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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community Resource Material Series No. 74.

This volume contains the work produced in the 135th International Senior Seminar that was conducted from 12 January to 16 February 2007. The main theme of the 135th Seminar was “Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders: An Examination of Best Practices”.

The United Nations Standard Minimum Rules for the Treatment of Prisoners states that the ultimate purpose of imprisonment is to protect society against crime; at the same time it should also aim at offenders’ reintegration into society. Non-custodial measures are more conducive to social integration of offenders and facilitate their rehabilitation by allowing them continuous contact with the community. In 1990 the United Nations adopted the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), which stipulate guidelines and standards concerning various non-custodial measures.

Since the 1990s, a re-evaluation of programmes that aim at the rehabilitation and reintegration of offenders has been made from the point of view of “What Works” not from the pessimistic point of view of “Nothing Works”. Thus now, a consensus is being established concerning the models of effective intervention that aim at the prevention and/or reduction of recidivism. Such effective intervention models have already been implemented in institutions, such as prisons, and in the community (for example, as part of probation), in many countries in the form of cognitive behavioural therapy, social skills training and motivational interviewing. Empirical evaluations of their outcomes have been, and continue to be, carried out.

Reflecting such insights, the United Nations adopted the Bangkok Declaration on the occasion of the 11th United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok, Thailand in 2005. The Declaration urges Member States to “recognize that comprehensive and effective crime prevention strategies can significantly reduce crime and victimization ... [, and] ... urge that such strategies address the root causes and risk factors of crime ...” Member States are also urged to “endeavour to use and apply the United Nations standards and norms in [their] national programmes for crime prevention and criminal justice [and] to facilitate appropriate training for law enforcement officials, including prison officials, prosecutors, the judiciary and other relevant professional groups, taking into account those norms and standards and best practices at the international level”. Therefore, it is very important to discuss and examine the experiences and practices that aim at the prevention and reduction of recidivism and evaluate their adaptability, sustainability and cost-effectiveness in order to incorporate such ideas into improving future treatment of offenders in respective countries.

Based on the above, this Seminar aimed to study best practices of the effective interventions that focus on the prevention and/or reduction of recidivism of offenders in the participating countries and provided an opportunity to examine necessary and productive measures to promote offenders’ reintegration into society through the provision of effective programmes at each stage of the criminal justice process.

In this issue, in regard to the 135th Seminar, papers contributed by visiting experts, selected individual presentation papers from among the participants and the Reports of the

Seminar are published. I regret that not all the papers submitted by the Seminar participants could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes.

Finally I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series; in particular, the editor of Resource Material Series No. 74, Ms. Grace Lord.

January 2008



Keiichi Aizawa
Director of UNAFEI

**RESOURCE MATERIAL SERIES
NO. 74**

Work Product of the 135th International Senior Seminar

**“PROMOTING PUBLIC SAFETY AND CONTROLLING RECIDIVISM USING
EFFECTIVE INTERVENTIONS WITH OFFENDERS: AN EXAMINATION OF
BEST PRACTICES”**

UNAFEI

VISITING EXPERTS' PAPERS

CONTROLLING PRISONER RATES: EXPERIENCES FROM FINLAND

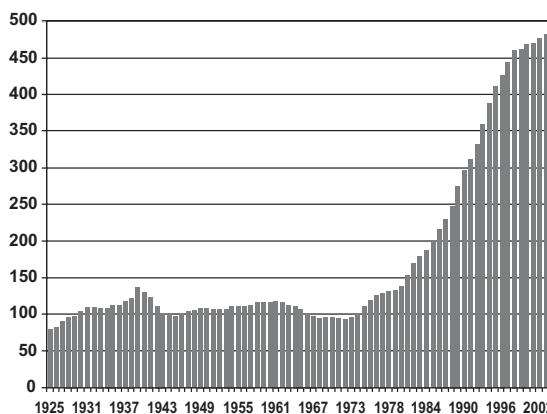
*Dr. Tapio Lappi-Seppälä**



I. TRENDS AND CHANGES

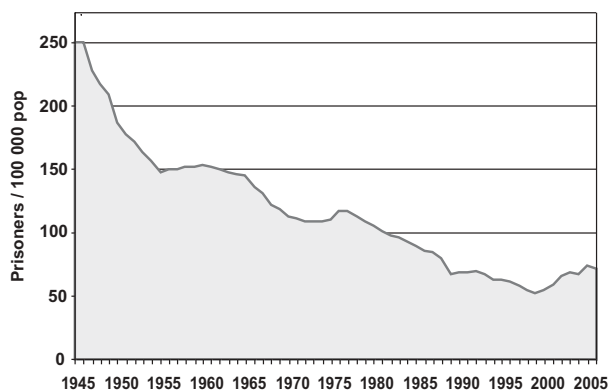
The last decades have witnessed unprecedented expansion of penal control in different parts of the world. Between 1975 and 2004 prisoner rates in the US have increased by 320% from around 170/100,000 inhabitants to over 700/100,000 inhabitants.

Federal and State prisoners in the USA 1925-2003 (/100 000)



This drastic change can be contrasted with another one, which took place in Finland after the Second World War:

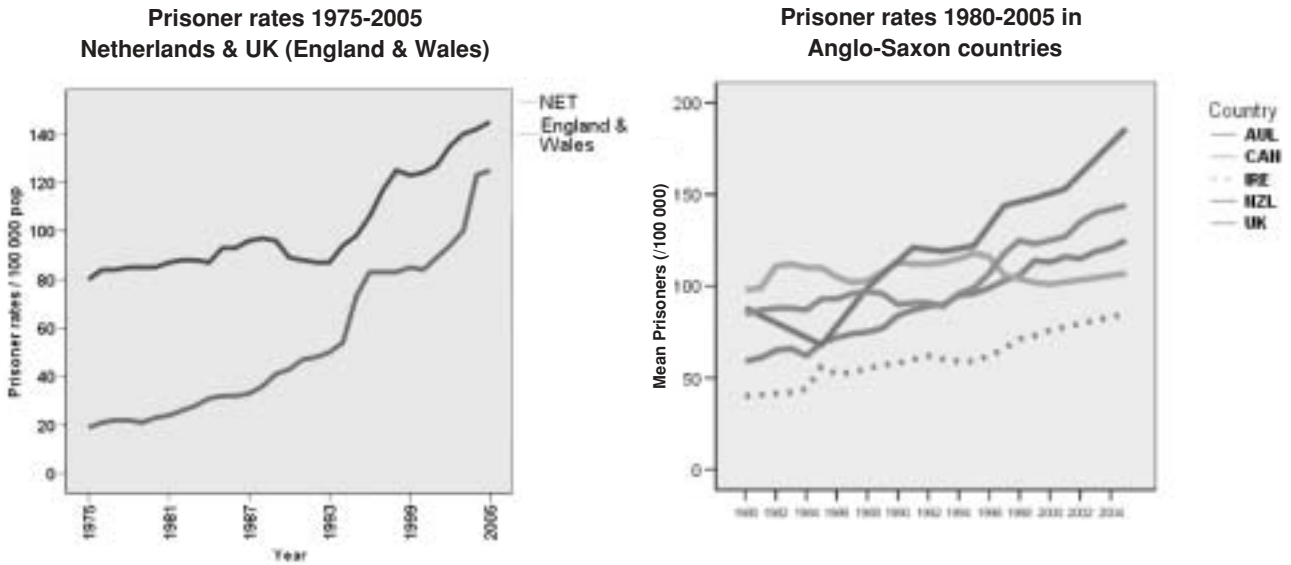
Prisoner rates in Finland 1945-2005



Combining these two diametrically opposing trends, we have a nice illustration on how things can take different shape in penal policy in different jurisdictions, at the same time.

* National Research Institute of Legal Policy, Finland.

Whatever happened in the US did not take place in Finland – to the contrary. Things can go differently, and often do. The development in the US seems to have had a strong model-effect in the English-speaking world. Similar – albeit smaller – changes have taken place also in Australia, New Zealand and the UK. These trends do not confine themselves to the Anglophone world. During the last two decades the Netherlands has increased more than six-fold its prisoner rate from the low of 20/100,000 to 130/100,000. Spain has more than tripled its rate from 40/100,000 to 140/100 000.



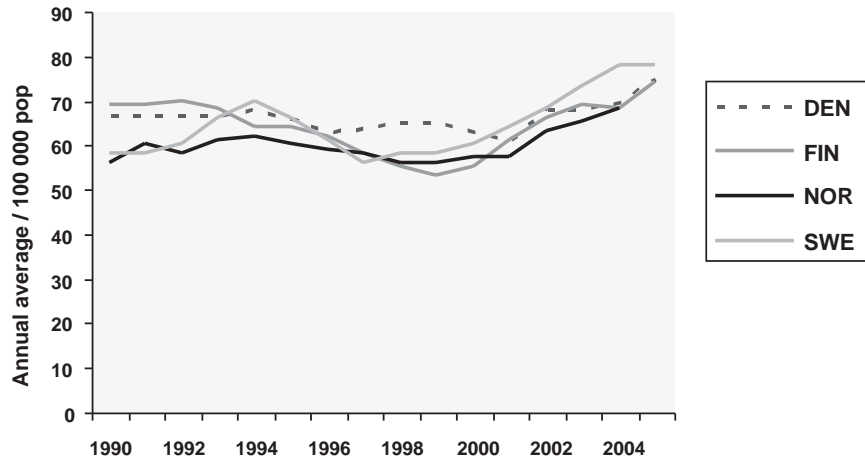
There is every reason to be worried by this development. As it seems, the expansion of prisoner rates is not confined to the Anglophone world, nor to Europe. Similar trends can be found everywhere, including Asian and African countries.

Japan, in turn, is an often cited as an example of a low-crime and low-imprisonment country. For a long period of time, Japanese prison figures were among the lowest of the industrialized countries, even below that of Scandinavia. But it now appears that Japan too is experiencing increasing prisoner rates, and a rise of around 70% from the early 1990s to today.

