

CONDITIONAL RELEASE IN CATALONIA

NEWSLETTER DISSEMINATION OF RESEARCH

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Introduction

In 2012, in association with the Penal Services Department (DGSP) the CEJFE recognised the need to study deeply the application of conditional release in Catalonia. The aim was to find out how it is managed now and to describe the best way of extending it to all prisoners who meet the objective and subjective conditions provided for in legal ordinance and can therefore benefit from it to complete a sentence involving deprivation of freedom.

The aim of extending the application of conditional release in Catalonia is based on two motives: first –taking account of international recommendations and the results of empirical research– to encourage the possibilities for rehabilitation provided by the prison sentence, promoting that stage when the prisoner can follow an effective rehabilitation process with guarantees of support and control. Second, and all the more so at a time of serious economic restrictions, to reduce the high cost of imprisonment when it is not necessary. The DGSP has been working along those lines for some time and on 1 June 2012 published Circular 2/2012 on the management, execution and monitoring of conditional release.

From the results of the research we believe it is fundamental to explain clearly to prison professionals, the experts in this field and society in general why conditional release should be encouraged; the arguments that provide reasons for extending its application; and most of all the benefits society may obtain from a proposal of this kind. It is equally important to note in what way and by which measures the present situation can be improved.

In this *Invesbriu* or summary of the complete research, of all the arguments that are set out in the report for the promotion of conditional release we would select the following ones, grouped in: 1) arguments related to penal and prison policy, 2) economic arguments, and 3) arguments related to criminological efficacy.

1) Concerning the arguments related to penal and prison policy:

- Catalonia has almost doubled its prison population in ten years, although there has been no corresponding increase in criminality in the same period.
- The rate of prison population is one of the largest in Europe. Catalonia occupies the 13th place of the 32 records collected. Spain occupies the eighth place and imprisons more people than any other Western country.
- Catalonia has a very high prison population density, among the worst in the EU. We should note that Spain is better on this point, since it has built many prisons that have adjusted its capacity to its high rate of prison population.
- The average length of effective time spent in prison in Spain is one of

the highest in Europe even though there is no life sentence among the applicable measures.

- The requirements for the granting of conditional release are among the broadest and most demanding in European countries and have the largest number of additional requisites. All in all, this means that the percentage of prisoners who serve out their time on conditional release is one of the lowest in Europe.
- The percentage of successful early release procedures in Catalonia for 2012 was 99%. 97.3% of the prisoners completed them without incidents. Despite that, the percentage of prisoners classified at 2nd degree, or ordinary regime, who have been granted early release in recent years has fallen, though that has nothing to do with there being a higher number of disciplinary files in the prisons (this has also fallen in the last few years). Not having ordinary permission at 2nd degree will seriously hinder any possibility of progressing to another degree and, therefore, of being granted conditional release.

2) Concerning the economic arguments

- Although there are no exhaustive studies of the real economic cost of penal execution measures, there is a general consensus that the expense to the public of supervision on conditional release is considerably lower than when the sentence is served in prison.

3) Concerning the arguments related to criminological efficacy

- The studies consulted agree in pointing out that open custody measures are more effective for working on the rehabilitation process than confinement in prison.
- The supervision is more effective if it includes rehabilitation interventions and is not based solely on control measures. Also if the interventions focus on the population with a medium or high risk of committing further crimes. We need to optimise human, time and economic resources for intervening with this population and minimising intervention with low risk prisoners.
- Many of the studies mentioned in this research confirm that going out on conditional release reinforces the prisoner's wish to refrain from continuing with a life of crime and, consequently, brings down the rate of recidivism. It should therefore be fostered whenever possible.

Aims of the study

1. To discover the present keys to the use of conditional release in Catalonia, whether to grant or to refuse it, when it is possible to apply for it.
 - 1.1. To find out the profile of the prisoners who were granted conditional release in 2012. To see if there are differences between those who had served 2/3 of the sentence and those who had served 3/4. To find out why more conditional releases are not proposed in the advanced modality (2/3).
 - 1.2. To discover the profile of the prisoners who were at 3rd degree in 2012 and see the differences with those who went out on conditional release.
 - 1.3. To discover the profile of the prisoners who were at 2nd degree in 2012, but met some of the legal conditions for being better classified at 3rd degree and/or on conditional release. To see if there are differences in their profile that explain why they had not progressed to another degree.
 - 1.4. To discover the profile of the prisoner whose conditional release has been revoked and who has been sent back to prison.
2. To find out if there are differences in the application of conditional release (in the number of proposals, way of processing, type of prisoner, etc.) according to different variables: territory managed, length of the sentence imposed or timescale of application (before or after the Circular on conditional release mentioned above came into force).
3. To find out how long the delay in the granting of conditional release is in relation to the moment when it would be legally due and the reasons for that.
4. To provide information about the organisation of conditional release in other countries around us. That knowledge would help with decision-making concerning the improvements to be introduced in Catalonia.
5. To collect the opinions of the leading legal operators involved in the proposals for improvement which would make the proposals for conditional release will be stronger.

