

COUNTRY FACTSHEET

Sentence Adjustment Mechanisms in Europe
Procedural Barriers & National Contexts

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**EUROPEAN
PRISON
LITIGATION
NETWORK**

1. Introduction	3
2. Overview of Spain’s Penal and Prison System	4
a. Structure of the Prison Regimes (‘grados de tratamiento’)	6
b. Sentencing Practices	6
c. Fair Trial Guarantees	7
3. Overview of Spain’s Sentence Adjustment Mechanisms	7
a. Institutional Architecture	7
b. Players in the System	8
c. Eligibility and Criteria for Granting Sentence Adjustment	9
d. Procedure for Applying	11
e. Time Limits	11
f. Time Thresholds	12
4. Substance of Sentence Adjustment Decisions	12
a. Quality of the Law and Legal Uncertainty	13
b. Disciplinary Incidents and Behaviour	14
c. Cooperation with Authorities and Remorse	15
5. Recall	15
b. Appeal Mechanisms	15
c. Procedural Guarantees	15
d. Limitations	16
6. Statistics	16
7. Procedural Barriers	17
a. Access to Legal Assistance and Representation	17
b. Interpretation	17
c. Access to Case Files	18
d. Witnesses and Evidence	18
e. Public Access to Proceedings	18
f. Access to Appeal	19
8. Differential Impact for Categories of Prisoners	20
a. Barriers relating to Socioeconomic standing of prisoners	21
b. Foreigners	21
c. Minors	23

1. Introduction

Spain's approach to sentence adjustment mechanisms reflects a complex interplay of legal frameworks, administrative practices, and political influences, shaped in part by its decentralised penitentiary system. Operating under three separate administrations—the **State Prison Administration**, **Catalan Prison Administration**, and **Basque Prison Administration**—the country's system is unified by the **Organic Law of the General Prison System (LOGP)** and overseen by specialised **Judges for Penitentiary Supervision (JPS)**. Despite shared legal foundations, regional disparities in policies and practices highlight the fragmented nature of sentence adjustments in Spain.

Sentence Adjustment Mechanisms: A Tool to Manage Prison Overcrowding

Spain's application of sentence adjustment mechanisms, particularly during the COVID-19 pandemic, highlights their potential use as tools for addressing political and systemic issues, such as managing prison overcrowding. During the COVID-19 pandemic, the Catalan and the Central Prison Administration implemented extra-penitentiary sentence enforcement measures (rather than reducing the prison population in the strict sense of the term), essentially through the progression to open regime in application of Article 100.2 RP ("flexible regime") or the release of prisoners over 65 years of age with health conditions that made them particularly vulnerable to contagion.

Notably, the **Catalan Prison Administration** took a more robust approach, applying these measures to **17% of its prison population (1,425 prisoners)** compared to just **5.8% (2,931 prisoners)** under the Central Prison Administration. The Central Administration cited a lack of significant overcrowding as justification for its restrained approach, even as it acknowledged rising COVID-19 outbreaks and the potential need for stricter isolation measures.

Following the peak of the pandemic, the bulk of the release measures were scaled back or even revoked. This underscored that sentence adjustment mechanisms and the promotion of alternatives to imprisonment are neither central to nor fully integrated into the institutions' approach to prison policy.¹

Minimal Impact of Increased Sentence Adjustments on the Overall Prison Population

Even when the application of sentence adjustment mechanisms increased to mitigate overcrowding, the overall prison population in Spain saw little change. This can partly be attributed to the focus on individuals already in **open or flexible regimes**, who typically occupy specific prison modules separate from the majority of prisoners in ordinary regime. As a result, overcrowded **ordinary regime modules**, where the majority of inmates reside, remained largely unaffected by these measures.

¹ Observatorio del Sistema Penal y los Derechos Humanos Universidad de Barcelona, Equipo SIRECOVI, Informe final sobre la gestión del coronavirus en los centros penitenciarios, marzo 2020 – mayo 2021. https://www.ub.edu/portal/documents/10080835/10975974/INFORME+FINAL+CARCEL.CAST_compressed.pdf/ca35b61c-4657-5675-c444-ed889352175e

2. Overview of Spain's Penal and Prison System

There are three penitentiary administrations in Spain.² The three share the same basic law (Ley Orgánica General Penitenciaria nº 1/1979) and statutory regulation (Reglamento Penitenciario from 1996), and are identically supervised by the Judge of Penitentiary Supervision and the Public Prosecutors of Penitentiary Supervision, which are State Bodies and provide a common basis and supervision of the three penal execution and prison administrations (execution of all the criminal sanctions, probation, parole and measures dictated by the criminal courts).

1. The State Prison Administration, under the jurisdiction of the Ministry of Home Affairs, operates prisons located throughout the entire Spanish territory, except the Autonomous Community of Catalonia and the Autonomous Community of the Basque Country.

2. The Catalan Prison Administration, under the jurisdiction of the Department of Justice of the Regional Government of Catalonia, manages prisons located in that territory. It was in 1983 when Catalonia materialised that the possibility was provided for in the Spanish Constitution³ of running its own prison administration through the adoption of Royal Decree 3482/1983, of 28 December, on the transfer of State services to the Generalitat of Catalonia regarding Prison Administration. It must be noted that Catalonia has executive competences and a reduced statutory competence on prison issues, subordinated to the legislative competence of the State.

3. The Basque Prison Administration, under the jurisdiction of the Department of Justice and Human Rights of the Regional Government of the Basque Country, runs prisons located in that territory. It was only as recently as 2021, ten years after the ceasefire of the terrorist organization ETA, that the Basque Country⁴ started operating its own prison administration through the adoption of Royal Decree 474/2021, of 29 June, on the transfer of functions and services from the State Administration to the Autonomous Community of the Basque Country on the implementation of State legislation on penitentiary matters. The handover of all the services and institutions became effective on the 1st of October 2021, which explains why, given the short period of time it has been in operation, there is no data available in SPACE I 2023 annual report regarding the Basque Prison Administration.

In 2004, the total prison population rate per 100,000 inhabitants was 116.3, in 2014 it was 141.7 and in 2023 it was 116.3. Taking into account that the European median value as regards prison population is 106.5, the State Prison Administration scores high as regards its prison population rate.⁵ The Catalan Prison Administration, however, has a low prison

² Article 149.6 of the 1978 Spanish Constitution provides for the possibility of transferring to the Autonomous Communities the competence over prison administration, while reserving exclusive competence over penitentiary legislation to the State.