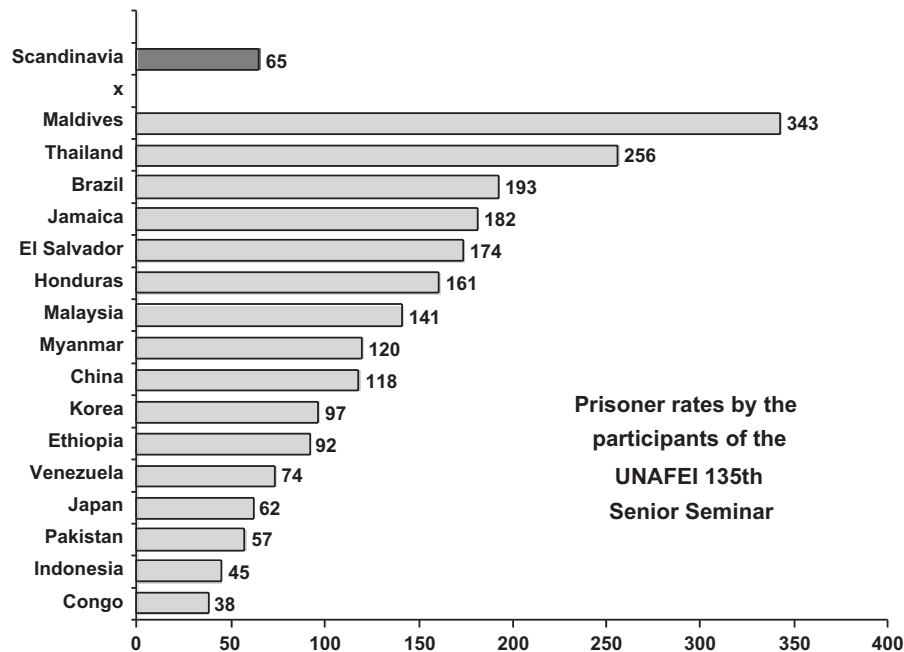


Unfortunately, by the turn of the millennium the global increase in prisoner rates seemed to have taken a hold also of the Scandinavian countries. Starting from the late 1990s, prisoner rates have taken an upward turn. Even if this increase is modest by international standards (on average from 60/100,000 to 70-75/100,000 prisoners), it is nevertheless significant from the Scandinavian point of view.

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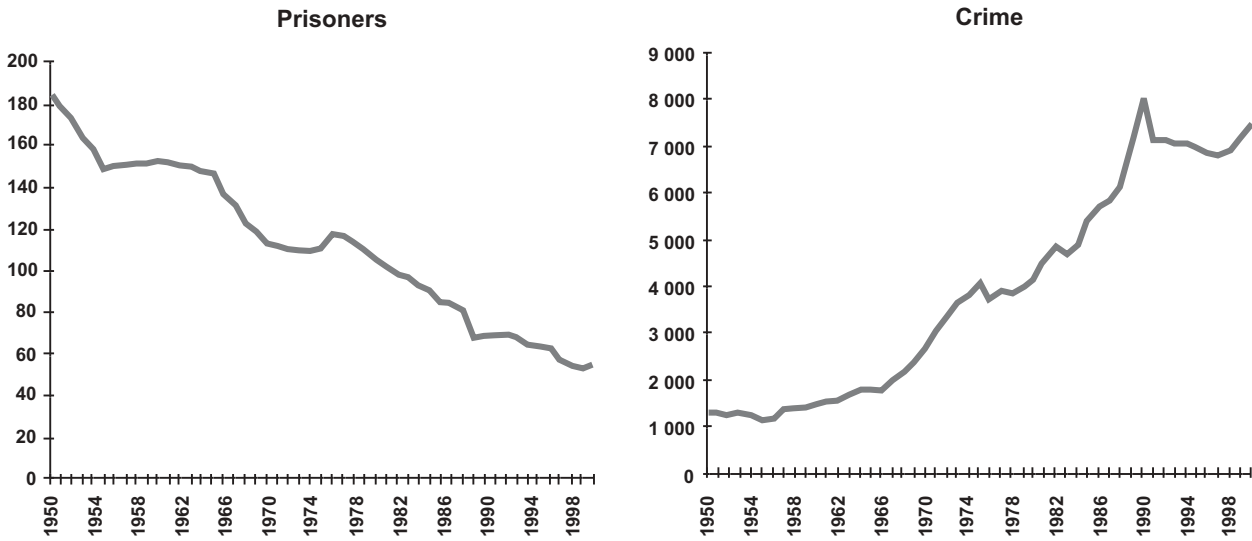
In short, the global picture is dominated by rising prisoner rates. However, there are exceptions in trends and there still are huge differences in the levels of imprisonment. That becomes also clear when we look at the published prisoner rate data of the participating countries of the 135th UNAFEI International Senior seminar.



The Maldives is in the lead with 350 prisoners per 100,000 people while the Congo has only 10% of that number. Japan is located at the lower end of the scale, on the same level as Scandinavia. Are they just unavoidable and natural reflections of current levels of crime? My tentative answer is a decisive “No.” Prisoner rates cannot be explained with reference to crime. They are products of political processes, but these processes can also be influenced.

I will try to examine these processes on the basis of Finnish data. In a global context, the Finnish trends are unique. At the beginning of the 1950s, Finland had some 200 prisoners per 100,000 inhabitants, while the figures in Sweden, Denmark and Norway – and in Japan – were around 50. Even in the 1970s, Finland’s prisoner rate continued to be among the highest in Western Europe. However, during the time when most European countries experienced rising prison populations, the Finnish rates continued to decrease. By the beginning of the 1990s, Finland had reached the Nordic level of around 60 prisoners per 100,000 inhabitants. The first thing to note is that this major change cannot be explained by decreasing crime – as so often is assumed. When prisoner rates went down, crime went up.

**PRISON RATES AND CRIME RATES
Finland 1950-2000**



But neither was it so, that a decrease in the prisoner rates lead to an increase in crime – as is even more often assumed. I will first look at the reasons and factors that contributed to this decline in prisoner rates. I will thereafter consider whether, and to what extent, changes in prisoner rates were reflected in the crime rates.

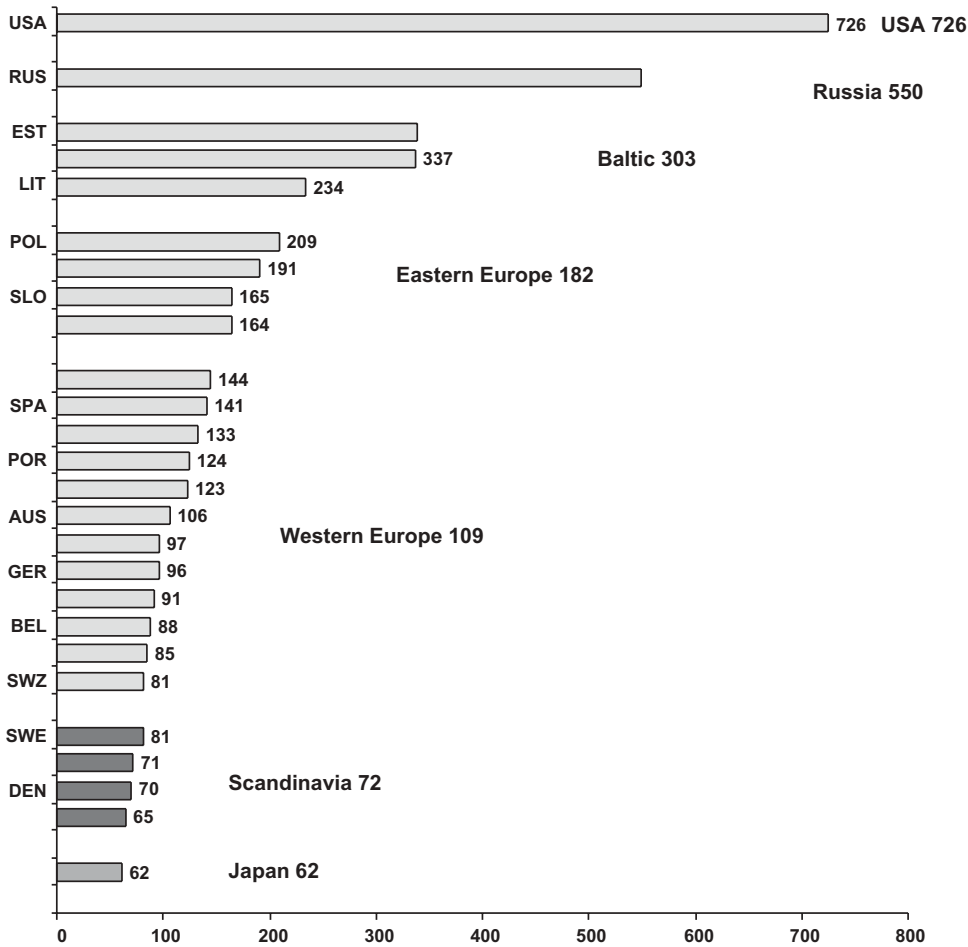


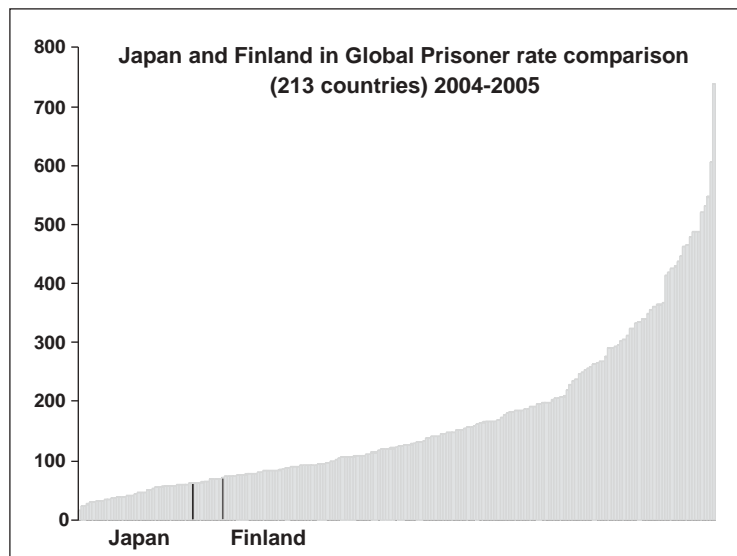
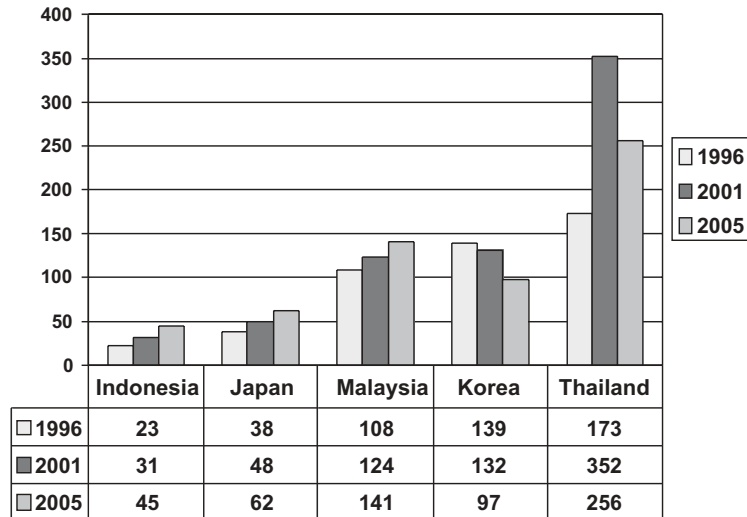
Figure I.1 Prisoner rates in 2004/2005

Source: KCL <http://www.prisonstudies.org/>

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In a global context Scandinavia is tied with Japan in having the lowest numbers of prisoners per capita. At present the figures are about 70-75/100,000. The corresponding figures for other Western European countries are around 110; in Eastern Europe around 200; in the Baltic countries around 300; in Russia around 550 and in the US over 700.

