

Long-term Prison Sentences Review Board

Purpose

This paper provides information on the composition and functions of the Long-term Prison Sentences Review Board (LTPSRB), particularly with regard to the review of prisoners serving indeterminate sentences. It also informs Members of the Board's response to the suggestions made by members of the Panel on Security at its meeting of 12 February 2004 and the Bills Committee meeting of 2 June 2004.

Background

2. In discussing the legislative proposal to amend the Criminal Procedure Ordinance (Cap. 221) on 12 February 2004, some members of the Panel on Security expressed concern about the transparency of sentence reviews of prisoners serving indeterminate sentences conducted by the LTPSRB. It was suggested that there should be rules or guidelines providing for circumstances for early release of a prisoner and information relating to such early release should be made available to the concerned prisoners. The Administration undertook to refer the views and suggestions to the Board for their consideration. At the Bills Committee meeting on 2 June 2004, Members requested a response to their suggestion that the Board should lay down clear guidelines on the release of a prisoner after serving his minimum term. Hence, this response by the Administration following consultation with the LTPSRB.

The Long-term Prison Sentences Review Board

3. The Board is an independent statutory tribunal established under the Long-term Prison Sentences Review Ordinance (Cap. 524) (the Ordinance) to review, among others, the sentences of prisoners serving indeterminate sentences. Under the Ordinance, the President and Deputy President of the Board must be judges or former judges of the High Court. Other members (six to nine) shall come from various fields including psychiatry, psychology, social work, legal profession, education, industry, commerce and rehabilitation of offenders. The Board is now presided over by the Hon Mr Justice Wally

Yeung, Justice of Appeal of the Court of Appeal of the High Court. The membership list of the Board is at **Annex A**.

4. The principal function of the Board is to conduct regular reviews of the cases of prisoners serving indeterminate sentences or long sentences of over 10 years. The Board may, when conducting a sentence review, recommend to the Chief Executive that a prisoner's indeterminate sentence be substituted by a determinate one or that a prisoner's determinate sentence be remitted. The Board may also order a prisoner serving an indeterminate sentence to be released conditionally under supervision when it considers it appropriate to defer making a recommendation for a determinate sentence. However, the Board is not authorized to order the early conditional release of a prisoner before his minimum term of imprisonment has been served.

5. When reviewing the sentence of a prisoner, the Board is obliged to have primary regard to specified principles as set out in section 8 of the Ordinance (**Annex B**). In considering whether to recommend a determinate sentence during a sentence review, the Board would consider a number of factors such as the nature of the offence, the progress of the prisoner's rehabilitation, the safety of the public, the prisoner's age, etc. as listed in Schedule 1 of the Long-term Prison Sentences Review Regulation (**Annex C**).

6. Prior to the review of prisoners serving indeterminate sentences, the Board Secretary writes to notify the concerned prisoners of the date and place of the review, the powers of the Board as well as their right to make written representations to the Board. The concerned prisoners are also provided, in their preferred official language, with a copy of all relevant documents to be considered by the Board in connection with the review. Moreover, the prisoners are also informed of the results of the sentence review afterwards. These aim to ensure a fair and open review for the prisoners concerned.

Response of the Board to the Views of the Panel on Security

7. As a continuous effort to improve its operation, the Board has set up a working group to identify measures for improving the sentence review process and for enhancing the transparency of the Board's operation. The

working group has considered the views and suggestions of the Panel on Security and has given the following response.

Transparency of the Board

8. Following discussion on this issue, the Board has decided to look into ways to improve its transparency. The Board considered that more detailed explanation of the result of the sentence reviews should be provided to the concerned prisoners. For instance, the prisoner could be informed of the reasons of the decision made in a review. Prisoners will therefore be able to identify, and work on, areas for improvement. This arrangement has already been implemented by the Board.

9. The Board has also discussed the point about prisoners' requests for making oral representations before the Board. Under the Ordinance, the prisoner may, with the consent of the Board, appear before the Board either personally or through a representative of the prisoner's choice, to be heard and to make oral representations. As a matter of principle, the Board will continue to assess, on an individual basis, the merit and need for such an application. The Board is also considering more efficient ways in which a prisoner can address the Board in person, if his application is granted. One possible solution is the use of video link. The Board is now working with the Correctional Services Department to assess the feasibility and the resource implication of the proposal.