³ Article 11 of the former Statute of Autonomy for Catalonia of 1979 mirrored art. 149.6 of the Spanish Constitution and provided for the possibility of Catalonia being responsible for the organisation and operation of penitentiary institutions. Art. 168 of the current 2006 Statute of Autonomy for Catalonia includes that same provision.

⁴ Article 10.14 of the 1979 Statute of Autonomy for the Basque Country attributes to the Autonomous Community exclusive competence over the organisation and operation of penitentiary institutions. Article 12.1 states that the Autonomous Community of the Basque Country is responsible for the execution of State legislation on penitentiary matters.

⁵ The State Prison Administration is classified within the cluster including the prison administrations whose score is between 5% and 25% higher than the European median value, See SPACE I 2023 report p. 4

population rate⁶ (aligned with other Southern European States like Italy (95.4) or Greece (100.7), yet still far away from the values of countries such as Norway (55.2), the Netherlands (52.4), Finland (52.3) or Germany (68.9). The Basque prison population would score in this very low group of prison population rate (72.1).

When comparing the prison population rate throughout the last 20 years, the following must be noted:

- As regards the State Prison Administration: there was an upward trend in the number of inmates up to 2009, when the prison population reached its peak (173.1 incarcerated persons per 100.000 inhabitants), and ever since that date a decrease followed (the percentage change being -18.9%). However, this trend was surprisingly reversed in 2022 when it went from 55.097 inmates in all administrations (31-12-2021⁷) up to 58.942 according to the latest available data (31-07-2024). This results in a 7% increase in two and a half years.
- As regards the Catalan Prison Administration: the same upward trend can be noted up to 2011, when the prison population reached its peak (144.1 incarcerated persons per 100.000 inhabitants), and a subsequent decrease after that year can also be appreciated (the percentage change being -26.9 %). Likewise, since 2022 this downward trend has been reversed; in December 2021 Catalonia had a prison population of 7.746, whereas in July 2024 (latest available data) it had a prison population of 8.450; +704 inmates; +9%.

Two main conclusions can be drawn:

1. The difference between the Catalan and Central Prison Administration rates essentially remains over the years, with the Central Prison Administration having a higher prison population rate than that of the Catalan Prison Administration.
2. The evolution of the two trends (the Catalan and the Spanish) is parallel (upwards up to 2009-2011,⁸ and then downwards until 2021,⁹ after which they seem to be increasing

⁶ The Catalan Prison Administration is classified within the cluster including the prison administrations whose score is between 5.1% and 25% lower than the European median value, See SPACE I 2023 report p. 4.

⁷ https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/anuarios-y-estadisticas/ultimo-anuario-estadistico/Anuario_estadistico_2023_126150729_Prov.pdf.

⁸ Doctrine has come up with several reasons to try to explain the very pronounced increase in prison population between the years 2000 and 2009 / 2011 in both Prison Administrations. First, the adoption of several laws of rigorous content: (1.) the 1995 Criminal Code, which on the one hand increased the penalties for various crimes, including the crimes of drug trafficking and robbery that motivate most criminal convictions in Spain and, on the other hand, also abolished the remission of sentences for work (which automatically shortened sentences by 1/3 of their duration and optionally by 1/2). Although the new Code came into force in 1996, its impact manifested itself in a delayed manner, and the length of stay in prison went from 13 months in 2000 to 19.3 months in 2010. (2.) Law 7/2003, of 30 June, introducing reforms assuring that inmates serve the full length of their sentences. (3.) Law 15/2003, of 25 November introducing a major revision of the Criminal Code which raised occasional abuse in the domestic sphere to the category of a criminal offence (4.) Law 1/2004, of 28 December, regarding violence against women which increased the penalties for occasional abuse where the victim is the woman partner and also raised to the category of crimes threats and minor coercion where the victim is the woman partner.

Cid, J. (2021). El futuro de la prisión en España. PostC: La PosRevista sobre Crimen, Ciencia y Sociedad de la era PosCovid19, (2). El incremento de la población reclusa en España entre 1996-2006 diagnóstico y remedios. José Cid Moliné <https://dialnet.unirioja.es/descarga/articulo/2591478.pdf>.

⁹ This fact has been explained by the impact of the reform of the Penal Code of 2010 (Law 5/2010, of 22 June), which affected the minimum penalty for drug trafficking offences and extended the use of alternatives to imprisonment. Reasons related to the context of the economic crisis could also explain this decrease: faced with the need to reduce public expenditure and given the high cost of maintaining inmates, the administrations are more inclined to adopt decisions that lead to a decrease in the incarcerated population, including foreign

again), so that the two prison systems respond similarly to the causes that determine prison population increase and decrease.

Currently, Spain as a whole and both the State Prison Administration and the Catalan Prison Administration score very low (more than 25% lower than the European median value) as regards the rate of admissions.

Doctrine believes that in order to really grasp the full picture and understand the factors that explain the evolution of the incarceration rate in Spain, prison admissions and the duration of imprisonment must be analysed separately, since Spain has one of the longest average lengths of imprisonment in the Council of Europe but at the same time, has a very low rate of admissions.

a. Structure of the Prison Regimes ('grados de tratamiento')

The Spanish prison system provides for different modalities of serving the sentence which are articulated through a system of classification into three prison regimes (in Spanish *grados de tratamiento*). This classification system is characterised by its flexibility and, in accordance with the so-called principle of scientific individualisation, allows the initial classification of the sentenced person in any prison regime, including the open regime (or third degree) (Article 72.3 and 4 of the LOGP). Indeed, the system of scientific individualisation has been built on subjective elements, linking the classification and assignment of each of these modalities to the individual conduct of the prisoner and his or her prognosis for reintegration, in such a way that it is not compulsory to pass through each of the regimes in order to progress to the next one. Classification in any prison regime is possible. That said, one of the requirements for parole is to have reached open regime. And in certain cases (those in which the so-called 'security period' is established), access to open regime does not comply with the logic of the system of scientific individualisation.