Prisoner rates in selected Asian countries 1995-2005



II. CHANGES IN PENAL IDEOLOGY

Long-term change in Finland – covering almost a half a century – was affected both by macro-level structural factors and ideological changes in penal theory, as well as legal reforms and changing practices in sentencing and prison enforcement. Also, the role of these different background reasons varies over time.

Like in so many other countries, criminal political thinking in Finland underwent profound changes in the late 1960s and 70s. In the 1960s, the Nordic countries experienced heated social debate on the results and justifications of involuntary treatment in institutions, both penal and otherwise. (Such as in health care and in the treatment of alcoholics). What became later known as the “nothing works” doctrine had its earlier counterpart in the Scandinavian discussions of the late 1960s. The tone and the results of this ideological turn were quite different in Finland compared to the US. In Finland the emphasis was on the ineffectiveness of institutional treatment and the excessive use of the prison system. While in US the fall of the rehabilitative ideal lead subsequently to the renaissance of punishment – as we just saw – in Finland the

outcome was just the opposite. The 1960s and 70s started a reform movement against excessive use of custodial sentences. The resulting criminal political ideology was labelled as “humane neo-classicism”. It stressed both legal safeguards against coercive care and the objective of less repressive measures in general.

This change reflects more than just a concern over the lack of legal safeguards. Behind this shift in strategies in criminal policy were more profound changes in the way the entire problem of crime was conceived. The whole theoretical criminal political framework and the conceptualization of the aims and means of criminal policy underwent a dramatic change. The aims of criminal policy were defined in par with the overall aims of general social policy. Traditional goals, such as simple prevention or the ‘fight against crime’ were replaced by differentiated twofold overall aims:

- (i) the minimization of the costs and harmful effects of crime and of crime control (the aim of minimization); and
- (ii) the fair distribution of these costs among the offender, society and the victim (the aim of fair distribution).¹

The *aim of minimization* emphasizes the *costs and the harmful effects* of criminal behaviour instead of the mere number of crimes. It also draws attention to means which perhaps do not affect the level of criminality, but which affect the harmful impact that crime has on different parties (and especially on victims). By stressing not only the costs of criminality, but also the costs and suffering caused by the *control of criminality* the formula draws attention to the material and immaterial losses that arise, e.g. through the operation of the system of sanctions. The *aim of fair distribution* brings into daylight the delicate issues of how to allot the costs of crime and crime control between the different parties (society/community, the potential or actual offender, the potential or actual victim) in a manner fulfilling the demands of fairness and social justice.

Also *cost-benefit analysis* was introduced into criminal political thinking. In making choices between different strategies and means, the probable policy effects and costs – to be understood in a wide sense, including also immaterial costs for the offender – were to be assessed.

One result of all this was that the *arsenal of the possible means of criminal policy expanded* in comparison with the traditional penal system. *New strategies of crime prevention* emerged in criminal political discussions, to be later known as social and situational crime prevention strategies. This new ideology was crystallized in slogans such as “good social development policy is the best criminal policy”.

Also, the *aim and the justification for punishment* were subjected to re-evaluation. The shift was once again towards general prevention. However, this concept was now understood in a different way. It was assumed that this effect could be reached not through fear (deterrence), but through the morality-creating and value-shaping effect of punishment. According to this idea, the disapproval expressed in punishment is assumed to influence the values and moral views of individuals. As a result of this process, the norms of criminal law and the values they reflect are internalized; people refrain from illegal behaviour not because such behaviour would be followed by unpleasant punishment, but because the behaviour itself is regarded as morally blameworthy.²

¹ These were originally introduced into the international discussion at the Sixth International Congress on Criminology, 1970, by a Finnish criminologist, Patrik Törnudd. This definition of goals was adopted by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, where it was embodied in the report of the section dealing with the economic and social consequences of crime. The same report also recommends encouragement of cost-benefit thinking (for a more detailed discussion, see Törnudd, 1996).

² This ‘redefinition’ of the aim of punishment in the Nordic countries could rely on a long theoretical tradition dating back to the early Scandinavian realism of the Uppsala school of the 1920s and 1930s. In a closer analysis, this concept contains several distinct hypotheses which are based on different assumptions of why, how and through what kind of mechanisms various features of the legal system influence social values and compliance with the law. See in general Andeanes, 1974 and Lappi-Seppälä, 1995. Closely related trends are to be found in the German criminal law theory since the 1970s (“positive General-Prävention”, see Schünemann *et al.* 1998) and Anglo-Saxon sociology of the 1990s (on the theory of “normative compliance” see Tyler, 2003 and Bottoms, 2001).

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This view of the functions of the penal system has a number of important policy implications. To put it briefly: the aim of indirect prevention is best served by a system of sanctions which maintains a moral character and which demonstrates the blameworthiness of the act. The mechanisms require a system that is enforced with 'fair effectiveness' and that follows procedures which are perceived as fair and just and which respects the rights and intrinsic moral value of those involved. In short:

- From the early 1970s onwards there was a general conviction that in crime prevention, criminal law is only one means among many and that other means were often far more important;
- Furthermore, it was also stressed that the general preventive mechanisms were more subtle and indirect than one usually thinks and that the effective functioning of the criminal law is not necessarily conditioned by severe punishments, but by legitimacy and perceived fairness;
- All in all, we should be realistic as regards the possibilities of achieving short-term effects in crime control by tinkering with our penal system;
- And most importantly, we should always weigh the harms and benefits of applied or proposed strategies of criminal policy.

Between 1970 and 1990 all the main parts of the Finnish criminal legislation were reformed from these starting points. The list starts from the late 1960s and it contains over 25 law reforms, all having one thing in common: the reduction of the use of imprisonment.

Law reforms decreasing (- -) and increasing (+ +) prisoner rates Finland 1966-2004

Effect	Law reforms
-	1966 Minimum time for parole 6 months -> 4 months
---	1967 Amnesty
---	1969 Decriminalization of public drunkenness
-	1969 Day-fine reform
---	1972 Reduced penalties for theft
--	1973 Restricting the use of preventive detention
-	1973 Discount rules for remand
-	1976 Reform of the prison law: minimum time for parole reduced 4 months -> 3 months
-	1977 Conditional sentence expanded
--	1977 Sentencing reform; the impact of recidivism reduced
-	1977 Day-fine reform: heavier fines to replace imprisonment
---	1977 DWI reform: fines and conditional sentences instead of prison
-	1989 Fine-default rate reduced
--	1989 Minimum for parole 3 months -> 14 days
-	1989 The use of prison for juveniles restricted
-	1989 The length of pre-trial detention reduced
--	1991 Reduced penalties for theft
-	1991 Expanding the scope of non-prosecution
--	1992 Introduction of CSO
+	1994 Aggravated DWI 1.5 -> 1.2 %
-	1994 Experiment on (non residential) juvenile penalty
---	1995 Community service permanent and nationwide
+	1995 Domestic violence under public prosecution
++	1999 Increased penalties for assault
+	2000 Increased penalties for rape
+	2001 More fines for drug-users
+	2003 Zero-limits for drugs in traffic
-	2000/4 Combination sentence (conditional + CSO)

III. LAW-REFORM AND SENTENCING POLICIES

A. General Trends in Sentencing

The Finnish judge has traditionally had quite a limited number of options when sentencing. The two basic alternatives to imprisonment have been conditional imprisonment (suspended sentence) and a fine, but these alternatives have been used quite effectively. The scope of fines and conditional imprisonment (suspended sentence) were extended in the late 1960s, and mid 1970s also, by a series of law reforms.

Sixty percent of all cases dealt with by the courts result in fines. Eighty percent of cases dealt with either by the courts or the prosecutors result in fines. A fine is a typical penalty for most middle-rank offences such as theft, minor burglaries and assaults etc. The leading role of fines is to large extent explained by the day-fine system which was adopted in Finland some 80 years ago.

The other basic alternative, conditional imprisonment, has been widely used to replace custodial sentences. From 1950 to 1990 the number of conditional sentences increased from some 3,000 to 18,000 sentences per year. At the same time the number of prison sentences remained stable. In 1950, 30% of all sentences of imprisonment were imposed conditionally. In 2005 the rate was 64%.

Table III.1. The Use of Conditional and Unconditional Imprisonment from 1950 to 2000

	Unconditional N	Conditional N (all)	Conditional % (of all prison sentences)
1950	7000	4000	35
2000	8000	14000	63

* Excluding sentences commuted to community service

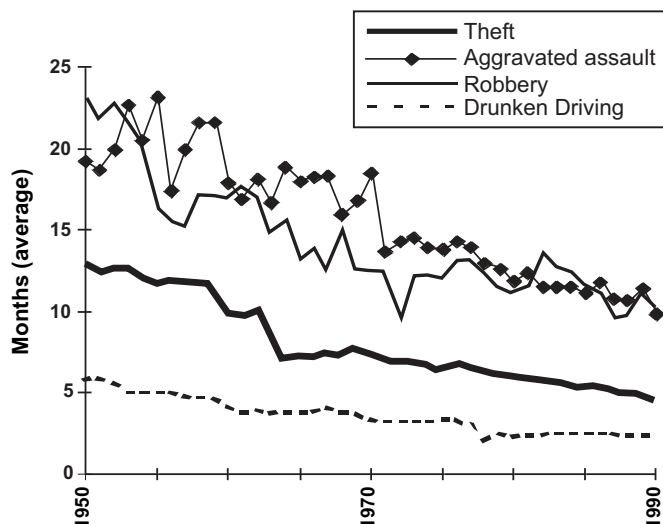
Source: Statistics Finland

B. Sentencing Changes in Separate Offences

Long custodial sentences imposed for traditional property crimes kept the prison population at its peak level during the early 1950s. In 1972 new definitions and new punishment latitudes for larceny were introduced. Again, in 1991 the latitude for the basic form of theft was reduced.