Methodology

The methodology of the study is based on triangulating the collection of information to compare what was expected (theoretical base, laws, earlier studies), what has been observed (quantitative and qualitative results collected) and what has been explained (experts' arguments, existing studies, professionals working in the field). That has entailed using a combination of quantitative and qualitative techniques and analyses which are adjusted as far as possible to the aims pursued at any time.

Table 1 is the technical file of the research with the different types of quantitative and qualitative analysis.

Table 1. Technical file of the research

Quantitative part

Territorial sphere	Catalonia
Period of study	From 1 January to 31 December 2012
Population object of study	Population on conditional release (N = 1032 persons) Conditional release revoked (N = 70 persons) Sample of the population at 3 rd degree (n = 1102) Sample of the population at 2 nd degree who meet the conditions for being at enhanced level: half of the sentence served, no disciplinary files pending cancellation in the last six months, low risk in the RisCanvi (n = 1206). The selection of the samples has been random among the global population.
Source of the data	SIPC. 94 variables collected: personal, family, penal and penitentiary.
Field work	February and March 2013 (manual extraction of data by 14 investigators and validation of 10% of cases)
Statistical exploitation	IBM SPSS Statistics 17.0 statistical package
Statistical analyses	Contingency with the Pearson (X^2) chi-squared test and Phi and Cramer's V. Student's t test for measuring the difference of the averages. Analysis of variance by independent samples (ANOVA). Binary logistical regression. Analysis of conglomerates (two-stage with processing of atypical values).

Qualitative part

Case analyses	15 cases, selected by intentional theoretical sampling. The cases are extreme ones (unusual in relation to the majority) and typical ones (the ones that become normative regularities).
In-depth interviews	With key informants. Intentional theoretical sampling searching for maximum heterogeneity and snowball pragmatic sampling.
Discussion groups	3 discussion groups (two in June and one in September 2013) Formed by treatment professionals (psychologists, teachers, social educators social workers, jurists, team managers) in all the prisons in Catalonia and representatives of the directive centre.
Delphi technique	2 progressive questionnaires published on the web in <i>Google Drive</i> . People consulted in the questionnaires: treatment technicians in prisons, deputy directors and coordinators of treatment teams and professionals of external services who work with the prison administration on care for persons sentenced who are in open custody and/or conditional release. Participants first round: 153 professionals (21.9%) Participants second round: 104 professionals (14.9%) Field work: June 2013-October 2013
Bibliography and comparative legislation for conditional release	Council of Europe Data (SPACE I and SPACE II) Data for <i>probation measures and alternative sanctions in the EU</i> International studies (see bibliographical references)

Results and conclusions

A. Concerning the subjects' profile and classification

1. The subjects from the three groups studied who were on conditional release in 2012, at 3rd degree or 2nd degree, show significant differences from one other.

1.1. The conditional release group has a more socially adapted profile. It shows the highest percentages in the indicators of protection of personal and social variables (social support, minimum economic resources, absence of drug addiction, etc.). It also shows lower values in the risk of violence and recidivism variables (previous history of violence, criminal record, crimes against property, etc.)

