

Towards effective application of suspension discretion

Fred Luciani¹

Research Branch, Correctional Service of Canada

The nature of conditional release supervision has been greatly influenced by recent policy changes, by advances in risk assessment methods and an aggressive expansion in program opportunities. The Correctional Service of Canada has long embraced the principle of “least restrictive measure of confinement” — consistent with the demands for public safety. The promulgation of the Corrections and Conditional Release Act (CCRA) in 1992 provides the legislative and strategic reinforcement to pursue greater efficiencies in measures of control and confinement of offenders.

The Service has also introduced a number of empirically derived objective measures of risk assessment designed to inform decision-making at critical points throughout the correctional plan. Actuarial instruments are routinely employed to provide indices of recidivism² and reintegration potential,³ risk and needs status and program profiles.⁴ Finally, expanded program opportunities⁵ both in the institutions and the community better prepare offenders for successful reintegration and often provide meaningful alternatives to conditional release suspension or revocation. Despite spirited public debate and politically motivated attacks, the safe reintegration of offenders remains a cornerstone of the Service policy and effective use of conditional release suspension is critical to advancing this objective.

Authority to suspend conditional release

The National Parole Board retains the exclusive prerogative to revoke conditional release while the authority to suspend, established under Section 35, of the CCRA, is delegated to selected Correctional Service of Canada staff located throughout one hundred and eighteen district or area parole offices and community correctional centres. The Act specifies three, broad legal criteria under which a suspension can be issued — in the event of a breach of a term or condition of release, to prevent a breach or term or condition of release, and for the protection of society. Furthermore, conditional release practice is governed by a labyrinth of regulations, policy directives, standard operating practices, supported by electronic applications and enforced through a system of audits, inquiries, program evaluations, and on-site quality assurance measures. The introduction of actuarial measures of risk assessment

are designed to promote consistent decision-making practice while legal imperatives stemming from the Charter of Rights encourages equity and fairness. Nonetheless, personal discretion permeates the correctional decision-making process to suspend conditional release, to cancel or withdraw a suspension of conditional release.

Local authority over suspension decisions is critical in the management and control of offenders. It allows for the immediate apprehension, and at the discretion of the delegated authority, confinement of the offender for up to thirty days during which the area office retains authority to cancel the suspension. The extent to which current suspension decision-making is informed by a growing body of actuarial information is not clear.

Approximately fifty percent⁶ of suspensions result from criminal conviction, charge, or the offender absconding from the parole area, circumstances that allow for little or no discretion. In the remaining cases involving breaches of special conditions or instructions, missing contacts or failing to adhere to the correctional plan etc., the delegated authority exercises much wider discretion. It is in these cases that opportunity to practice measures of least restrictive confinement are more likely to be considered and where the effective use of assessment tools and program alternatives can contribute to safe reintegration.

Safe reintegration and suspension practice

Reducing suspensions as a means to promote reintegration can be a double-edged sword. Simply mandating a reduction in suspensions or revocation is no guarantee that safe reintegration is achieved or that the measures employed to achieve policy objectives are appropriate. Correctional agencies that rely primarily on policy to reduce revocation rates have demonstrated some success. In some instances, the results are the product of rising tolerance to offender infractions or misconduct and lowering of supervision standards.⁷ Alternatively, agencies that have developed a decision-making framework in support of policy objectives to reduce revocation⁸ stand a much better chance of ensuring safe reintegration. The questions remains how best to reduce the reliance on suspension without

jeopardizing public safety? And what are criteria of effective and successful suspension practice?

Suspensions and risk assessment

The key to advancing safe reintegration while sustaining offenders under supervision lie in accurate assessment and effective use of program options. Assessment is accurate to the extent that it is predictive. In turn, research has demonstrated that the predictive accuracy of clinical and correctional decisions can be improved and in some cases substantially with the use of actuarial tools.⁹

Many of the actuarial tools employed by the Service and available to area offices have demonstrated favourable results, which are available to areas offices. The Statistical Information on Recidivism Scale Revised 1 (SIR-R1), used since the mid-eighties, has undergone a number of validations¹⁰ and continues to provide a competent index of recidivism potential. Likewise the predictive accuracy of the offender risk, needs profiling is established by research that consistently finds a linear relationship between risk, needs ratings and return to incarceration rates.¹¹ (The September 1998 issue of this periodical was dedicated to validating and refining the case needs identification and analysis protocol).