As a result, there was a clear change in sentencing practice. In 1971, 38% of offenders sentenced for larceny received a custodial sentence. Twenty years later, in 1991, this proportion had decreased to 11% (for more detail see Lappi-Seppälä, 1998 and Törnudd, 1993). Similar changes can be seen in several other offences too.

The length of all prison sentences for four different offences 1950-1990



Drunken driving plays a special role in Nordic criminal policy. The combination of hard drinking habits and a very restrictive and intolerant attitude towards drinking-and-driving has kept drunken driving among the key issues in debates on criminal policy. A substantial part of the Finnish prison problem during the 1960s resulted from fairly long unconditional sentences of imprisonment imposed for drunken driving. During the 1970s this practice was changed in favour of non-custodial alternatives. The definition of drunken driving was modernized by an amendment of the law in 1977 and the legislator took a definite stand in favour of conditional sentence and fines.



In 1971, 70% of drunk drivers received an unconditional sentence. Ten years later, in 1981, this proportion had dropped to 12%.

C. The Sentencing Reforms of the 70s:

During the 1970s three other bills were passed in order to increase the use of conditional sentences and fines in general (and particularly in cases of drunken driving).

- (i) The reform of the *Conditional Sentence Act* created the opportunity to combine a fine with a conditional sentence.
- (ii) The reform of the *day-fine system* raised the amount of day-fines thus encouraging the court to use fines in more serious cases.
- (iii) The most important 1977 reform from a principle point of view was, however, the *enactment of general sentencing rules*. These provisions mitigated markedly old mechanical recidivism rules. Diminishing the role of recidivism had an immediate affect on the sentencing practices of the courts.

D. New Sentencing Alternatives: Community Service

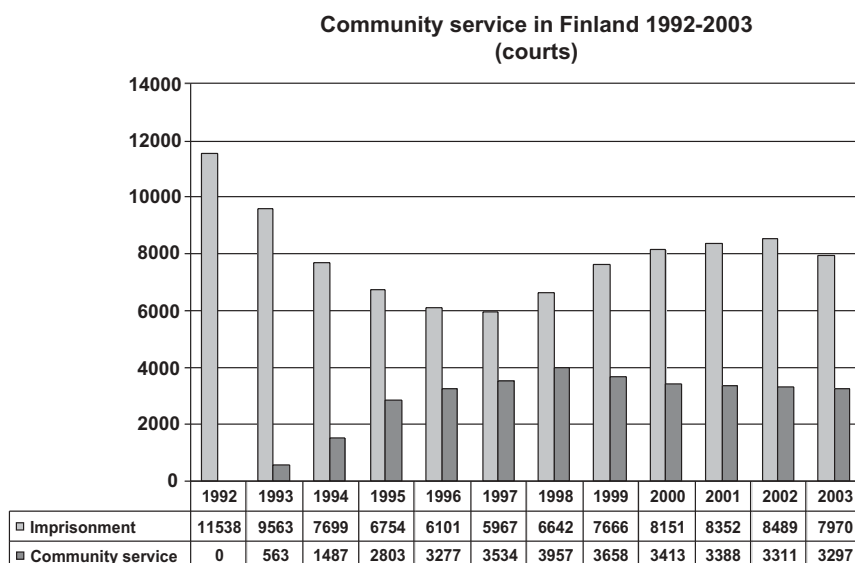
The next major change included the introduction of community service. This took place first on an experimental basis in 1991. In 1994 the system was extended to cover the entire country and community service became a standard part of the Finnish system of sanctions.

Community service is imposed instead of unconditional imprisonment for up to eight months. In order to ensure that community service will really be used in lieu of unconditional sentences of imprisonment, a *two-step procedure* was adopted. First the court is supposed to make its sentencing decision in accordance with the normal principles and criteria of sentencing, without even considering the possibility of community service. *If* the result is unconditional imprisonment, *then* the court may commute the sentence into community service under the following conditions:

- First, the convicted person must consent to the sanction;
- Second, the offender must also be capable of carrying out the community service order;
- Third, recidivism and prior convictions may prevent the use of this sanction.

The duration of community service varies from between 20 and 200 hours. In commuting imprisonment into community service, one day in prison equals one hour of community service. Thus, two months of custodial sentence should be commuted into roughly 60 hours of community service. If the conditions of the community service order are violated, the court normally imposes a new unconditional sentence of imprisonment. Community service does not contain any extra supervision aimed, for example, at controlling

the offender's other behaviour in general. The supervision is strictly confined to his or her working obligations. The legislator's idea, thus, was that community service should be used only in cases where the offender would otherwise have received an unconditional sentence of imprisonment. This aim was well achieved.



Along with the increase in the number of community service orders, there has been a decrease in the number of unconditional sentences of imprisonment. In 1998, the average daily number of offenders serving a community service order was about 1,200 and the corresponding prison rate was 2,800. It is therefore reasonable to argue that, within a short period of time, community service has proven to be an important alternative to imprisonment. As the figure shows, the use of community service seems to have peaked in 1998.

E. Specific Groups of Prisoners

In the course of time, different groups of prisoners have received different forms of attention. During the 1960s and 1970s the focus was on fine defaulters and recidivists in preventive detention. In the 1970s and 1980s the use of imprisonment for young offenders was restricted.

1. Fine Defaulters

In the 1950s and 1960s fine defaulters constituted a substantial part of the Finnish prison population (sometimes exceeding 25% of the total population). In the late 1960s the number default prisoners was reduced with two consecutive law reforms: by decriminalizing public drunkenness (which led to fewer default sentences since public drunkenness was one of the major offences leading to a default-fine) and by raising the amount of day-fines and decreasing the number of day-fines.

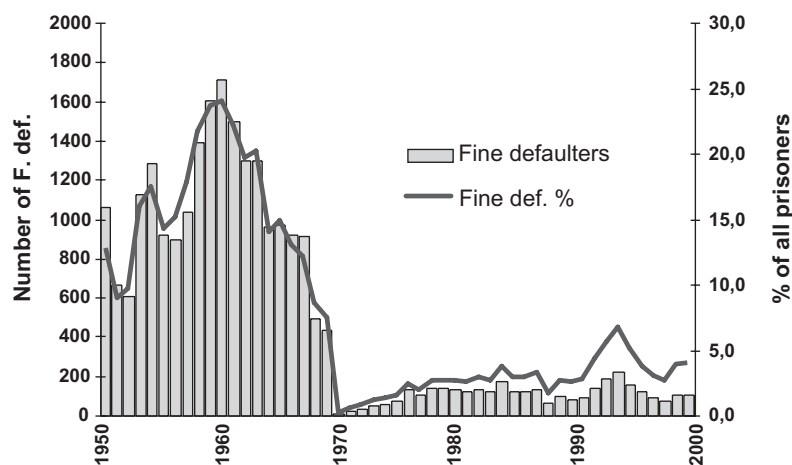


Figure III.2. The number of fine defaulters in prison 1950–2000

2. Preventive Detention

The Finnish criminal justice system includes a provision for holding chronic recidivists in preventive detention after the completion of the sentence, if both the sentencing court and a special court so decide. During the 1960s, a large majority of detainees had been guilty of repeat property crimes. On the basis of an amendment passed in 1971, the option of preventive detention was restricted only to dangerous violent offenders. The number of persons held in detention as recidivists dropped by 90% in one year, from 206 to 24. Since then, the annual average has been between ten and 20 prisoners.

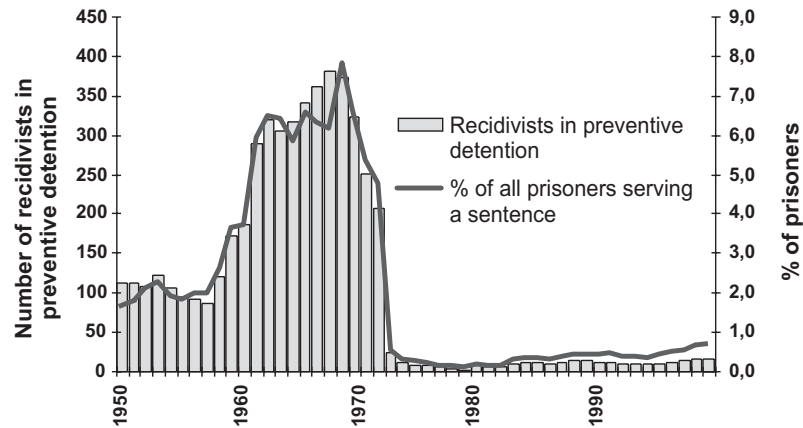


Figure III.3. Restricting the Number of Prisoners in Preventive Detention

3. Juveniles

There is no special juvenile criminal system in Finland, in the sense that this concept is understood in the Continental legal systems. There are no juvenile courts and the number of specific penalties only applicable to juveniles has been quite restricted. However, offenders between 15 and 17 receive a mitigated sentence. In addition, the conditions for waiver of sanctions (for example non-prosecution) are much less restrictive for young offenders. Offenders under 21 who are sentenced to imprisonment are usually released on parole after one third of the sentence has been served, instead of the normal one half. Despite the lack of specific measures for juveniles, there has also been a deliberate policy against the use of imprisonment for the youngest age-groups. This has been done mainly by relying on the traditional alternatives. The willingness of the courts to impose custodial sentences on young offenders has decreased throughout the 1970s and the 80s. In addition, the *Conditional Sentence Act* was amended in 1989 by including a provision which allows the use of unconditional sentences for young offenders only if there are extraordinary reasons calling for this. All of this has had a clear impact on practice. At the moment there are about one hundred prisoners between the ages of 18 and 20 and fewer than ten in the 15 to 17 age group, while as recently as the 1960s the numbers were ten times higher.

Limiting the use of prison for juveniles



F. Parole

The system of parole (early release) has also proven to be a very powerful tool in controlling prisoner rates. Any changes in the basic structure of this system will have visible effects on prison figures. In Finland all prisoners except those few serving their sentence in preventive detention or serving a life sentence will be released on parole.

At the moment, the minimum time to be served before the prisoner is eligible for parole is 14 days. A series of reforms have resulted in this situation. During the mid-1960s this period was shortened from six to four months, during the mid-1970s from four to three months and finally in 1989 from three months to 14 days.

IV. PRISON RATES AND CRIME RATES

A fundamental change in the use of imprisonment naturally leads to the question about the effects on crime rates. Time and time again, research confirms the fact that the use of imprisonment is relatively unrelated to the number of crimes committed or reported. There are, of course, several well known methodological difficulties in combining crime rates with prison rates (and other changes in the sentence severity). However, the possibility of comparing countries which share strong social and structural similarities but have a very different penal history gives an exceptional perspective to the matter. In fact, the Nordic experiences provides an interesting opportunity to test how drastic changes in the penal practices in one country have been reflected in the crime rates, compared to countries which have kept their penal system more or less stable. Figure IV.1 provides information on prisoner rates and reported crime in Finland, Sweden, Denmark and Norway from 1950 to 2000.