10. Further to enhance transparency, the Board has decided to publish Annual Reports in future, which will include stories of prisoners whose sentences have been commuted by the Chief Executive following the Board's recommendations, highlighting their efforts in rehabilitation, studies, family support, etc. with a view to encouraging other prisoners to make more efforts in improving themselves. The Annual Reports will also highlight the Board's independent status, the major principles (as listed in s.8 of the Ordinance) followed by the Board when performing its functions, and detailed statistics relating to the Board's operation and recommendations.

Provision of rules or guidelines on circumstances of early release to prisoners

11. As a statutory body, the Board has to act within the framework of the provisions of the Ordinance. In reviewing the prisoners' sentences, the

Board will, in respect of each prisoner, receive a number of reports regarding their performance, attitude and other relevant matters on the progress of their rehabilitation. More importantly, the prisoners themselves have the opportunity to write to the Board and to state their case. However, the Board must have primary regard to the principles listed in section 8 of the Ordinance (para. 5 refers).

12. Prisoners have different background and different reasons to be imprisoned. Their institutional behaviour and response to programmes for their rehabilitation do vary from case to case. The Board has to consider the merits of each individual case in order to make recommendations to the Chief Executive. In the circumstances, it would not be desirable for the Board to lay down its own rules or guidelines, over and above the statutory factors listed in section 8, on how a prisoner may behave so they will get an early release. In any case, the four primary factors are already clearly stated in section 8. They are, in short, rehabilitation, re-integration into society, sufficiency of sentence and protection of the community.

13. The Board would welcome and consider any views from Hon Members for further improvement of its operations.

Security Bureau
7 June 2004

Membership List
Long-term Prison Sentences Review Board

President

The Hon. Mr. Justice Wally C K YEUNG
Justice of Appeal of the Court of Appeal of the High Court

Deputy President

The Hon. Mr. Justice Louis TONG
Judge of the Court of First Instance of the High Court

Members

Dr. SHUM Ping-shiu, B.B.S., J.P.
(Psychiatry)

Mr. HO King-man, Kenneth, J.P.
(Rehabilitation of Offenders)

Mr. PANG Yiu-kai, J.P.
(Commerce)

Dr. LAM LEUNG Yin-ting, Teresa
(Education)

Prof. LEE Wing-ho, Peter, J.P.
(Psychology)

Mr. NG Wing-tung, Peter
(Social Work)

Dr. KWOK Kin-fun, Joseph, J.P.
(Youth Matters)

Dr. MAK Ki-yan, J.P.
(Psychiatry)

Mr. LAM Tai-wai, David
(Legal)



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Section:	8	Heading:	Principles on which Board is required to exercise or perform its functions and duties	Version Date:	30/06/1997

The Board must have primary regard to the following principles when exercising its functions or performing its duties in relation to a prisoner-

- (a) in any case where the prisoner has not been completely rehabilitated, the rehabilitative effect of releasing the prisoner from detention before the unremitted part of the prisoner's sentence is served;
 - (b) the benefits to the prisoner and to the community arising from the prisoner being supervised after release with a view to securing, or increasing the likelihood of securing, the prisoner's rehabilitation (in any case where the prisoner has not been completely rehabilitated) and successful reintegration into the community;
 - (c) whether the part of the prisoner's sentence already served is sufficient, in all the circumstances (in particular given the nature of the offence for which the prisoner is being detained), to warrant consideration being given to having the prisoner released from detention early;
 - (d) the need to protect members of the community from reasonably foreseeable harm that could be inflicted by the prisoner as a result of having been released from detention early.
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Chapter:	524A	Title:	LONG-TERM PRISON SENTENCES REVIEW REGULATION	Gazette Number:	L.N. 633 of 1997
Schedule:	1	Heading:	MATTERS THAT MAY BE TAKEN INTO ACCOUNT BY BOARD	Version Date:	24/12/1997

[section 2]

1. The nature of the offence.
2. The prisoner's criminal record.
3. Reports, if any, made by the trial judge in relation to the offence.
4. Any mitigating circumstances.
5. Remorse shown by the prisoner for the offence.
6. The prisoner's response to counselling and rehabilitative treatment.
7. The prisoner's age when the offence was committed.
8. The prisoner's rehabilitation prospects and employment prospects on release.
9. Sentences in other similar cases.
10. Public interest, including public safety and the likelihood of commission of the same or further offence.
11. The prisoner's psychological condition.
12. The prisoner's psychiatric condition.
13. The prisoner's conduct in prison.
14. The prisoner's state of health.
15. The prisoner's age.
16. The length of time the prisoner has served in prison.
17. The minimum term of the prisoner's sentence (if applicable).
18. Any assistance provided by the prisoner to law enforcement agencies.

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