- 1.2. The group classified at 3rd degree has an intermediate profile and show an evolution towards improvement while serving the sentence: from initial characteristics at the beginning of the sentence similar to the group classified at the 2nd degree to characteristics similar to the conditional release group when the last assessment is made.
- 1.3. The group classified at 2nd degree are the ones with a more difficult profile, even though they mostly meet certain objective conditions that would make it possible to classify the prisoners in the group as 3rd degree and/or conditional release. The reasons that best explain the lack of progression in degree are, in this order:
 - a) Not being given ordinary permission
 - b) Active drug addiction
 - c) Not responding properly to treatment or doing so with limitations
 - d) Showing a hostile attitude or having pro-criminal values
 - e) Having committed a crime *against property* as the main offence
- 1.4. The profile of the group with conditional release revoked coincides strongly with the characteristics of the 2nd degree group. The differences are that the ones with conditional release revoked have evolved positively –albeit with ups and downs– in prison and at a particular moment have deserved sufficient trust to be proposed for conditional release. The professionals say that the prisoners with these characteristics would need much closer monitoring than the others who are granted conditional release.
2. The present system of classification in *degrees of treatment* functions according to the *discretionary model* (based solely on the criterion of the professional for selecting the prisoners, once the objective conditions have been met, according to their personal and criminological characteristics). According to the statistical analysis of the total of the sample studied (3,340 subjects), 75.8% would be correctly classified statistically using this method. But the research has detected that 24.2% of prisoners (620 persons) could be classified in a more favourable situation than the one they are actually in without increasing the risk of their committing more crimes or perpetrating acts of aggression inside the institution.
3. The length of the sentences influences the process of classification and progression of level. And so the prisoners with *short* sentences (less than three years) are usually at 2nd degree in a far higher proportion than the other groups studied. The professionals admit that they are reticent about taking rapid decisions about the initial 3rd degree classifications and rapid progressions of degree with prisoners sentenced to *short* terms.
4. In the process of classification and concession of licences the main crime committed also has an influence, especially if it is a crime *against persons* or a *sex offence*. In these cases, there is a tendency to delay the start of the *permissive sentence*, though that delay does not necessarily have a direct relation with the degree of risk assessed in the RisCanvi¹, the assessments made on the MAS² or the degree of success of the ITP³.

The two main conclusions of this section are: that conditional release is being applied to prisoners with a low risk profile, with little likelihood of their reoffending, for whom an especially close monitoring or supervision would not be necessary; and that there is a significant percentage of prisoners who could be classified at a more favourable level.

B. Concerning the delays in the concession of prisoner privileges

5. 60.5% of the sample studied had begun the *permissive sentence* later than allowed for by the law (ordinary leave licences when completing one quarter of the sentence). The fact of not being given ordinary permissions, as a variable in itself, explains the 54.3% of the cases of non-progression of degree and therefore refusal of conditional release when it falls due.
 - 5.1. Other variables related to the prisoner which explain the refusal of ordinary permissions are: a) having no economic resources outside prison; b) having no family or social support

1. Diagnostic instrument based on a structured individualised assessment of a set of pre-established variables used by treatment professionals in prisons to manage the probabilities of an increase or decrease in the prisoners' risk of taking part in new episodes of violent behaviour.
2. Motivational Assessment System.
3. Individualised Treatment Programme.

outside prison; c) having had regressions of degree while serving the sentence.

5.2. The variables related to the action of the Administration which best explain the delay in the concession of the ordinary permission are the following: a) having committed a sex offence in the basic sentence as the main crime; b) having entered preventive prison (in some cases, the time the prisoner spends in preventive custody exceeds a quarter of the sentence when it is final); c) when the sentence is *long* (three to five years) or *very long* (more than five years) there is an institutional tendency to delay granting the licences until the sentence is well under way, among other reasons, to avoid the risk of breach of sentence by failure to return.

6. Concerning access to conditional release, the research has enabled us to identify 52.6% of cases in which the file is opened with a delay in relation to the terms established for the modality of conditional release proposed. One of the influential elements is the delay in the start of the permissive sentence and the subsequent delays that entails. Moreover, the professionals identify the following incidents which can be imputed to the Administration: a) prison transfers, b) excess bureaucracy, c) bad management of the ITP⁴, d) difficulties in the satisfaction of the civil liability, e) disorders in the treatment programme⁵, f) lack of treatment programmes in open custody, which means that the professionals of the centres wait until the programme inside is finished before proposing conditional release, g) shortage of support resources for the prisoner in open custody, h) lack of specific programmes for new types of crime.

C. Concerning the changes introduced by Circular 2/2012

7. Circular 2/2012 on the management, execution and monitoring of conditional release issued by the DGSP has helped improve access to conditional release, but has not helped increase the prisoners' global access to open custody, since approximately the same number of persons are granted it as before the Circular (27.8%). What has changed, however, is the internal distribution: now there are more prisoners on conditional release and fewer at 3rd degree.

8. On the other hand, so far there has not been any percentage increase in the advanced modality of conditional release (if in 2006 it was 32.6% of the total, in 2012 it was 25.7%), despite the mistaken perception of the professionals, according to whom there has been an increase in its application.

9. 80.3% of the professionals who took part in the research acknowledge that the Circular has changed their way of working and make a fairly positive assessment of its application (80%).