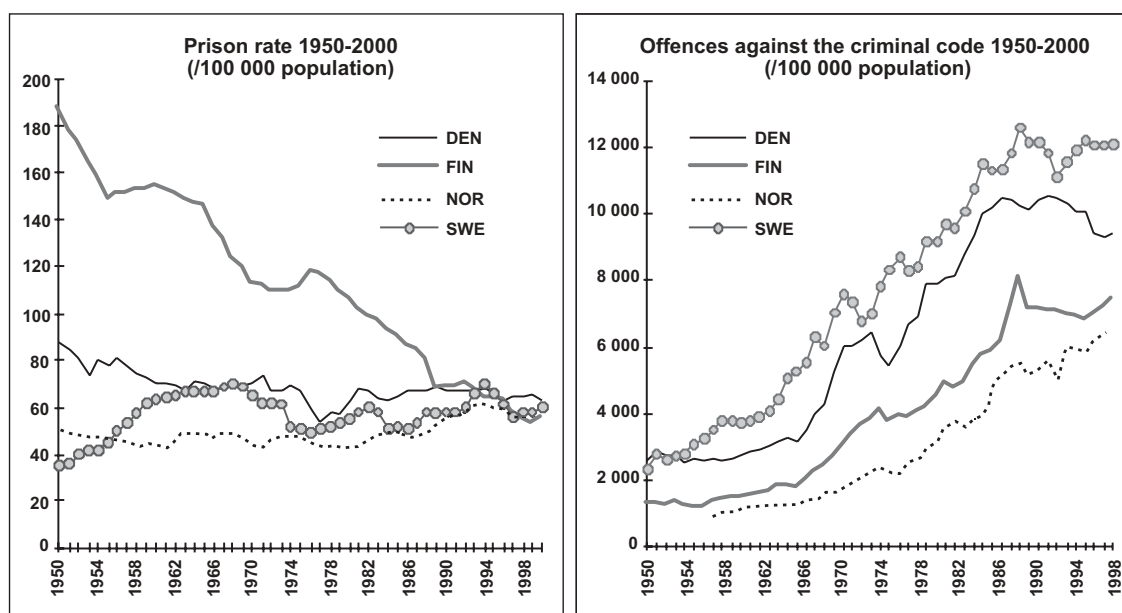


Figure IV.1. Prison Rates and Crime Rates 1950–2000

Compiled from: Falck, von Hofer & Storgaard 2003

A simple comparison between the Nordic countries reveals a striking difference in the use of imprisonment, as well as a striking similarity in the trends in recorded criminality. The fact that Finland has heavily reduced its prisoner rate has not disturbed the symmetry of Nordic crime rates. The figures start to differentiate only during the 1990s, as reported crime in Norway kept going up, while the Danish figures are going down. However, the imprisonment rates in both countries stay at the same level (Norway between 56 and 60 and Denmark between 63 and 68). The figures also confirm, once again, the general criminological conclusion that crime rates rise and fall according to laws and dynamics of their own, and sentencing policies in turn develop and change according to dynamics of their own; these two systems are fairly independent of one another.

V. FACTORS BEHIND THE CHANGE

The decrease in the Finnish prison population has been the result of a conscious, long term and systematic criminal policy. But what made it possible to carry out these law-reforms? Describing the techniques used was easy. Explaining why they were adopted and accepted is harder. Exploring more closely the dynamics of these changes is important for a number of reasons, in addition to mere scientific curiosity.³

A. Political Culture

Part of the answer could be found in the structure of our political culture. Finnish criminologist Patrik Törnudd has stressed the importance of the *political will and consensus* to bring down the prisoner rate. As he summarizes, “those experts who were in charge of planning the reforms and research shared an almost unanimous conviction that Finland’s comparatively high prisoner rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation.” (Törnudd 1993, p. 12). This conviction was shared by the civil servants, the judiciary and the prison authorities and, equally importantly, by the politicians.⁴

Another and closely related way of characterizing Finnish criminal policy would be to describe it as *exceptionally expert-oriented*. Reforms have been prepared and conducted by a relatively small group of experts whose thinking on criminal policy, at least on the basic points, has followed similar lines. The impact of these professionals was, furthermore, reinforced by *close personal and professional contacts* with senior politicians and with academic research.⁵ Consequently, crime control has never been a central political issue in election campaigns in Finland, unlike in many other countries. At least, ‘heavyweight’ politicians have not relied on populist policies, such as ‘three strikes’ or ‘truth in sentencing’.

B. Media

This takes us to another element in the Finnish criminal policy composition – the *media market and the role of the media*. In Finland the media have retained quite a sober and reasonable attitude towards issues of criminal policy. Finns have largely been saved from low-level populism. There is a striking difference between the British and Finnish crime reports in the media. The tone in the Finnish reports is less emotional, and reports – also when dealing with singular events – are usually accompanied with commented research-based data on the development of the crime situation.

In fact, the whole structure of the Finnish media market looks a bit peculiar. Firstly, according to the information given by the World Association of Newspapers (World Press Trends 2004), the busiest newspaper-readers in Europe are to be found in Finland and Sweden (90% of the population read a newspaper every day, while in France, Italy and the UK the figures are 44%, 41% and 33% respectively). Secondly, the clear market leader can be classified as a quality paper; tabloids have a far less prominent role in Finland than in many other countries (including the UK). Thirdly, only a small fraction (12%) of newspaper distribution is based on selling single copies. Almost 90% of the newspapers are sold on the basis of subscription, which means that the papers do not have to rely on dramatic events in order to draw the reader’s attention each day. In short, in Finland the newspapers reach a large segment of the population and the market leaders are quality papers which do not have to sell themselves every day, since distribution is based on subscriptions. This all may have an effect both on the ways crime is reported, and the ways people think in these matters.

C. Nordic Co-operation

The early 1960s was a period of intensifying Nordic co-operation in legal matters. Crime and criminal justice were among the key issues in this agenda. In 1960, The Scandinavian Research Council was established with the support of the respective Ministries of Justice. This Council became a central forum for

³ In order to put things in perspective, it should be stressed that instead of a massive move towards decarceration one could also describe the change merely as a ‘normalization’ of prison rates: a move from a level that was totally absurd to a level that can be considered to be a fair Nordic level – albeit ten times lower than the present U.S. level.

⁴ At least to the extent that they did not oppose the reform proposals prepared by the Ministry of Justice.

⁵ Several of our Ministers of Justice during the 1970s and 1980s have had direct contact with research work; indeed, one of them, Inkeri Anttila, was a professor of criminal law and the director of the National Research Institute of Legal Policy at the time of her appointment as Minister.

the exchange of information between the Nordic countries. Interest in criminological research expanded and the status and resources of criminology were strengthened in the Nordic countries. The reform work of the 1960s and 1970s in Finland was heavily influenced by this exchange of ideas, as well as by the legislative models offered by our Scandinavian neighbours (especially Sweden). In many instances liberal reforms could be defended with reference to positive experiences gained from other Nordic countries and the need for Inter-Nordic harmonization. This 'Nordic identity' was strengthened in Finland by the fact that Finland in the 1960s was quickly reaching the levels of other Scandinavian partners in economic and welfare resources.

A specific feature of this co-operation was that it was not founded on conventions but on non-binding agreements between the nations.⁶ It was not led by politicians and governments, but by Ministries of Justice and their experts. It proved to be very effective and less bureaucratic. The results of this co-operation were manifested in legislative acts that have been adopted separately in each Nordic country, but with identical contents. This concerns, for example, extradition from one Nordic country to another as well as the enforcement of sentences within these countries.

D. Judicial Culture and Sentencing Structures

Micro-level institutional arrangements and specific professional practices have also contributed to this change. Co-operation with the judicial authorities – the judges and the prosecutors – and their 'attitudinal readiness' for liberal criminal policies have been of great importance in Finland. In many cases, legislators have been strongly supported by the judiciary and especially by the courts of first instance. Quite often the courts had changed their practice even before legislators had changed the law.

Also, the fact that judges and prosecutors are career officials with training in criminology and criminal policy in the law schools contributes to this explanation. In addition, different courses and seminars arranged for judges (and prosecutors) on a regular basis by judicial authorities – in co-operation with the universities – have had an impact on sentencing and prosecutorial practices.

The Finnish sentencing structure, which treats sentencing as an area of normal judicial decision making, guided by valid sources of sentencing law, may also function as a shield against political pressures. Finland and Sweden have highly structured systems with detailed written provisions on the general principles and specific sentencing criteria to be taken into account in deciding both the type and amount of punishment. Arguments that affect sentencing must be presented in a form that fits the accepted rules and standards. The specific structure of the decision making-process, as outlined in the general sentencing provisions (the "notion of normal-punishments") stresses the importance of uniformity in sentencing (avoiding unwarranted disparities). This places the existing sentencing patterns in a central position as starting points in sentencing. And this, in turn, gives sentencing strong inertia; rapid changes are unlikely to occur, unless these changes have not been channeled through the valid sources of sentencing law (see in general Lappi-Seppälä, 2001).

E. Social Factors

But there are even more fundamental factors related to social structures and values. It needs to be noted that penal reform in Finland was a part of a larger social policy movement. Finland revised its penal policy together with its social policy. And the fact that reformulation of the basic principles and practices in criminal and social policy took place shortly after Finland had joined the Scandinavian welfare family is more than just a coincidence. Since those days explaining Finland is more or less the same as explaining the specific features of the Scandinavian penal policy as a whole, including the comparative leniency, and the pragmatic and less politicized and non-moralistic approach in penal policy.

VI. CONCLUSIONS – NORDIC MODEL OF PENAL POLICY TODAY – AND TOMORROW?

Nordic penal policy has been an example of a pragmatic and non-moralistic approach, with a clear social policy orientation. It reflects the values of the Nordic welfare-state ideal and emphasizes that measures against social marginalization and inequality work also as measures against crime. It stresses the view that

⁶ The foundation for the co-operation is based on Helsinki Treaty (1962). The treaty obliged the contracting parties to "strive to create uniform provisions concerning crime and sanctions of crime." A general overview is to be found in Lahti, 2000.

crime control and criminal policy are still a part of social justice, not just an issue of controlling dangerous individuals. These liberal policies are to a large extent also a by-product of an affluent welfare state and of consensual and corporatist political cultures. These structural conditions have enabled and sustained tolerant policies, made it possible to develop workable alternatives to imprisonment and promoted trust and legitimacy. All of this has relieved the political system's stress for symbolic actions and it also has enabled norm compliance based on legitimacy and acceptance instead of fear and deterrence. Further factors explaining the Scandinavian leniency included strong expert influences, (fairly) sensible media and demographic homogeneity.