b. Sentencing Practices

With regards to sentencing, the most important judgments against Spain at the European Court of Human Rights are *Del Río Prada v. Spain*¹⁰ and *Arrozpide Sarasola and Others v. Spain*.¹¹

prison population expulsion. J.M. Tamarit Sumalla "El sistema penitenciari català: fonament i exercici de la competència" REAF núm. 23, abril 2016, p. 235-273. Doctrine also mentions the process of "europeanisation" as one of the reasons which explains the reduction in prison population (more precisely, the reduction of the rate of admissions). Under this term, they refer to the renewal of the system of alternative sentences to imprisonment that took place with the adoption of the 1995 Penal Code and which brought our criminal legislation closer to the recommendations of the Council of Europe, which required alternative sentences to be the normal response to a criminal offence. This reform raised the threshold for alternative sentences to include sentences of up to two years' imprisonment and increased the number of alternative sentences available to the judge, including suspension while meeting rules of conduct (probation), community service and day-fines. Europeanisation also refers to the reception by Spanish constitutional jurisprudence of the case law of the ECtHR on the exceptionality of pre-trial detention. Judgment 128/1995 was the first of several decisions of the Spanish Constitutional Court which echoed the ECtHR case law on the exceptionality of pre-trial detention. Subsequently, the Court had to reaffirm its doctrine on several occasions until, finally, in 2003, the legislator reformed the Criminal Procedure Act (LECr) to bring it into line with the constitutional doctrine.

Cid Moliné, J. (2020). El futuro de la prisión en España. *Revista Española De Investigación Criminológica*, 18(1), 1–32. <https://doi.org/10.46381/reic.v18i0.285>.

¹⁰ Application no. [42750/09](https://doi.org/10.46381/reic.v18i0.285).

¹¹ Applications nos. [65101/16](https://doi.org/10.46381/reic.v18i0.285) and 2 others.

In the case of *Del Río Prada v. Spain* (2013), the European Court of Human Rights addressed the retroactive application of the 'Parot doctrine' by Spain's Supreme Court to an individual convicted of terrorist offences. This doctrine reinterpreted how sentence reductions for work performed in detention were applied, effectively preventing these benefits from reducing the statutory maximum prison term of 30 years established by Article 70(2) of the 1973 Spanish Criminal Code. The Court held that this change went beyond the execution of the sentence and altered its substantive scope, depriving the applicant of reductions previously granted under the law. It found this retroactive application to violate Article 7 of the ECHR, which prohibits retrospective increases in penalties. The judgment extended the concept of 'penalty' under Article 7, reducing the distinction between the 'sentence' and its 'execution'.

In *Arrozpide Sarasola and Others v. Spain* (2018), the Court considered Spain's refusal to deduct prison sentences served in France from the maximum 30-year sentence limit set by the 1973 Spanish Criminal Code for individuals convicted of serious crimes. The applicants argued that the time served in France should reduce their Spanish sentences under the calculation of the maximum term. The ECtHR found that the application of the maximum sentence was not limited to execution but also affected the substantive extent of the applicants' punishment. Spain's refusal to take into account the sentences served in France violated Article 7 §1 of the ECHR, which prohibits retroactive alterations to penalties. This judgment reinforced the principle that measures impacting the substantive scope of a penalty must be in line with Article 7.

c. Fair Trial Guarantees

Domestic law in Spain recognises that the ordinary requirements of a fair trial apply to sentence adjustment procedures, as encompassed by the constitutional provisions of Article 24 of the Spanish Constitution. This article guarantees the right to effective judicial protection and a fair hearing in administrative and judicial resolutions. However, the Constitutional Court has rarely exercised control over judicial decisions on sentence adjustments, largely due to their discretionary nature. As a result, while the constitutional framework theoretically ensures fair trial protections, their practical application in sentence adjustment procedures remains limited.

3. Overview of Spain's Sentence Adjustment Mechanisms

Spain's legal framework for sentence adjustment and reduction provides for the following mechanisms:

1. **Access to Open Regime (Tercer Grado)**
2. **Parole (Libertad Condicional)**
3. **Suspension of Execution Due to Mental Illness**

These mechanisms are governed by the Prison Law, the Criminal Code (CC), and the Prison Regulations.

a. Institutional Architecture

The institutional framework for implementing sentence adjustments in Spain combines administrative and judicial authorities:

i. Administrative Authorities

○ **Treatment Board (Junta de Tratamiento):**

- A collegiate body responsible for preparing sentence adjustment plans, including parole and open regime applications.
- Chaired by the Director of the Penitentiary Centre, it includes key personnel such as the Deputy Director of the Treatment Team, medical staff, penitentiary technicians, a social worker, and a Head of Services.
- It evaluates prisoners' circumstances and makes recommendations to the Judge of Penitentiary Supervision for parole applications, while directly deciding on open regime access.

○ **Individualised Treatment Plan (PIT):**

- Each prisoner is expected to have a PIT drawn up by the Treatment Team, including an educator, social worker, and psychologist. This plan is reviewed every six months.

ii. Judicial Authorities

○ **Judge of Penitentiary Supervision:**

- A specialised judicial body tasked with approving parole and ensuring the legality of administrative decisions, including flexible regime adjustments.
- Judges can also initiate parole proceedings ex officio under Art. 90.7 CC, introduced by the 2015 reform.

Historical Context:

The Judge of Penitentiary Supervision was established in 1979, reflecting Spain's democratic reforms after Franco's dictatorship. This innovation aimed to balance inmate rehabilitation with administrative oversight, fostering reintegration during Spain's political transition.

b. Players in the System

The key actors involved in Spain's sentence adjustment system are:

i. Judges:

- **Judges for Penitentiary Supervision** decide on parole applications and review decisions related to open regimes and flexible regimes.

ii. Treatment Board (Junta de Tratamiento):

- Responsible for preparing parole and open regime applications, often incorporating input from educators, psychologists, social workers, and other penitentiary staff.
- Members assess inmates' behaviour, rehabilitation progress, and reintegration potential to make recommendations or decisions.

iii. Prison Administration:

- Provides logistical and operational support, including medical evaluations and individualised treatment plans, to support sentence adjustment proposals.

iv. **Social Workers and Psychologists:**

- Integral to the Treatment Board, they contribute to rehabilitation and reintegration efforts by addressing prisoners' social and psychological needs.

v. **Probation Officers:**

- Support the reintegration of released individuals by supervising their compliance with parole conditions and helping maintain societal ties.

vi. **Medical Staff:**

- Play a crucial role in assessing health conditions that might qualify inmates for adjustments, such as parole for elderly or gravely ill individuals. However, staffing shortages and delays in accessing care pose challenges.

vii. **Prosecutors and Defence Lawyers:**

- Represent the state and inmates, respectively, in judicial proceedings related to sentence adjustments.