9.1. The professionals' positive perception means that, thanks to the Circular: a) more prisoner privileges are applied to the *short* sentences, b) the procedure for payment of the civil liability has been advanced because it makes it obligatory to take account of it at the outset (this is seen as something positive), and c) the quality of the reports has improved (although this perception is more widespread among the treatment professionals and less so amongst the members of the judiciary, the Management Centre and some prison governors).

9.2. There are also aspects in which a negative perception of the Circular carries more weight. Among the ones mentioned by the professionals are: a) its application has involved more bureaucracy with the demand for the drafting of more reports, even if they are produced in order to send the prison supervision judge a proposal with an unfavourable assessment; b) the task of making more conditional release proposals is seen with apprehension by some of the treatment team, especially when it is suspected that the dispatch of the proposal will be taken badly by the prison supervision judge, c) the professionals have an ambivalent attitude to the speeding up of processes to meet the terms that give the pris-

4. Preparation begins late, has little effect on the management of the payment of civil liability and is excessively linked to the integral completion of the treatment programme.

5. The main disorders seen are: 1) the programmes begin late within the period of the sentence; 2) not all the prisoners are obliged to follow the treatment programme linked to the type of crime they have committed if they do not have the problems worked on in the programme, and 3) they do not have to completely finish a programme in order to have access to the prisoner privileges or improvement of the classification of the level. The treatment programmes should be turned into transversal ones for the duration of the sentence, in the form of itineraries. They should begin inside the prisons and continue at the enhanced level, ending with a monitoring on parole.

oner the right to the prisoner privileges, and d) the change proposed by the Circular has increased the work load for the professionals at a time when resources, salaries and time-tables are being cut back, which means little work motivation for the change.

10. We are of the opinion that it is still too soon to assess the real changes brought about by the application of the Circular and that we need to wait to see results at least until the end of 2014, assuming that the policies of application are continued. It should be pointed out, however, that the forecast for the future made by the professionals is optimistic in terms of the increase of the application in all modalities of open custody and conditional release. We have to hope that those optimistic expectations are actually fulfilled.

Proposals

The proposals to be drawn from this research are the fruit of the triangulation of the empirical results with the opinion of the professionals and experts working in prisons and with European recommendations and the good practices collected in the international literature consulted.

The research specifies 23 proposals for improvement, set out in 6 subject areas focusing on the following aims:

- A) To strengthen the rehabilitating character of conditional release (8 proposals)
The prisoner should be notified from the first moment of the start of the sentence; its application to the medium and high risk groups according to the RisCanvi should be encouraged; the conditional release should be long enough to give time to see changes. The involvement of society is fundamental for achieving the success of these proposals.
- B) To implement a mixed model in the application of conditional release (3 proposals)
In the cases of *short* sentences (up to 3 years) to grant it automatically, except for the cases in which a medium or high score on the RisCanvi is obtained. In the cases of *long* sentences (more than 3 years) continue to apply the discretionary model currently in operation.
- C) To graduate the responses to breaches of the conditions of conditional release (2 proposals)
Breaches of the conditions must be treated as a logical part of the process of giving up crime. In accordance with this logic the responses must be graduated so that they do not necessarily mean a direct revocation of conditional release and a return to 2nd degree, as happens now.
- D) To improve the drafting and application of the ITP (6 proposals)
The individual treatment programme must be more interdisciplinary and unitary, so that the contents are the same at the different stages –closed custody, 3rd degree and conditional release–; it must be based on the subject’s criminogenic needs and not only on the crime committed; work must be done from the outset, even with the prisoners in preventive custody.
- E) To promote changes in the work habits of the prison professionals and the prison social services (3 proposals)
Great importance is given to the need for specific training of the treatment professionals, for good practices to be encouraged and rewarded and for the figure of the intermediary command as a key element for the success of these projects to be reinforced.
- F) To promote a change in the social perception of conditional release (1 proposal)
Educational methods must be used to explain to society that these measures are a tool for integrating the prisoner into the community and encouraging him or her to give up crime.

The recommendations of this broad, comparative empirical research which we are presenting in this *Invesbreu* are added to those of other international investigations and recommendations in that they stress the importance of promoting open custody penal measures and the systematic use of conditional release as a last stage of serving the prison sentence. Penal and penitentiary policies must be founded on the results of the research and the promotion of the rehabilitation of the persons sentenced, as pointed out by the Council of Europe in all its recommendations in the sphere of penal execution. Unfortunately, the latest reforms of the Spanish Penal Code do not follow these principles, and neither does the new bill which will shortly be starting its progress through parliament.