However, the changes that have occurred during the last five to ten years raise unavoidable questions. Has this now come to its end; what is the nature of these changes; are they more a result of changes in external conditions or signs of revised policy preferences; how are things going to proceed in the future, etc? There is space for only short tentative replies.

Any overall assessment of complicated phenomena such as penal policy, covering several countries, faces the risk of being incorrect, misleading or trivial. Also, the use of imprisonment as an indicator begins to lose its validity as we wish to focus our picture. Furthermore, qualitative indicators must be included which, in turn, leaves more room for interpretation. Still, ample evidence supports the main conclusion; if we look at the whole of Scandinavia, crime policy has become more offensive, more politicized, more adaptive to the views and voices of the media. There are more diverting views, more agents involved, and less agreement on matters of principle. One outcome of all this is that the role of penal expertise has diminished, being partly replaced by grass-roots knowledge, views of influential interest groups, and by politicians themselves. The expansion of the EU and the politically driven efforts to harmonize penal legislation among the EU member states is perhaps the most significant single factor contributing to these changes. It has both damaged the quality of the legal drafting processes and increased the amount of penal repression. This is the basic reason why a large segment of Nordic scholars have remained quite critical of political attempts to harmonize criminal law.⁷

How deep and how extensive is this change? Prisoner rates would justify (at least) the talk of a *relatively serious shift* (an increase by some 40%). In absolute terms and from a comparative point of view, the situation looks much less alarming (from 60-65 to 70-80 prisoners/100,000). There is also some indication that these figures might stabilize on this new level. In Finland, the prisoner rates have again declined by around 10% during the last two years.

Which, then, are the issues that have undergone the most severe changes? If the measure is the 'degree of politicization' the answer is clear: drugs, sex and violence (in that order). During the last 25 years over 30 law reforms have been passed to increase penal control in these issues. In drug issues, the Nordic countries have emulated practices from each other, following the example given by the most severe system (at that time). Norway started the race in the early 1970s, but soon Sweden took over. Under the pressure of these 'axel-powers' the others were to follow. The last one to bend was Denmark in the early 2000s. This spiral of moralistic and populist rhetoric seems to be extremely hard to break, despite the widely shared critics from both, legal, medical and social experts.

Drug laws are the most explicit example of politically motivated penal policy and, at the same time, the most evident anomaly in today's Scandinavian crime policy. Something akin has taken place also in the field of sexual offences and violent crime. These reforms have received visible places among the governments' lists of political 'achievements', especially in Sweden and Denmark. Criminal law and increased severity have become a question of equality between the sexes, which has made it politically very difficult to oppose these reforms. Other supporting arguments for tightening control have been fetched from the need to combat organized crime, especially motorcycle gangs. These deviations from traditional, detached and evidence-based pragmatic penal policy have had significant practical consequences. Expansive drug control

⁷ See for example Jareborg 1998, Greve 1995, Träskman 1999, and Nuotio 2003. These concerns are, by no means, restricted to Nordic Countries: "I remain very nervous that in the current political climate if we were to agree, at an EU-level, on common principles of punishment, these would lead to increased sentences of imprisonment without any real debate as to the efficacy and justice of such sentences." (Padfield 2004 p.89)

is responsible for over half of the increase in the Scandinavian prisoner rates. Drugs and violence explain together some 75-80% of the increase. The role of the politically highly visible sex offences has remained much more modest.

Criminal policy has lifted its political profile in Scandinavia. But *how* populist and *how* punitive are the present policies, actually? Again, much depends on the point of reference. What appears to be an example of punitive response for a Scandinavian commentator may not look the same for readers from the US or UK. A six month increment in rape penalties from two years to two and a half years may be a great deal in Finland, but not necessarily in other countries. The key phrase “humane and rational criminal policy” may have disappeared from political rhetoric and official statements; still, examples of expressive justice, public humiliation and the denial of an individual’s social and political rights are conspicuously absent in the Nordic penal policy. The issues of crime control are discussed at governmental level more often than before, but, much of these discussions take place in the form of crime prevention programmes which focus on social and situational prevention – not on criminal law. The first National Programme for Preventing Violence in Finland, in 2006, defined measures against social marginalization as key factors and hardly mentions criminal law at all.

There are also differences in the degrees of politicization between the countries. Penal issues have played a major role in national elections in both Sweden and Denmark, but were totally absent from the 2006 presidential election in Finland. Even the political systems seem to react differently: the Swedish political field seems to be dividing more and more clearly into two blocks, thus resembling more and more the Anglo-Saxon bi-polarized structure. In Sweden, the Ministry of Justice has promised to build 1,500 new prison places. In their web-pages the Swedish prison administration proudly claims that they are building new prison places “more actively than any other country in Europe”. In Finland, the Ministry of Treasury has refused to fund new prisons; consequently the Ministry of Justice has declared that the “control of prisoner rates” is one their key targets for the period of 2007-2011. Some signs indicate that prison overcrowding is, again, entering political and public debate as a problem which requires serious attention, at least in Finland.

However, the changes in the composition of agents in the criminal political field have made the situation unstable. The long-term consistency granted by strong involvement of civil servants and penal experts has weakened, and this year’s plans to reduce the prison population may look different next year. Still, it might be too pessimistic to announce the end of expert knowledge in penal policy. One of the major cultural changes in politics (elsewhere than in criminal policy) has been the growing importance attached to research-based knowledge in social and political planning. All major political plans – starting from the Government Programmes – define knowledge as the key factor, on which the development of the “competitive welfare state” must be built. Building the infrastructures which “support the production of the social and technological innovations” is the mantra of today’s Scandinavian governments. No doubt, the drafters of these programmes have something other than rational and humane criminal policy in their minds. Still, this general urge to promote evidence-based policies may provide a footing for demands that this same logic should be applied also to penal policy.

Is the bottle half-full or half-empty? Despite the most recent changes, there still may be room for some optimism. Overall, prisoner rates are still low – even after these changes. Neither is the path taken by many other penal systems an inevitable one. Very few of those social, political, economic and cultural background conditions which explain the rise of mass imprisonment in the US and UK apply to any of the Scandinavian countries, as such. The social and economic security granted by the Nordic Welfare State may still function as a social backup system for tolerant crime policy. The judges and the prosecutors are, and will remain, career officials with a professional touch in these matters. Political culture still encourages negotiations and appreciates expert opinions – at least that is something one may hope for.

Luckily enough, this is not only a matter of hope. In a political culture which, in general, values rational, pragmatic and responsible argumentation there is lot that can be done. We must improve the pre-conditions of rational policy-making over populist posturing by producing more and better information for the politicians, the practitioners and the public. We should apply the normal rules of political accountability in penal discourse. Nowhere else in political life can plans and proposals be presented without estimations of costs, benefits and possible alternatives. Why should this be allowed in criminal policy where decisions infringe legally protected basic rights and are hugely expensive? And, we should take advantage of the fact that, in politics in general, there prevails distaste for populism and political cynical score-hitting - if exposed.

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Exposing populism and showing the attitudinal oversimplifications, false premises, and the dubious value-commitments of populist proposals are important intellectual weapons in the hands of political opponents of any penal populist.

For those Scandinavian politicians, who otherwise are strongly devoted to welfare values but who, at the same time, are tempted by the strong rhetoric and powerful gestures of Anglo-Saxon penal politics, all this should present a difficult question: when we, in all other respects, defend policies based on social equality, full citizenship, solidarity, respect for reason and humanity, why should we choose to carry out criminal policy which shows so little appreciation to these very same values and principles?

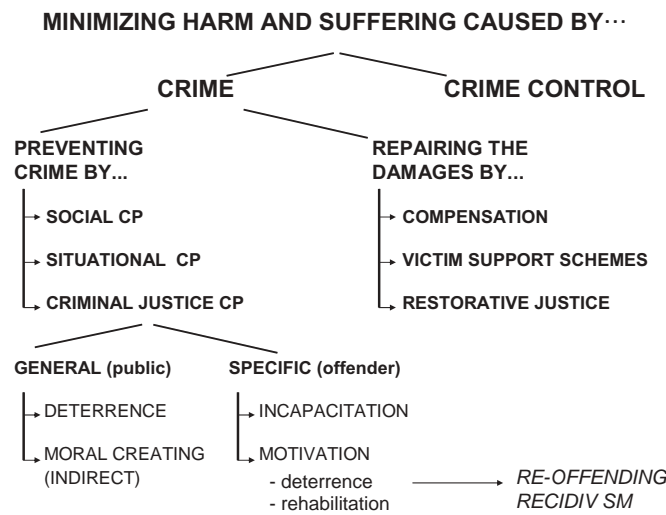
CRIME PREVENTION AND COMMUNITY SANCTIONS IN SCANDINAVIA

*Dr. Tapio Lappi-Seppälä**

I. INTRODUCTION

A. Punishment and the Scope of Criminal Policy

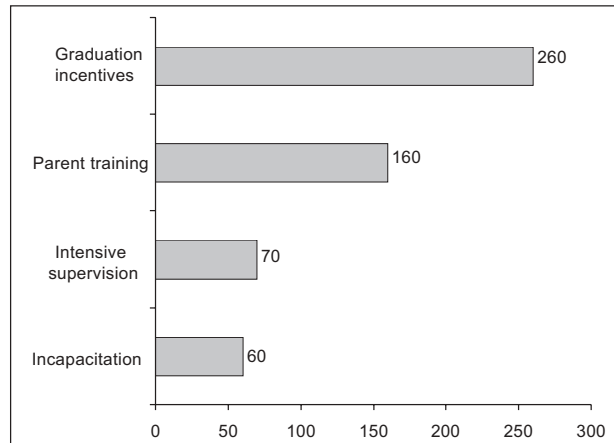
A balanced view of the role criminal justice as part of criminal policy needs a wider perspective than considerations of re-offending and protection of the public. Outlines for this wider framework have been briefly detailed in the previous paper. To summarize the main points:



- Firstly, the aims of criminal policy go beyond crime prevention. Though preventing crime is of fundamental importance, we must also concern ourselves with how to deal with the consequences of *those crimes that have not been prevented*. Repairing the damage, taking care of compensation for the victims, and supporting them is an equally important goal in criminal policy.
- However, crime and the reduction of the harm caused by crime remains the main target in criminal policy. Still, we must not forget that *crime control* also causes both material and immaterial losses; for offenders, their families, and for society as a whole. Keeping these costs under control is required both on rational grounds, as well as on grounds of decency and humanity.
- For lawyers, the criminal justice system may well be the first technique of crime prevention. However, clear empirical evidence suggests that other measures, including social and situational prevention, are far more effective compared to criminal justice interventions. Successful crime prevention requires proper attention given to all means and strategies available. Crime prevention based solely on criminal law would be both ineffective, expensive and inhuman.