Challenges in Resource Allocation:

Reports by the CPT and NPM highlight deficiencies in staff availability and medical resources, particularly in certain regions. Delays in medical assessments and insufficient staff continuity hinder effective preparation for sentence adjustments. Positive changes, such as expanded financial aid in Catalonia, address some vulnerabilities but require broader implementation for systemic improvement.

c. Eligibility and Criteria for Granting Sentence Adjustment

i. Access to Open Regime (Tercer Grado)

Eligibility:

Access to open regime is not automatic nor granted as a right. It requires an assessment of individual circumstances by the Junta de Tratamiento (Treatment Board), which evaluates factors such as the inmate's personality, family and social history, criminal record, sentence length, and social reintegration prospects.

• **General Conditions:**

- Satisfaction of civil liability related to the offence.
- Positive assessment of criminal and social integration variables.
- For progression from ordinary regime, inmates must have served at least a quarter of their sentence unless humanitarian exceptions apply.

• **Specific Conditions:**

- For sentences exceeding five years, access may be restricted by a mandatory "security period," requiring at least half the sentence to be served in ordinary regime.
- Inmates convicted of sexual offences, terrorism, or organised crime face stricter restrictions, including mandatory participation in treatment programmes as per Organic Law 10/2022.
- Open regime may be granted immediately after sentencing for first-time offenders with short sentences (up to five years) who meet specific criteria, such as stable employment or a supportive family network.

• **Special Provisions:**

- Flexible regime adjustments (Art. 100.2 PR) allow partial open-regime privileges even within ordinary regime upon approval by the Judge of Penitentiary Supervision.

- Convicts who are gravely ill or aged over 70 with low risk can access open regime for humanitarian reasons, bypassing regular criteria (Art. 104.4 PR).

Assessment Criteria:

The main criteria include individual, social, and criminological factors, as well as participation in rehabilitation or treatment programmes. While objective conditions are clearly outlined, subjective evaluations, such as an inmate's personality and behaviour, introduce discretion, leading to inconsistencies.

ii. Parole (Libertad Condicional)

Eligibility:

Parole is not granted as a right and requires fulfilling both objective and subjective criteria.

- **Objective Conditions:**

- Time thresholds: Generally three-quarters of the sentence served or 25-35 years for life imprisonment, depending on the nature of the offence.
- Placement in open regime.
- Effort to satisfy civil liability.

- **Subjective Conditions:**

- Good conduct during imprisonment, evaluated by considering the inmate's background, circumstances of the offence, potential for reoffending, and rehabilitation efforts.

- **Special Provisions:**

- Early parole requires proof of sustained engagement in rehabilitation or occupational activities that result in significant personal improvement.
- Inmates convicted of terrorism or organised crime must renounce violence, apologise to victims, and provide evidence of disassociation from criminal networks.
- Special considerations apply for older inmates (70+) and those with incurable illnesses, on the rationale of their reduced danger to society.

Assessment Criteria:

Parole is contingent on a positive prognosis of social reintegration. Judges for Penitentiary Supervision rely on reports from prison authorities, though subjective elements like personality assessments have been criticised for vagueness, risking unequal treatment among inmates.

iii. Suspension of Execution Due to Mental Illness

Eligibility:

Prisoners diagnosed with a severe and lasting mental disorder post-conviction may have their sentence execution suspended if the disorder prevents understanding of the punishment.

Conditions:

- Medical reports must substantiate the mental disorder.
- The Judge of Penitentiary Supervision must guarantee appropriate medical care for the inmate.
- A security measure may be imposed instead of imprisonment.

Assessment Criteria:

The evaluation prioritises the severity and permanence of the disorder, with decisions focusing on the prisoner's health and capacity to understand the penal sanction.

d. Procedure for Applying

The procedure for applying for sentence adjustment mechanisms in Spain varies depending on the specific adjustment sought:

i. Open Regime

- **Initiation:**
 - Prisoners may request access to open regime by appealing the Treatment Board's decision to retain them in the ordinary regime.
 - The process begins with a complaint to the Prison Director. If the Prison Director confirms the Treatment Board's decision, the prisoner can appeal to the Judge for Penitentiary Supervision (JPS) within one month.
- **Appeals Process:**
 - If the JPS denies the request, the prisoner can file a *recurso de reforma* (appeal for reconsideration) within three days before the same judge.
 - If denied again, the inmate may lodge a *recurso de apelación* (appeal) within five days to a higher court, specifically the sentencing court. This appeal must be signed by a lawyer.
- **Motu Proprio Decisions:**
 - The Treatment Board may independently grant open regime without inmate application, but family members cannot request this adjustment on behalf of the prisoner.
 - The JPS intervenes only if the decision is appealed by the inmate or the prosecutor (Art. 107 PR).

ii. Parole

- **Eligibility and Initiation:**
 - Prisoners may request parole after serving the required portion of their sentence (e.g., two-thirds for early parole or three-quarters for normal parole).
 - The Prison Administration can also propose parole motu proprio, and if approved by the JPS, the prisoner must accept it.
- **Approval Process:**
 - All parole applications must be reviewed and approved by the JPS. Family members cannot initiate parole requests.
- **Appeals Process:**
 - The appeals process mirrors that of open regime:
 - Complaint and appeal for reconsideration (*recurso de reforma*) before the JPS.
 - Final appeal (*recurso de apelación*) to the sentencing court, requiring legal representation.

e. Time Limits

The overall duration of the procedure is not regulated in a binding manner. The legal deadlines for lodging the relevant appeals are, however, and prisoners and lawyers must comply with them (1 month for complaints, 3 days for appeals for reconsideration and 5 days for appeals). However, judges and prosecutors do not have deadlines for handing down their decisions or filing their appeals,

respectively. This results in a time delay in most cases. Depending on the JPS, it takes 2, 4, 6 or 9 months to resolve the entire file. This is one of the black spots of Spain's system: undue delays. In the investigation phase and in the trial phase of criminal proceedings, these delays are considered when assessing the mitigating circumstance of undue delay (art. 21.6 of the CC), but in the phase of sentence execution this circumstance does not apply.

f. Time Thresholds

The time thresholds for sentence adjustment mechanisms in Spain vary depending on the specific modality of the mechanism and the nature of the conviction:

Parole

- **General Parole:** Eligibility requires serving three-quarters (3/4) of the sentence (Art. 90.1 CC).
- **Early Parole:** Eligibility is reduced to two-thirds (2/3) of the sentence (Art. 90.2 CC). While no longer considered exceptional since the 2015 reform, this modality requires additional conditions such as participation in work, cultural, or occupational activities. Persons convicted of terrorism or offences within criminal organisations are excluded.
- **Qualified Early Parole:** Eligibility is set at one-half (1/2) of the sentence, with a maximum of 90 days for each year that has elapsed since the sentence began (Art. 90.2 CC in fine). This advanced form of parole imposes stricter requirements, including demonstrated effective and favourable participation in specific treatment programmes. It is unavailable to persons convicted of terrorism or offences committed within criminal organisations.
- **Early Parole for Primary Prisoners with Short Sentences:** Eligibility requires serving one-half (1/2) of the sentence (Art. 90.3 CC). This is applicable only to first-time offenders sentenced to no more than three years in prison, provided they meet additional requirements such as engagement in work, cultural, or occupational activities. It excludes individuals convicted of offences against sexual freedom and indemnity, terrorism, or offences within criminal organisations.
- **Parole for Life Imprisonment (Prisión Permanente Revisable):** Eligibility occurs after serving 25 to 35 years, with the latter threshold applying to terrorism-related offences (Art. 92 CC).

Open Regime

Time thresholds for eligibility depend on various conditions outlined in Art. 102 PR and associated regulations. For detailed thresholds and conditions, refer to the specific provisions in the section on *Access to Open Regime*.

4. Substance of Sentence Adjustment Decisions

In Spain, sentence adjustment mechanisms consist of administrative decisions on the one hand, and judicial decisions on the other. There is a legal duty to substantiate, i.e. to state reasons in fact and in law for both administrative and judicial decisions on sentence adjustments. One of the grounds for filing an appeal is the lack of motivation or omissive inconsistency (when judges do not rule on something that has been requested). Effective judicial protection is directly connected to this duty to substantiate decisions.

In practice, sentence adjustment decisions often rely on overly generic justifications, both from the administration and from the judges supervising sentence execution. For example, progression to open regime is frequently denied with broad arguments, such as the remaining time left until half of the sentence is served or the perceived lack of guarantees for successful reintegration. Legal reasoning is typically outlined in just a few paragraphs, with factual data often limited to a single paragraph. This reflects a tendency toward excessive reliance on 'rubber-stamp' practices in Spain.

In the judicial sphere, as opposed to the administrative sphere, there is also a noticeable overuse of 'copy-and-paste' practices in decision-making. This has resulted in decisions containing erroneous names and incorrect data. Additionally, judges rarely respond directly to the specific arguments or evidence submitted by inmates. Even when they agree with the inmates' claims or requests, their responses are often vague, lacking detailed engagement with the issues raised. Such patterns suggest a lack of thoroughness or genuine interest in reviewing individual cases.

According to the publicly available statistics, the 51 Penitentiary Supervisory Courts that exist in Spain received a total of 206.371 cases in 2023 and adopted a decision on 205.952 of those cases.¹² This is quite a significant amount of litigation for a prison population of 56.698¹³ inmates, from which it can be deduced that quite a lot of prison litigation takes place. Those large numbers can also support the argument that Judges for Penitentiary Supervision are overloaded and cannot carry out in-depth assessments of the facts complained of by prisoners and, as pointed out by the CPT, risk becoming 'rubber-stamping authorities' and an 'extension' of the prison administration.¹⁴ The CPT coined those phrases in regards to Judges for Penitentiary Supervision back in 2017 but in its last report of 2021 reiterated again its impression that "the role played by the supervisory judges remained merely one of certifying the decisions of the prison administration and there appeared to be no examination of the proportionality and appropriateness of these measures by the supervisory judges".¹⁵

a. Quality of the Law and Legal Uncertainty

Legal commentators and academics have expressed concerns about the **quality of the law** in the context of sentence adjustments, particularly in relation to the criteria for granting parole and access to open regime. There are notable issues around the legal framework's **predictability, clarity**, and the **discretionary nature** of certain provisions.

i. Parole

- **Subjective Criteria:**

¹² Data obtained from Consejo General del Poder Judicial, La Justicia dato a dato año 2023, estadística judicial, Resumen de la jurisdicción penal [Data obtained from the judicial statistics of the Spanish General Council of the Judiciary, 2023 broken-down data, overview of the criminal jurisdiction], p.40. Available at: <https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Justicia-Dato-a-Dato/>

¹³ This number corresponds to 31st December 2023 and has been obtained from Anuario estadístico del Ministerio del Interior 2023, p. 303.

¹⁴ CPT/Inf (2017) 34, p.54, §98.

¹⁵ CPT/Inf (2021) 27, p. 69, §117.

- Academics have criticised the imprecision of the subjective criteria used in parole decisions. For example, the assessment of a prisoner's *capacity for social reintegration* is too heavily focused on their **criminal past** or **dangerousness** at the time of the offence.
- The **judgement of probability** required by the Judge for Penitentiary Supervision (JPS) about the inmate's future conduct once released is another point of contention. This subjective approach introduces uncertainty and makes it difficult for both prisoners and the judiciary to predict outcomes consistently.
- **Social Reintegration:**
 - Although the **criteria for social reintegration** have evolved, there is criticism that the **parameters** to assess this factor remain poorly defined in law. The **amendment of the Criminal Code in 2015** removed explicit reference to social reintegration in parole decisions, leaving it more implicit. The law no longer includes a direct reference to the individualised social reintegration prognosis, although **Article 67 of the Prison Law** and **Article 195 of the Prison Regulations** still require it to be considered in parole applications. Despite its legal relevance, the criteria for evaluating reintegration are vague and have yet to be clearly defined ii. in any legal document, contributing to legal uncertainty.

ii. Open Regime

- **Security Period:**
 - Academics also highlight concerns regarding the **security period** (for sentences exceeding five years), which mandates that prisoners must serve a minimum period in ordinary regime before qualifying for open regime. This requirement undermines the principle of **scientific individualisation**.
- **Classification and Regime Progression:**
 - The law permits **flexibility** in the classification of prisoners, allowing for the possibility of moving between prison regimes, including directly to open regime without passing through intermediate stages (Article 72.3 and 4 of the Prison Law). While this is theoretically in line with the principle of scientific individualisation, the system's inherent subjectivity leaves room for **inconsistent decision-making** by the Treatment Boards and the Judge for Penitentiary Supervision.
 - The **criteria for assessing an inmate's social environment** and the resources available to support reintegration are broad, contributing to uncertainty in how decisions are made. For example, the lack of a stable social support network can hinder access to open regime, but there is no clear legal guidance on how this is assessed or how to address the **unique personal circumstances** of each prisoner.