Invesbreu bulletins published

- 1 Inmigrantes y criminalidad en Europa. Los ejemplos de Alemania y España. Enero 1995.
- 2 La cárcel pública de Barcelona durante la etapa isabelina / La casa de corrección de Barcelona (1836-1856). Enero 1998.
- 3 El coste de la justicia penal. Privación de libertad y alternativas. Febrero 1998.
- 4 El niño abusado sexualmente como testigo / Los delitos contra la libertad sexual relacionados con menores. Marzo 1998.
- 5 Inteligencia y personalidad en el proceso rehabilitador del delincuente. Mayo 1998.
- 6 Salud y prisión. Octubre 1998.
- 7 La prensa frente a la violencia juvenil y la cárcel. Noviembre 1998.
- 8 El tratamiento de los agresores sexuales. Febrero 1999.
- 9 La victimización en Cataluña en el año 1996. Abril 1999.
- 10 Programas aplicados de psicología comunitaria con personal penitenciario. Junio 1999.
- 11 Justicia juvenil: inserción laboral y medidas en medio abierto. Octubre 1999.
- 12 Reincidencia y delincuencia juvenil. Noviembre 1999.
- 13 Violencia doméstica. Diciembre 1999.
- 14 El estado de la adopción en Cataluña (1998-1999).
- 15 Maltratos infantiles en Cataluña. Junio 2000.
- 16 Prisión y mujeres. La incidencia de los programas motivacionales en la conducta social. Un estudio evolutivo (1988-2000) en la prisión de mujeres de Barcelona. Septiembre 2000.
- 17 Evaluación de un programa de tratamiento para jóvenes violentos. Noviembre 2000.
- 18 Evaluación de la efectividad de los programas de tratamiento con delincuentes en Europa. Enero 2001.
- 19 La victimización en Cataluña en el año 1999. Mayo 2001.
- 20 El arresto de fin de semana en Cataluña (1996-2000).
- 21 Adictos a las drogas y reincidencia en el delito.
- 22 Maltratos físicos graves a bebés y menores de cuatro años ingresados en centros de acogida.
- 23 Intervención institucional. Elementos para el análisis en menores infractores o en riesgo.
- 24 Los menores extranjeros indocumentados no acompañados (MEINA).
- 25 La mediación penal
- 26 La reincidencia.
- 27 Familia y conducta antisocial.
- 28 Presentación de dos investigaciones del ámbito penitenciario.
- 29 Intervención en centros de justicia juvenil.
- 30 La clasificación inicial en régimen abierto de los condenados a prisión.
- 31 La reincidencia en las penas alternativas a la prisión en Cataluña.
- 32 La asistencia religiosa y la libertad de culto en las prisiones de Cataluña.
- 33 Bullying - Violencia de género. Elementos para el análisis.
- 34 Violencia de los jóvenes en la familia.
- 35 Infractores y conducta violenta.
- 36 Drogas y tratamiento penitenciario.
- 37 Perfil profesional del juez de primera instancia e instrucción de Cataluña.
- 38 Violencia de género y justicia.
- 39 Delitos sexuales y reincidencia.
- 40 Intervención con infractores juveniles.
- 41 Mediación y resolución de conflictos en entornos penitenciarios.
- 42 Perfil profesional del Secretario Judicial de Cataluña.
- 43 Predicción del riesgo de violencia en contextos institucionales. Los sistemas de control monitorizado aplicado a penados adultos.
- 44 Drogas y prisión . Medidas de seguridad y salud mental.
- 45 Modelos de política criminal y penitenciaria internacional.
- 46 Mujer y violencia de género.
- 47 La formación de los funcionarios de seguridad de los centros penitenciarios en Cataluña y Francia.
- 48 Perfil de los penados por delitos contra la seguridad del tráfico.
- 49 Intervención con agresores de violencia de género.
- 50 Intervención con infractores condenados por delitos de tráfico a programas formativos.
- 51 Abuso sexual infantil: valoración psicosocial desde el ámbito de la justicia.
- 52 Agresores en violencia de pareja.
- 53 Inserción después de la cárcel.
- 54 Extranjeros en centros penitenciarios.
- 55 Victimología y ciberdelito en menores.
- 56 La reincidencia en el programa de mediación y reparación de menores.
- 57 Intervención penal con infractores de tráfico.
- 58 Evaluación de menores infractores: factores protectores y de riesgo..
- 59 El tiempo en la justicia de menores.
- 60 Intervention in the framework of penal measures in the community
- 61 Community service orders and tasks to educate for life in society in juvenile justice
62. Victimisation of young people in protection for children and adolescents and in juvenile justice

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