The recently introduced Reintegration Potential index combines the results of three risk scales that early results suggest¹² are useful in confirming recidivism potential. The search for relevant risk predictors is well advanced,¹³ while approaches that combine information from a multiple sources offer the potential for improving accuracy.¹⁴ These and other information systems currently employed by the Service supply the data critical to development of a suspension decision framework.

In designing a framework for suspension decisions, the principle of reconciling the risk represented by objective methods with the actual decision-making is fundamental. Identifying a range of options available to the local decision-maker commensurate with typical forms of parole violation and actuarial risk is another. This is not to suggest that the decision to suspend or cancel a suspension can or should rely on a scale outcome. Rather, actuarial results, particularly those consistent across a variety of available instruments, should inform judgement and support and explain decision-making. Guidelines derived from an objective analysis that reflect a consensus among practitioners and are endorsed by the correctional agency provide an important vehicle for improving and ensuring consistent practice. They also provide field staff with agency support that is important when exercising broad discretionary authority.

Suspension and program assessment

Program alternatives to suspension, revocation or that allow for local cancellation has grown substantially across all parole districts in the last decade. It is now common for many area offices to have access to the Service's core programs (life skills, substance abuse, family violence, clinical interventions and sex offender treatment), and "half-way-back" referrals to private residential or Correctional Service of Canada facilities that offer specific treatment opportunities. In addition many traditional supervision strategies (increased contacts, additional conditions, police reporting, disciplinary interviews etc.) continue to serve as alternatives to re-incarceration. Restorative justice initiatives¹⁵ are being explored in some area offices and intensive parole supervision units are accessible to most offices.

All community programming advances at least two objectives: to address criminogenic needs and to provide additional controls through structured intervention. Both serve as risk reduction strategies providing that the offender program needs and responsivity are accurately identified, offenders are appropriately matched to programs and the risk reduction potential of programs is realized. The best intended programs, however, can fall prey to the "widening the net" principle resulting from the miscalculation or overestimation of offender needs and in turn the over prescription of programs. A recent evaluation of substance abuse programs¹⁶ suggests that pre, post treatment gains, as measured on a number of psychometric tests were marginal, in part, the result of the high level of functioning of many offenders assigned to treatment programs. In the same report we find evidence that some programs were ineffective with high-risk offenders. The results suggest that some programs have little to offer, particularly to high functioning offenders while others have little or insufficient impact on risk. In either case, simply assigning offenders to community programs is no guarantee of safe integration. Making better use of available approaches to assessing and matching offenders to programs,¹⁷ and of improving understanding of program¹⁸ results will help to ensure that the Service and offender resources are not squandered. Safe reintegration is advanced not only by ensuring higher risk/need offenders are assigned to appropriate programs but as well by limiting the assignment of lower risk/need offenders to the ineffectual program.

Suspension authority is a daunting responsibility, one that balances the demands for public safety and the rights of the offender. In many cases the parole office enjoys discretionary authority. Both the

process by which decisions are made and the results of decisions are important in defending the integrity of the discretion. The goal should be not only to make the correct suspension discretionary decisions, but make them “in the correct way”.¹⁹ The parole offices have ready access to a substantial offender

information base, including both narrative assessments and actuarial results and to a variety of program options. Establishing consensus as to core criteria and decision rules governing suspension practice may prove to be an efficient and effective way to make use of this information. ■