b. Disciplinary Incidents and Behaviour

- **Disciplinary incidents** and overall **behaviour in detention** are key factors in both parole and open regime decisions. The law explicitly requires **good conduct** as one of the primary conditions for parole, and similarly, behaviour is crucial for accessing open regime. However, the law's reliance on general terms like 'good conduct' without

clearly defining the parameters reinforced **unpredictability**. The weight of individual incidents or patterns of behaviour is often left to the discretion of prison authorities, increasing **uncertainty** for inmates.

c. Cooperation with Authorities and Remorse

- The **expression of remorse** and **cooperation with authorities** plays a significant role in the parole process for certain groups of offenders. Specifically, those convicted of **terrorism** or related offences must demonstrate **unequivocal signs of having abandoned violent activities**, which can include cooperation with authorities, repudiation of their past actions, and requests for forgiveness. This is also a condition for accessing open regime. This increases the risk of inconsistent and arbitrary decision making.

5. Recall

In Spain, there are legal mechanisms to review decisions to recall prisoners to custody who have been granted early release or open regime.

a. Grounds for Recall

- Breach of any conditions attached to parole or open regime can result in the prisoner being returned to custody.
 - Parole violators are placed back in ordinary prison regime until the Treatment Board reclassifies them and assigns the appropriate prison regime (Art. 201.3 PR).
 - Prisoners in open regime who violate conditions are similarly reassigned to the ordinary regime to serve the remainder of their sentence.

b. Appeal Mechanisms

Prisoners have the right to appeal recall decisions through the following process:

i. Administrative Appeals

- In cases of open regime revocation, the prisoner may appeal the decision of the Prison Administration to the Judge for Penitentiary Supervision (JPS).

ii. Judicial Appeals

- If parole is revoked, the prisoner may:
 - File a *recurso de queja* (complaint) with the JPS.
 - Appeal the JPS decision with a *recurso de reforma* (appeal for reconsideration) before the same judge.
 - File a *recurso de apelación* (appeal) before a higher court, specifically the Provincial Court, if the prior appeals are unsuccessful.

c. Procedural Guarantees

- Some procedural guarantees associated with judicial proceedings are present, including:
 - **Effective Judicial Protection:**
 - Right to an impartial judge predetermined by law.
 - Right to a judgment based on law.
 - Access to appellate remedies.
 - **Right to Defence:**
 - The prisoner has the right to counter the arguments presented by the Prison Administration.
 - **Legal Assistance:**
 - Inmates can access legal aid and representation, though this is not available during the administrative stage of the appeal process.

d. Limitations

- Procedural guarantees are not fully implemented in penitentiary proceedings:
 - The right to legal assistance is delayed until later stages of the process.
 - There is no explicit regulation on the reasonable duration of proceedings, nor consequences for delays, which can lead to procedural inefficiencies.

6. Statistics

In Spain, statistics on the use of sentence adjustment and reduction mechanisms, including open regime and parole, are available but lack detailed and consistent data across all areas. Publicly available statistics primarily focus on the **prison population classified in open regime** and some aspects of **parole**, with data segmented by the State Prison Administration, Catalan Prison Administration, and the Basque Prison Administration. However, the granularity of this data varies significantly between regions.

The primary issue with Spanish statistics on sentence adjustments is the **lack of detailed data** regarding specific adjustments, the types of offences associated with them, and the **socio-demographic profile** of those granted sentence reductions. For example:

- Data on the **timing of sentence adjustments** (i.e., how much of the sentence has been served before an inmate is released) is **insufficient** and lacks the detail necessary for meaningful analysis.
- **Qualitative analyses** of the courts' activities concerning sentence adjustments are limited, and detailed studies of the **profile of individuals** receiving sentence adjustments (e.g., age, gender, nationality) are not systematically published.
- **Judicial and criminological data** from the **General Council of the Judiciary** and other sources on how the courts handle sentence adjustments and reductions is also sparse, making it difficult to assess the trends and effectiveness of these measures comprehensively.

- **Proportion of Prisoners in Open Regime:**
 - In December 2023, **18.7%** of Spain's total convicted inmate population (45,561) were serving their sentence in open regime. This proportion includes inmates across all prison administrations, with figures as follows:
 - **State Prison Administration:** **17.7%** of 37,894 convicted inmates were in open regime.
 - **Catalan Prison Administration:** **21.25%** of 6,328 convicted inmates were in open regime.
 - **Basque Prison Administration:** **33.1%** of 1,339 convicted inmates were in open regime.
- **Parole Statistics:**
 - Data on **parole** is less readily available and more difficult to access. However, it is known that parole can be granted after a portion of the sentence has been served, with general trends showing a higher proportion of parole granted to individuals convicted of lesser offences.
 - Statistics on parole for individuals convicted of **terrorism** or **organised crime** are less common due to their stricter eligibility criteria, including serving three-quarters of the sentence before parole can be considered.

7. Procedural Barriers

a. Access to Legal Assistance and Representation

A lawyer is only required when lodging an appeal (*recurso de apelación*) against an order of the Judge for Penitentiary Supervision (JPS). The lawyer has 5 days after the prisoner has been notified of the JPS' order. The lawyer only appears at this stage of the process (in the appeal phase) and not before: in the administrative pre-judicial phase, nor at the filing of the first complaint before the Judge for Penitentiary Supervision, given that the intervention of a lawyer is not compulsory for these phases.