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How many serious crimes will be prevented by investing 1 000 000 dollars in...?
(Greenwood et al 1996)



- When, finally, using criminal punishment as a crime prevention device, we should not limit our imagination to common sense assumptions of the mechanisms of prevention. Assumptions of the effectiveness of measures based solely on deterrence have been seriously challenged by both theoretical and empirical analyses. Criminological theory strongly suggests that law-abidingness is basically explained by internalized motives, not by fear¹. Most people refrain from crime not because of fear of punishment, but because the behaviour itself is regarded as morally blameworthy, or simply because of habit.

This partly explains why no research has been able to confirm that moderate changes in sentence severity have long lasting and visible effect on the level of criminality (see Doob & Webster 2005 and the Finnish experience recounted in the previous paper in this volume).

B. Re-offending Rates as Indicators of Policy Success?

Still, there are people who need to be deterred and who need to be incarcerated for the protection of the public. Criminal punishment, as a system, is needed for the upholding of the norms of society (general prevention in a broad sense). When imposing and enforcing these penalties in concrete cases, their effects on individual offenders, obviously, become a matter of substantial importance. Standard measures for these effects are re-offending and recidivism rates. But also here, few words of caution may be necessary.

1. Where do we get information of recidivism and re-offending?

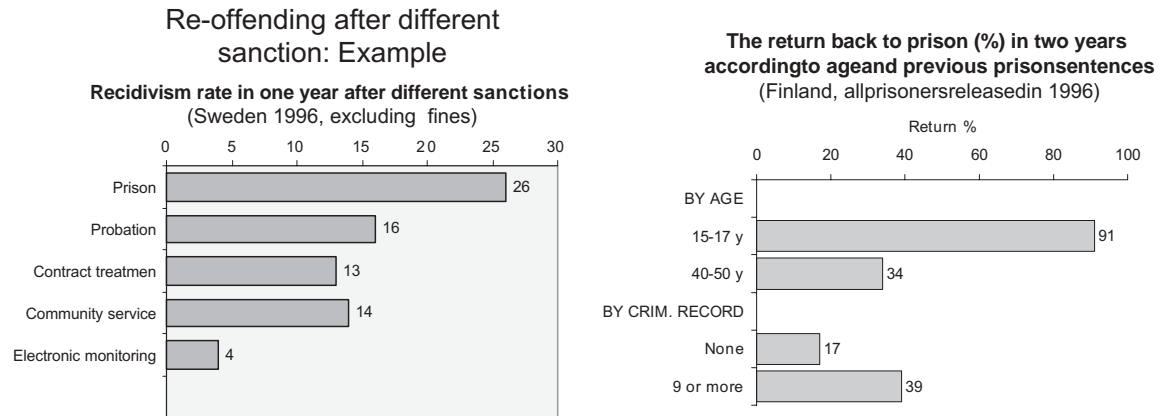
Up till recent years, recidivism data has been based on separate recidivism studies. Along with the increased international interest in the effectiveness of criminal justice interventions, several States have now established national reconviction statistics.

This calls up the question of the reliability, comparability and validity of these data-sets. Much depends on the purpose for which this data has been used. For national overviews concerning trends, this information may be sufficient, however, for any other use several qualifications must be met.

2. Does recidivism data reveal us differences between effectiveness of different sanctions?

Only if measurements are calculated carefully enough. Assessments of re-offending differences *between different sanctions* require that comparisons are made between similar groups. This requires high quality research design, and fairly few studies fulfil this requirement.

¹ See the papers of Professor Anthony E. Bottoms in UNAFEI Resource Material Series No. 68, March 2006. "Crime and Crime Prevention in the 21st Century" and "Crime Prevention for Youth at Risk: Some Theoretical Considerations".



The minimum requirement is that the groups under comparison are similar, in one way or another. The best way to do this is to use randomized experiment design, something which only seldom comes to question in the field of criminal justice.

3. Can re-offending figures be compared between two or more countries?

Reliable comparisons between different countries are, at the moment, impossible due to differences in definitions, follow up periods, and recording practices. This situation may improve in the future as recidivism statistics will be more harmonized. But we still are left with the problem of the similarity of samples (above).

Cross national comparisons in recidivism after prison are highly influenced by the extent to which prison is used in these countries. A country (such as US) which uses prison more, puts different people in prison than a country (any Scandinavian country) which uses prison less. The more people are in prison, the more low-risk people there are behind the bars. Extensive use of imprisonment leads, therefore, logically, to low recidivism rates. Ignoring this fact may lead to fatal mistakes and wrong conclusions.

4. How well does reconviction data inform us of true recidivism?

Not very well. Firstly, since only a minor fraction of new offences committed lead to convictions, reconvictions rates are *always an undercount of true re-offending*.

Related to that, reconviction rates are also *affected by changes in police and prosecution practice*. When research in the US shows that offenders in intensive probation re-offend more often (as compared to normal probation group), this was largely deemed to be the result of the fact that persons on intensive probation were supervised more closely (and got caught for their offences).

In addition, the reconviction rate is a crude, *all-or-nothing measure*. Without further qualifications, it does not take into account changes in *severity and frequency*, nor does it take into account the *changes in timing* of repeat-offending.

5. Is re-offending data an adequate measure of policy effects and success?

In other words, how well does recidivism data measure those effects it claims to be measuring (validity), in this case the policy success of individual sanctions and interventions. Also, at this point, there is much that could be improved.

Regarding offence-specific interventions, it would be important to be able to measure whether changes occur in areas targeted by the intervention. Sex offender treatment programmes are targeted on sex offending behaviour. Is it a failure or not, if a sex-offender after participating in programme for sexual offenders is later found of being guilty for drunken driving but not for sexual offences? General reconviction data should in these cases be supplemented with offence - related outcome data.

Secondly, criminal justice interventions *may also have a second type of effects* in addition to effects on offending behaviour. These other benefits – also called as “non-reconviction benefits” – may also need our attention. Social marginalization – of which crime is also a part – means unemployment, poor housing, weak social relations, substance abuse, and poor mental and physical health. These are social and human needs

which should be properly addressed. Non-reconviction benefits deserve our attention for two reasons: Firstly, they deal usually with factors which will, *in the long run*, also affect crime and recidivism: employment and meaningful work, vocational education, family and social relations, mental health and absence of drugs and substance abuse are essential elements for a life without crime. Secondly, enhancing these dimensions of a good and meaningful life is a valuable thing as such, irrespective of direct crime prevention effects.

6. Is it enough for us to know the re-offending rates (and the possible non-conviction benefits)?

Again, the answer is no. If crime prevention is our interest, we should always be ready to ask, at what cost? To take an example, prison is expensive, probation is cheap. If both have the same re-offending results, is not be wiser to invest in the latter, and use the remaining money in other crime prevention programmes?

This, of course, simplifies the situation, as prison serves also other penal purposes, including incapacitation and general prevention. Still, we need to keep the cost/benefit aspect in mind, as a growing amount of research is showing the over-riding success of social and situational crime prevention programmes over criminal justice interventions and, especially, of imprisonment.

II. SCANDINAVIAN SYSTEMS OF CRIMINAL JUSTICE

All Nordic countries form unitary political systems with a single written criminal code. The administration of justice is based on nationally organized institutions. Prison authorities and the prosecution service are administratively under the respective ministries of justice, while the police forces are under the ministries of the interior. Courts are under the budgetary power of the ministries of justice, but enjoy constitutionally granted independence (as does the prosecutors service). Civil servants and criminal justice officials (judges, prosecutors, the police etc.) are permanently appointed non-partisan career officials.

A. Sanctions

The death penalty is prohibited in all Nordic countries, including during war time.

The most severe sentence in Denmark, Finland and Sweden is a life sentence, which means in practice a prison term of around 15 years. Norway has abolished life sentences and replaced it with a 21 year maximum term. The maximum term of imprisonment for a single offence in Denmark is 16 years, in Finland 12 years and in Sweden ten years. In case of multiple offences and in case of recidivism (only Denmark and Sweden) these limits may be exceeded.²

Imprisonment is used only with more serious offences. The clear majority of penalties imposed consist of less severe alternatives. Among these, *finer* have been the principal punishment throughout the last century. Denmark, Finland and Sweden impose fines as day-fines (a system first adopted in Finland in 1921). The day-fine-system aims to ensure equal severity of the fine for offenders of different income and wealth. The *number* of day-fines is determined on the basis of the seriousness of the offence while the *amount* of a day-fine depends on the financial situation of the offender. Thus similar offences committed by offenders of different income will result in (roughly) similar overall severity.

Middle-rank offences are punished as a rule by different type of community sanctions. The basic structure of community sanctions is fairly similar in all Scandinavian countries. However, there are great differences in the details.

Conditional imprisonment (a suspended sentence) is generally used for middle range offences. In Finland sentences of imprisonment of, at most, two years may be imposed conditionally. In Sweden the limit is three years. Norway and Denmark have no formal limits, but conditional sentences lasting more than two years are quite rare.

² On the Nordic sanction systems see Jareborg 2001 (Sweden), Kyvsgaard 2001 (Denmark), Lappi-Seppälä 2001 (Finland) and Larsson 2001 (Norway). On the aims and principles of the work with prisoners see Nordic Prison Education 2005. The Scandinavian juvenile justice systems are described in Stoorgaard 2004, Janson 2004 (Sweden), Kyvsgaard 2004 (Denmark) and Lappi-Seppälä, forthcoming (Finland).

Community service is used as an independent sanction in Finland and Norway and as an attachment to other sanctions in Sweden and Denmark. The maximum number of community service hours vary from 200 (Finland) to 420 (Norway).

In addition to the basic community alternatives, each country has its local applications. Sweden and Denmark, with long rehabilitative traditions, have the widest array of community sanctions. Probation is the backbone of the Swedish community sanction system. Sweden also uses electronic monitoring extensively both as a front-door and as a back-door alternative. Contract-treatment is also included in the Swedish sentencing menu. Denmark and Sweden apply also treatment oriented measures, either as independent measures or in combinations with other sanctions. This also is a kind of dividing line between the systems.

The Finnish legal system makes a clear distinction between treatment and punishment. Criminal courts have no power to give treatment orders of any kind. Involuntary psychiatric treatment for the 'criminally insane' is ordered by medical authorities alone, but the courts decide whether the offender may be exempted from punishment due to his or her mental state. Alcohol and drug treatment is always voluntary in Finland. In both aspects the Swedish and the Danish system allow the courts more leeway. The Norwegian approach is somewhere in between.