- ¹ 340 Laurier Avenue West, Ottawa, Ontario K1A 0P9.
- ² Revised Statistical Information on Recidivism Scale (SIR-R). (1996). Ottawa, ON: Correctional Service of Canada.
- ³ Motiuk, L. L., & Nafekh, M. (1999). Reintegration potential profiles for federally sentenced women. *Forum on Corrections Research*, 11(3), 13-17. See also Motiuk, L. L., & Serin, R. (1998). Situating risk assessment in the reintegration potential framework. *Forum on Corrections Research*, 10(1), 19-22.
- ⁴ Motiuk, L. L., & Porporino, F. J. (1989). *Field test of the community risk/needs management scale: A study of offenders on caseload*. Research Report R-06, Ottawa, ON: Correctional Service of Canada.
- ⁵ *Report on Correctional Programs: Annual Report 1996-97*. Ottawa, ON: Correctional Service of Canada (1997).
- ⁶ Dittenhoffer, T., Leroux, J. P., & Cormier, R. B. (1986). *The suspension and revocation process in Canada: Study of how and why federal inmates under conditional release are returned to imprisonment*. Ottawa, ON: Solicitor General of Canada. See also Luciani, F., Marshall, W., & Nafekh, M. A. (1995). *Review of conditional release suspension practice Ontario region: 1995/96*. Kingston, ON: Correctional Service of Canada.
- ⁷ Prus, R., & Stratton, J. R. (1975). *Organizational influence on revocation decisions: An exploratory analysis*. Presented at the Midwest Sociological Society, Chicago, Illinois.
- ⁸ Stoker, R. P. (1989). *Establishing a framework for alternatives to revocation —The development of cohesive policies concerning parole violators in South Carolina*. Proceedings: ACA Annual Conferences.
- ⁹ Andrews, D. A. (1989). Recidivism is predictable and can be influenced: Using risk assessments to reduce recidivism. *Forum on Corrections Research*, 1(2), 11-18. See also Palmer, W. R. T. (1997). *Improving parole selection: Predicting release outcome using current psychological and behavioural variables, a longitudinal criterion measure, and event history analysis*. Kingston, ON: Queen's University. And see Quinsey, V. L., Harris, G. T., Rice, M. E., & Cormier, C. (1998). *A. Violent offenders: appraising and managing risk*. Washington, DC: American Psychological Association.
- ¹⁰ Hann, R. G., & Harman, W. G. (1992). *Predicting general release risk for canadian penitentiary inmates*. Ottawa, ON: Solicitor General of Canada. See also Bonta, J., Harmen, W. G., Hann, R. G., & Cormier, R. B. (1996). The prediction of recidivism among federally sentenced offenders: A re-validation of the SIR scale. *Canadian Journal of Criminology*, 38, 61-97.
- ¹¹ Grant, B. A., Motiuk, L. L., Brunet, L., Lefebvre, L., & Couturier, P. (1996). *Day parole program review: Case management predictors of outcome*. Research Report R-52. Ottawa, ON: Correctional Service of Canada. See also Motiuk, L. L., & Brown, S. L. (1993). *Survival time until suspension for sex offenders on conditional release*. Research Report R-31. Ottawa, ON: Correctional Service of Canada. And see Grant, B. A., & Gillis, C. A. (1999). *Day parole outcome, criminal history and other predictors of successful sentence completion*. Research Report R -83. Ottawa, ON: Correctional Service of Canada.
- ¹² Motiuk, L. L., & Brown, S. L. (1993). *The validity of offender needs identification and analysis in community corrections*. Research Report R- 34. Ottawa, ON: Correctional Service of Canada. See Motiuk, L. L. (1997). The community risks/needs management scale: An effective supervision tool. *Forum on Corrections Research*, 9(1), 8-12; and Motiuk, L. L. (1997). Classification for correctional programming: The offender intake assessment (OIA) process. *Forum on Corrections Research*, 9(1), 18-22, and also Motiuk, L. L. (1998). Using dynamic factors to better predict post-release outcome." *Forum on Corrections Research*, 10(3), 12-15.
- ¹³ Andrews (1989). See also Hanson, K. R., & Bussière, M. T. (1996). *Predictors of sexual recidivism: A meta-analysis*. Ottawa, ON: Ministry of the Solicitor General of Canada. And see Gendreau, P., Little, T., & Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: What works! *Criminology*, 43, 401-433.
- ¹⁴ Bonta, J. (2000). Offender Assessment: General issues and considerations. *Forum on Corrections Research*, 12(2), 14-18.
- ¹⁵ Correctional Service of Canada. (1999-2000). *Alternatives to Revocation: Safely Sustaining Offenders in the Community*. Ottawa, ON: Strategic Planning and Policy Branch.
- ¹⁶ Correctional Service of Canada. (1999-2000). *An Outcome Evaluation of CSC Substance Abuse Programs: OSAPP, ALTO and Choices*. Final Report. Ottawa, ON: T³ Associates.
- ¹⁷ Serin, R. (1998). Treatment responsivity, intervention and reintegration: A conceptual model. *Forum on Corrections Research*, 10(1), 29-32. See also Bonta, J. (1995). The responsivity principle and offender rehabilitation. *Forum on Corrections Research*, 7(3), 34-37. And see Andrews (1989).
- ¹⁸ Gendreau, P., & Goggin, C. (1996). Principles of effective correctional programming. *Forum on Corrections Research*, 8(3), 38-41.
- ¹⁹ Alexander, J. (1986). Classification objective and practices. *Crime & Delinquency*, 32, 323-338.

Change of Address

If you are moving, please do not forget to let us know and provide us with the new address. This will help ensure that you do not miss a single issue of FORUM.