Bar Associations have a system of duty lawyers specifically for Penitentiary Matters (lawyers who are specialists in prison law). Prisoners can easily request one. These lawyers are appointed for a period of 2 years to defend the prisoner in all appeals that he/she wishes to file. This is a service that is always covered by legal aid on the understanding that inmates do not have the means. If the prisoner does not want an appointed lawyer from this system of duty-lawyers, they can appoint a private lawyer of their own choice and bear the costs of their services (in the case of private lawyers, they can appear as soon as an initial complaint is lodged with the JVP or advice the inmate in the filing of this complaint).

b. Interpretation

There are no interpreters for the phase of enforcement of sentences. There are interpreters for the pre-trial and trial phases, but not for the stage of requesting sentence adjustments. Where prisoners do not have command of Spanish, they usually consult other inmates for help or appoint their own translators where they have the means.

c. Access to Case Files

At the administrative stage, prisoners do not have access to their file. The decisions adopted are substantiated and formally communicated to the prisoner, but all the documentation on which decisions have been based are not attached. Prisoners only have access to the Individual Treatment Plan (Pronóstico Individualizado de Tratamiento, which is drawn up by the Technical Team composed of an educator, social worker and psychologist and is reviewed every six months at the same time as the classification reviews), the assessment grid (Tabla de Variables de Riesgo on which the decision has been partly based) and the agreements of the Treatment Boards if and when the JPS asks the prison to disclose them. That is, prisoners access their case file once they reach the judicial stage, when they expressly request it, the judge deems it necessary and still, they will not access it completely. Indeed, they will never see their so-called personality protocol, nor the reports of the Technical Teams, for example. Some prisoners cite the ECtHR judgement of *Cano Moya v. Spain*¹⁶ on the right of access to the file, but it is of no use. Based on this, it is clear that there is no real equality of arms in the adversarial proceedings, particularly at the administrative stage of the sentence adjustment procedures.

d. Witnesses and Evidence

Regarding the use of witnesses and expert evidence, this is generally limited to disciplinary proceedings, where inmates can request that witnesses be heard. While not expressly prohibited, this practice is uncommon for other types of inmate requests, including sentence adjustments. Witnesses, in the strict sense, are typically not considered relevant in sentence adjustment mechanisms.

In practice, social workers verify family support claimed by inmates by contacting the designated family members to confirm whether they are willing to assist the inmate during open regime (e.g., on weekends) or parole. In cases involving NGOs or associations, inmates are required to provide official guarantees stamped by the organisation, confirming the place where they will stay during open regime or parole.

Inmates may submit expert reports as part of their appeals before the JPS, but these must be independently requested and paid for by the inmates themselves—a significant obstacle for many.

e. Public Access to Proceedings

Penitentiary proceedings in Spain are conducted entirely in writing, with no provision for oral hearings or court appearances. All petitions and appeals must be submitted through official registers, and courts respond exclusively in writing. Spain's legislation does not specifically regulate prison procedures, and in some cases, it is necessary to rely on the Criminal Procedural Law, the Law on the Judiciary, or the Administrative Procedural Law. However, the exclusively written nature of penitentiary proceedings distinguishes them from pre-trial detention hearings or trials for minor offences.

¹⁶ Application no. 3142/11.

While oral interaction is not standard, some judges meet with prisoners by videoconference in response to specific requests, though this is not a formal part of the procedure. Similarly, some judges may occasionally meet with lawyers or family members of prisoners, but this too is rare and entirely at the discretion of the Judge for Penitentiary Supervision (JPS), as it is not explicitly provided for in the law.

f. Access to Appeal

Appeal Mechanisms:

i. Complaint (*Recurso de Queja*):

- **Timeline:** Must be filed within one month from the day after notification of the Prison Administration's decision.
- **Procedure:** Prisoners can file the complaint themselves, without requiring legal representation. It must be submitted in writing and can be handwritten.
- **Authority:** The complaint is directed to the Judge for Penitentiary Supervision (JPS).

ii. Appeal for Reconsideration (*Recurso de Reforma*):

- **Timeline:** Must be submitted within three days from the day after the JPS issues its decision.
- **Procedure:** Prisoners may file this appeal themselves, without legal representation, in writing and in their own handwriting.
- **Authority:** The appeal is reviewed by the same JPS.

iii. Appeal (*Recurso de Apelación*):

- **Timeline:** Must be filed within five days from the day after notification of the reconsideration decision.
- **Procedure:**
 - This appeal requires legal representation. Prisoners may use a private lawyer or a court-appointed lawyer under legal aid.
 - Additional documents supporting the appeal can be submitted alongside it.
- **Authority:** Filed with the JPS, the appeal is forwarded to the Provincial Court, which comprises three magistrates. The Provincial Court issues a judicial order (*auto judicial*) that concludes the proceedings.

Usage and Outcomes:

- Appeals are common as the process is cost-free for prisoners unless they opt for a private lawyer.
- Statistics indicate that Provincial Courts uphold the JPS's decisions in approximately 80% of cases. Information on the outcomes of specific appeals is not available.

Participation of Other Parties:

- Both the public prosecutor and the private prosecution (if represented in the original criminal case) are entitled to lodge appeals in all cases.

Delays

There are no legal deadlines for the JVP to resolve, nor for the prosecutors when they file opposition briefs, which means a lengthening of the proceedings. Delays are also caused/exacerbated by the lack of staff in the judicial offices.

8. Differential Impact for Categories of Prisoners

Certain categories of prisoners have **easier access** to specific mechanisms. These categories include:

1. Mothers with children under the age of three, as outlined in Article 180 of the Prison Regulations (PR).
2. Individuals suffering from very serious mental health conditions, as specified in Article 183 PR.
3. Persons diagnosed with life-threatening illnesses, as provided for in Articles 91.2 and 91.3 of the Penal Code (PC).
4. Individuals who agree to substitute their prison sentence with admission to a detoxification centre, as stated in Article 182 PR.

Women do not have greater access to these sentence reduction mechanisms than men, except in cases where they have children under three years old in their care. This provision aims to avoid the imprisonment of minors. The percentage of women in prison in Spain stands at 7% of the total prison population, which is higher than the average of 4% observed across the European Union, according to the SPACE I and II reports.

Certain categories of prisoners face disproportionately **greater challenges** in accessing specific mechanisms, with some being entirely excluded from them. Certain categories of prisoners are subject to specific mechanisms concerning parole and open regimes, while others are excluded from the general frameworks due to the nature of their offences. Mechanisms specific to imprisoned foreign nationals are addressed separately below.

For **parole**, individuals convicted of **sexual offences** are excluded from qualified early parole for primary offenders serving short prison sentences under Article 90.3 CC. However, they remain eligible for general parole and advanced parole if they meet the applicable requirements, although no specific mechanism exists for this group.

