
Note: The following is an outline of an oral paper delivered by Diarmuid Griffin at the second in the Prison Law series of practice seminars for barristers and solicitors, 'Prison Law Seminar - The Parole Process', which took place on Thursday March 26th, 2009.

The lecture series is co-hosted by the Irish Penal Reform Trust, the Irish Criminal Bar Association and the Dublin Solicitors Bar Association.

Parole developments in the US and UK

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Walter Crofton and the Intermediate System

- “The criminal could be reformed but only with employment and only if that employment was in a free community where the convict is subject to ordinary temptations” (1854-1865)
 - International attention:
 - US:
 - Cincinnati Prison Congress 1870:
 - “The most valuable parts of the Irish prison system- the more strictly penal stage of separate imprisonment, the reformatory stage of progressive classification and probationary stage of natural training- are believed to be as applicable to one country as another – to the United States as to Ireland”
 - Europe:
 - Germany, Holland, Switzerland, France and Italy
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The US parole system

☐ Definitions

■ Types of sentence:

- ☐ Determinate
- ☐ Indeterminate

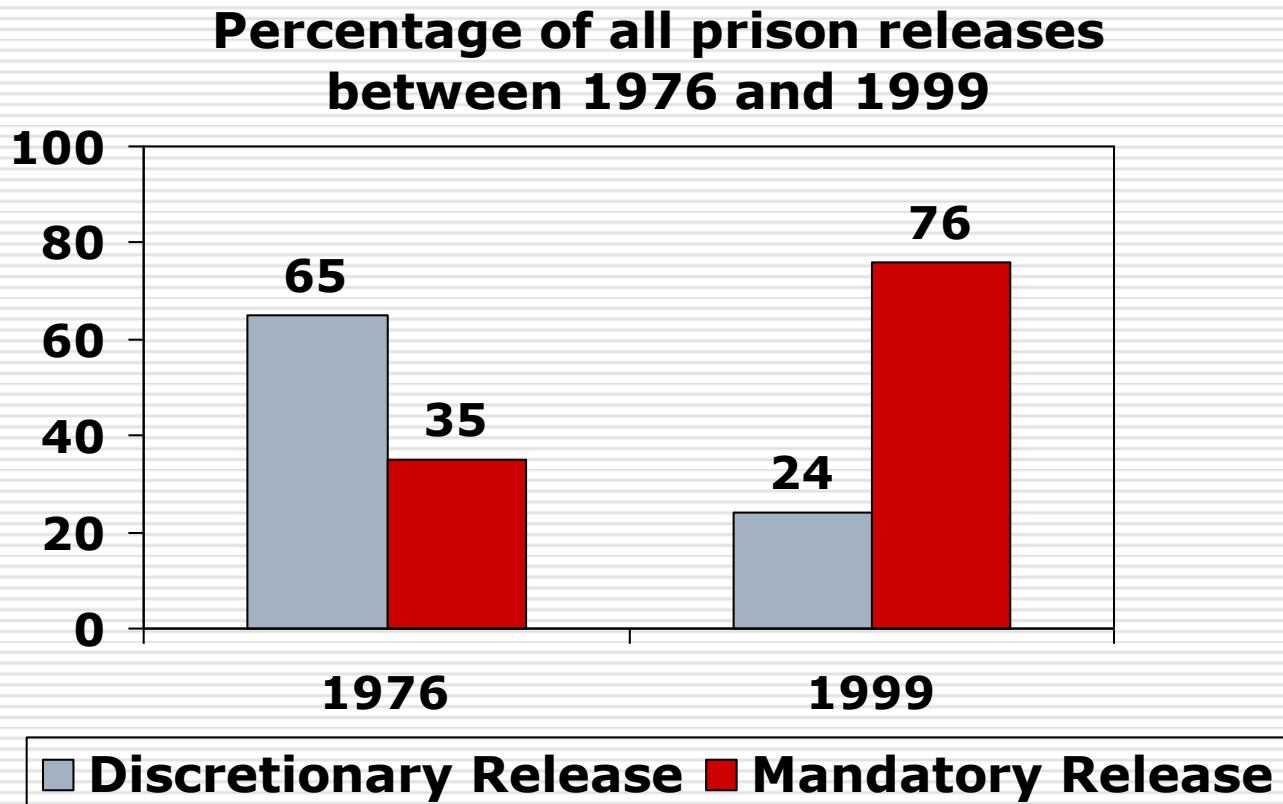
■ Types of release:

- ☐ Discretionary
 - ☐ Mandatory
 - ☐ Conditional
 - ☐ Unconditional
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The rise and fall of the Parole Board

- ❑ Emergence of indeterminate sentencing at end of the 19th Century
 - ❑ Parole Board established in all States by 1930
 - ❑ In 1975 Maine becomes the first State to abolish its Parole Board
 - ❑ Indeterminate sentences replaced with determinate sentences
 - ❑ The fragmentation of the process across the States
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Mapping trends in parole



Emerging themes

- ❑ Power over release process has shifted from executive to the legislative branch
 - ❑ Greater reliance on parole supervision
 - ❑ Increase in the number of parole violators returned to prison
 - ❑ Parole Board guidelines focus on risk of reoffending and seriousness of the offence
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The parole process in England and Wales

- ❑ Criminal Justice Act 1967 establishes parole system
 - ❑ The system would provide “the strongest incentive to reform” and it would also “incidentally go some way to relieve the existing overcrowding in prisons”. (Home Office 1965 para. 8)
 - ❑ Eligibility restricted to those who had served at least twelve months in prison, or one third of their sentence, whichever was longer.
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From 1967-2003

□ Carlisle Committee Report (1988)

- Restore meaning to the sentence
- Parole decision to be based solely on “an evaluation of the risk to the public of the person committing a further serious offense at a time when he would otherwise be in prison”
- Remove involvement of the Home Secretary
- Remove secrecy surrounding decision-making

□ Criminal Justice Act 1991

The Criminal Justice Act 2003

- ❑ Those who receive an ordinary determinate sentence of more than 12 months are released automatically at the half-way point (s.244)
 - ❑ “Specified” offences and extended prison sentences (s.227 and 228)
 - Release dependent on whether the Parole Board panel is “satisfied” that their confinement is “no longer necessary for the protection of the public”
 - ❑ Sentence of imprisonment for public protection (s.224)
 - the court must be of the opinion that “there is significant risk to members of the public of serious harm but where the court does not consider the offence so serious as to justify a life sentence.”
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Emerging themes

- ❑ Focus has moved to risk and risk assessment
 - ❑ Shift in power away from the executive
 - ❑ The imposition of more rigorous due process standards
 - ❑ Human rights substantively condition the range of options open to the Parole Board
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Conclusions

- ❑ Chameleon-like capacity of parole
 - ❑ “Any prediction about the future human behaviour of human beings is necessarily problematical.” (Lord Bingham, *A v. Home Secretary* [2004] UKHL 56 para. 29)
 - ❑ Why should judicial sentencing discretion be shared at all with the Parole Board?
 - ❑ Why should a fixed sentence of custody not mean what it says?
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