probation order, except that they will not be liable to a sentence for the original offence for which they were put on probation.

There must also be provision, of course, for foreign nationals who are to be transferred from Canadian institutions to their own country. The bill does not contain many clauses dealing with them, since all that is really necessary is to provide the authority for their release from incarceration and transfer, or their transfer while on parole or probation. After transfer has been effected, they will be dealt with in accordance with the law of the state to which they go.