Individuals convicted of **terrorism-related offences** or crimes committed within **criminal organisations** face stricter restrictions. They are excluded from early parole, qualified early parole, and early parole for primary offenders. Additionally, these individuals have a significantly higher time threshold of 35 years to access parole if serving a life sentence. They must also satisfy a set of specific and stringent requirements to be considered for general parole. This constitutes a distinct scheme for accessing parole.

There are no specific mechanisms in place for disabled persons, pregnant women, or parents of young children regarding parole.

For the **open regime**, there is a specific provision for elderly prisoners. Article 104.4 of the Prison Regulations allows the Judge of Penitentiary Supervision to authorise progression to

an open regime for prisoners aged 70 or older, particularly when their level of dangerousness is considered low. While no specific mechanisms exist for disabled persons, pregnant women, or parents of children under the age of three to access the open regime, these personal circumstances are carefully assessed. In practice, prisoners in these situations are more likely to be granted progression to an open regime, as outlined in Articles 180-184 of the Prison Regulations, Article 104.4, and Instruction No. 6/2020 SGIP.

Individuals convicted of terrorism, organised crime, or certain sexual offences face additional restrictions. Offenders convicted of sexual crimes against minors under 16 years of age, human trafficking involving minors or especially vulnerable individuals, and offences related to prostitution, sexual exploitation, or the corruption of minors are excluded from the general framework for the open regime until they have served half of their prison terms, known as the 'security period'. After serving this period, they must meet specific additional conditions to qualify for the open regime. For instance, those convicted of sexual offences must undergo evaluation for participation in a penitentiary treatment programme for sexual offenders, as mandated by Organic Law 10/2022.

a. Barriers relating to Socioeconomic standing of prisoners

Economic and social factors play a significant role in the granting or denial of open regime or parole. If an inmate lacks stable housing or a source of income, securing these mechanisms becomes extremely difficult. In such cases, inmates are typically required to provide a 'guarantee' (aval) from a third-sector organisation, such as an NGO or foundation, that will offer housing in its residences or reception flats.

Several organisations operate within Spanish prisons, supporting inmates through their reintegration process. These NGOs, associations, and foundations run programmes inside prisons and establish relationships with prisoners, which are necessary to issue the required guarantees for housing upon release.

For inmates without economic resources, there was previously a "prison release benefit" available through the Employment Office, which provided non-contributory welfare assistance upon release on parole. However, this benefit was abolished in October 2024. Now, inmates must apply for the Minimum Living Income, subject to meeting specific eligibility requirements.

b. Foreigners

The treatment of foreign nationals within Spain's penal system is influenced by specific legal provisions, practical challenges, and international agreements.

Expulsion as a Substitute for Prison Sentences

Under **Article 89 of the Criminal Code** (as amended by Law 11/2003 and Organic Law 1/2015), along with **Circular 7/2015**, foreign nationals may have their prison sentences replaced by expulsion from Spanish territory.

- **Conditions for Expulsion:**

- Expulsion can occur once the inmate has completed a determined part of their sentence, reached open regime, or been granted parole.
- The sentencing court decides whether to execute part of the sentence before expulsion.
- **Practical Limitations:** Despite the legal framework, expulsion often proves unenforceable due to:
 - Uncertainty regarding the prisoner's nationality.
 - Non-cooperation from consular or diplomatic authorities in issuing travel documents.
 - Prohibitive repatriation costs.
 - Concerns about the returnee's safety in their country of origin.
 - Lack of bilateral agreements with certain countries.

As a result, many foreign inmates remain in Spain's prisons despite being eligible for expulsion.

Access to Open Regime for Foreign Nationals

The Prison Regulations (PR) provide limited guidance on foreign nationals in open regimes, leading to varied practices:

- **Undocumented Foreign Nationals:**
 - Foreign inmates without proper documentation or a stable social environment in Spain often face barriers in accessing ordinary open regime.
 - These individuals are frequently assigned to a *restricted open regime*, which offers fewer freedoms due to the perceived risk of absconding.
 - Lack of documentation hampers full reintegration into society, particularly the labour and housing markets.
 - Some academics advocate for temporary work permits to support undocumented inmates during their open regime or parole, with occasional success when the Ministry of Labour grants permits tied to the duration of the regime.
- **Foreign Nationals with Legal Residence:**
 - Those with valid work or residence permits are generally eligible for ordinary open regime, similar to Spanish citizens.
 - However, practical challenges arise when these permits expire during incarceration:
 - Renewal efforts are often unsuccessful because having a criminal record disqualifies inmates from renewing their permits.
 - Without valid permits, inmates are considered less socially rooted, leading the Treatment Board to view them as flight risks and assigning them to restricted open regimes instead.

Parole for Foreign Nationals

Parole for foreigners is governed by **Article 197.1 PR**, rather than the Prison Law.

- **Key Provisions:**
 - For foreign inmates without legal residence in Spain, parole may involve a request to the Judge for Penitentiary Supervision to authorise parole in the inmate's country of residence.
 - The inmate's consent is required to proceed with this request.

- **International Agreements:**
 - Bilateral treaties on prisoner transfer facilitate monitoring and enforcement during parole.
 - These agreements allow the prisoner to be supervised by the authorities in their home country, who enforce the conditions imposed by Spain and report any violations.

c. Minors

Article 14 of the Organic Law Regulating the Criminal Responsibility of Minors (LORRPM) provides specific provisions regarding minors subject to criminal measures when they reach the age of majority. When a minor who is serving a measure under this Law turns 18, the measure continues to be enforced until the objectives outlined in the original sentence are fully achieved.

In cases where the measure imposed involves internment in a closed regime and the minor reaches the age of 18 without having completed it, further steps are considered if their conduct does not align with the objectives of the sentence. The Judge for Minors, after consulting the Public Prosecutor, the minor's legal counsel, the Technical Team from the juvenile facility, and the public entity responsible for protecting minors, may issue a reasoned decision to transfer the individual to a penitentiary facility. In such cases, the general prison regime established under the Prison Law applies.

Once the minor begins serving their measure in a penitentiary facility, any other measures previously imposed by the Judge for Minors, whether pending or served concurrently, are rendered void if they are incompatible with the prison regime.

The time the individual has already spent in the juvenile center is credited towards their sentence. From the moment they are placed in the penitentiary facility, the ordinary time thresholds and conditions for open regimes and parole apply, just as they do for other inmates. No special considerations are given, except for placement in a youth module within the penitentiary facility to account for their age and developmental needs.



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