B. Sentencing Structure

Finland, Norway and Sweden prescribe for each offence a specific minimum and maximum penalty in the law. The Danish law uses offence-specific minimums only occasionally. Sentencing in courts takes place within these limits. The discretion is guided mainly by legislative principles and norms. Finland and Sweden have highly structured systems with detailed written provision on the general principles and specific sentencing criteria to be taken into account in deciding both on the type and on the amount of punishment. Denmark has less detailed provisions, but with similar content. Norway lacks legislative sentencing provisions, but in Norway the Supreme Court has taken a very active role in producing guideline decisions in sentencing.

The Scandinavian sentencing structures are relatively well shielded against outside political pressures. Sentencing commissions or detailed concrete guidelines are unknown for the Scandinavian systems. Sentencing is treated as an area of normal judicial decision making, guided by valid sources of sentencing law and their interpretation, according to the generally accepted interpretation standards. Thus, sentencing cannot be affected by outside instruction.

C. Enforcement

The enforcement of criminal sanctions belongs to the administrative field of the Ministry of Justice. Each country has nationwide prison and probation services, which are responsible for the implementation and enforcement of imprisonment and community sanctions.

Sentences of imprisonment are enforced either in closed prisons or in open institutions. Open institutions hold between 20 % (Sweden) to 40 % (Denmark) of the current prison population. Open institutions are in practice prisons without walls: the prisoner is obliged to stay in the prison area, but there are no guards or fences. Closed prisons are small in their size. The largest units carry 200-300 prisoners, while the regular size of a prison is around 50-100 inmates.

The system of early release is used on a routine basis. In Finland, practically all prisoners are released on parole after either one half or two thirds of their sentence. The use of early release is somewhat more discretionary in other Nordic countries, still covering a clear majority of all releases. The minimum time to be served before the prisoner is eligible for parole in Denmark is two months, in Finland 14 days, in Norway two months and in Sweden one month. Parole revocations occur generally only due to a new offence committed during the parole period.

D. Juvenile Justice

The age of criminal responsibility is 15 years in all countries. Children under 15 years of age at the time of the offence may be subjected only to measures taken by the child welfare authorities. The criterion for all child welfare interventions is the best interest of the child. All interventions are supportive by their nature and criminal acts have little or no formal role as a criterion or as a cause for these measures.

Criminal justice becomes relevant once the offender has reached the age of 15. The child welfare system continues to function for those aged 15 to 17 years old. So offenders of this age are usually under both the criminal justice and the child welfare system. Strictly speaking, there is no special juvenile criminal system in Scandinavia in the sense that this concept is usually understood in most legal systems. There are no juvenile courts and the number of specific penalties only applicable to juveniles is fairly restricted (but expanding). During the last decade each Nordic country has modified its system with new juvenile sanctions to be applied for juveniles alongside the general alternatives. Denmark applies a *youth contract* (a contract based obligation to participate in certain activities) and *youth sanction* for the more serious cases (a two-year programme, imposed by the courts but implemented by the social welfare authorities, see in general Kyvsgaard 2004, p. 370-374). Sweden has adopted court ordered institutional treatment under the social welfare authorities based on child welfare principles, as well as closed institutional treatment for more serious cases (see Janson 2004 p. 409-411). Finland has adopted a specific *youth punishment*. The sanction consists of non-institutional programmes and supervision arranged in co-operation with the social welfare board and the Probation Service (see Lappi-Seppälä, forthcoming).

In addition to special juvenile penalties, there are limiting rules for the full application of penal provisions, as well as special rules and measures applicable only for young offenders. Young offenders are often diverted from the criminal proceedings by using withdrawal from prosecution (diversionary non-prosecution); they also receive mitigated sentences and there are additional restrictions in the use of unconditional prison sentences. Still the most common sanction for juveniles is either a fine or conditional imprisonment.

E. Restorative Justice and Mediation

Restorative justice schemes are gaining more and more importance in dealing with crimes committed by young offenders.

Mediation started first in Norway in 1981. In Norway, mediation is an independent criminal sanction which has been acknowledged in the Code of Criminal Proceedings. A successful mediation also automatically leads to non-prosecution.

In the other Nordic countries mediation has a more informal role. Finland started mediation in 1983. The practice is as widely spread as in Norway. Denmark and Sweden started to experiment with mediation during the 1990s. At the moment both countries are expanding the use of mediation. Even though mediation is not restricted to any specific age-group, the majority of cases involve juvenile offenders or offenders below the age of criminal responsibility. With the exception of Norway, mediation is not classified as a criminal sanction. However, the criminal code acknowledges mediation as one possible ground for the waiving of charges by the prosecutor, the waiving of punishment by the court, or mitigation of the sentence. Participation in mediation is always voluntary for all the parties.

F. Basics in Proceedings

The criminal procedure is mainly accusatorial and the public prosecutor bears the burden of proof. The court system is arranged in three tiers. All parties (the defendant, the prosecutor and the victim) have an unrestricted and independent right to appeal. The position of the victims has traditionally been quite strong. The victim has an unlimited right to press charges (but in some cases only if the prosecutor has first refused to prosecute). Another Scandinavian peculiarity is that all compensatory claims connected to a criminal offence are treated in the criminal proceedings. The Scandinavian countries follow the systems adhesion process in a full sense. Therefore decisions on punishments are, as a rule, accompanied by decisions on compensation. Compensation orders are not classified as a criminal sanction.³ Still, it is possible that compensation (especially when completed voluntarily right after the offence occurs) may also serve as an argument for the courts to refrain from further punishment.

The prosecutor has basically the same options at their disposal in all Nordic countries. The prosecutors have the powers to impose prosecutor's fines (or summary fines). All systems also grant the prosecutor the power not to prosecute, even if the facts of the case are clear (diversionary non-prosecution). Formally, the countries differ in this respect as Norway and Denmark follow the principle of opportunity in prosecution, granting the prosecutor a general right not to prosecute at his or her own discretion. Finland and Sweden

³ On the role of restitution and compensation in the Finnish legal system, see Lappi-Seppälä, 1996.

follow the principle of legality in prosecution. According to the legality principle, prosecution must take place in all cases in which sufficient evidence exists of the guilt of the suspect. The rigid requirements of the principle of legality are softened through the legislative provisions of non-prosecution, which state the legal grounds for non-prosecution. In practice, the difference is non-existent. The scope of prosecution has varied over time unrelated to the underlying basic principles but has been affected by more general criminal political trends.

III. OVERVIEW OF COMMUNITY SANCTIONS

A glimpse at Scandinavian court statistics reveals that there is no short way of giving an overview of the use of different sentencing alternatives. Both Swedish and Danish sentencing statistics contain over 20 different alternatives and options. However, this diversity results mainly from the fact that the law allows different combinations of the same few basic alternatives. These are fines, conditional or suspended sentences, supervision, community service and electronic monitoring.

In short community sanctions include the following:

- conditional or suspended sentence - possibly combined with other alternative sanctions
- probation or supervision - either as an independent or complementary sanction
- community service (punishment) - either as an independent or complementary sanctions
- treatment orders - either as an independent or complementary sanctions (or part of social services)
- electronic monitoring (both in front-door and back-door versions).

Differences between the systems constitute from the following elements:

- *The number of combinations:* Denmark and Sweden allow more combinations than others (Finland and Norway). Combinations may include not only community sanctions but mixtures between community and custodial sanctions.
- *Status:* Some countries have been more willing to give new alternatives an independent status (Finland and Norway), while the other have added these new alternatives as sub-conditions under the old traditional alternatives (Denmark and Sweden).
- *Juvenile justice:* The sanctions systems differ also in the extent the countries have adopted specific sanctions for juveniles. The Swedish and the Danish systems are more differentiated than the Finnish and the Norwegian ones. However, all Scandinavian countries follow the same model which treats juveniles in the criminal justice system basically according to the same rules as adults, while the main role in rehabilitation is in the hands of the child welfare authorities. Unlike many other countries, the Scandinavian countries do not have specific juvenile justice system with its own juvenile codes and juvenile courts.
- *The role of treatment:* Sweden and Denmark have maintained closer relations between punishment and treatment. Sweden has even abolished the whole concept of penal capacity and defines psychiatric treatment as a sanction imposed for offenders.

Once these differences are taken into account, the Scandinavian sanctions systems fall into two main groups. Finland and Norway have a relatively simple system with fewer alternatives and with less emphasis on treatment-oriented measures. In these countries the statistics differentiate around 7-8 basic sentencing options starting from summary fines to unconditional prison sentences. Both Sweden and Denmark have much more complex systems with several possible combinations (over 20 in all).

The table below summarizes the use of the main sentencing alternatives in Scandinavian court practices in year 2005, both in absolute numbers and per 100,000 of population.

Table 1. The use of main sentencing alternatives in Scandinavian court practices in 2005

THE USE OF MAIN SENTENCING ALTERNATIVES IN 2005				
Absolute numbers	FIN	SWE	DEN	NOR
PRISON	8313	15335	11239	11292
(Average in months)	8,8	8,5	6,1	4,9
Probation		4110		
Probation + Contract treatment		1114		
Probation + Community service		1000		
Community service	3370	303		2632
Community S + conditional (+fine)	110	3344	3684	
Conditional + fine	8930		2567	6750
Conditional + Supervision	(1232)			
Conditional alone	6717	6300	6312	2580
Treatment in social welfare		2907	350	
ALL COMMUNITY SANCTIONS	19127	19078	12913	11962
Court fine	38291	23328	21174	2314
ALL COURT IMPOSED PENALTIES	65 549	57 741	45 326	25 568
Summary fines	348449	200 000	..	289647
THE USE OF MAIN SENTENCING ALTERNATIVES IN 2005 (/100 000 pop)				
	FIN	SWE	DEN	NOR
PRISON N	158	170	208	245
PRISON AMOUNT (months)	8,8	8,5	6,1	4,9
Probation		45		
Probation + Contract treatment		12		
Probation + Community service		11		
Community service	64		3	57
Community S + Conditional (+ Fine)	2	37	68	
Conditional + Fine	170		47	147
Conditional alone	128	70	117	56
Treatment in social welfare		32	6	
ALL COMMUNITY SANCTIONS	365	211	239	260
Court fine	730	258	393	51
ALL COURT IMPOSED PENALTIES	1253	639	840	556
Summary fines	6643	2212	..	6295
Population (1000)	5 245	9 043	5 413	4 601

What follows is a systematic description of the structure and use of these basic alternatives, with special focus on re-offending (whenever there is either Scandinavian or comparable international data available).

IV. FINES

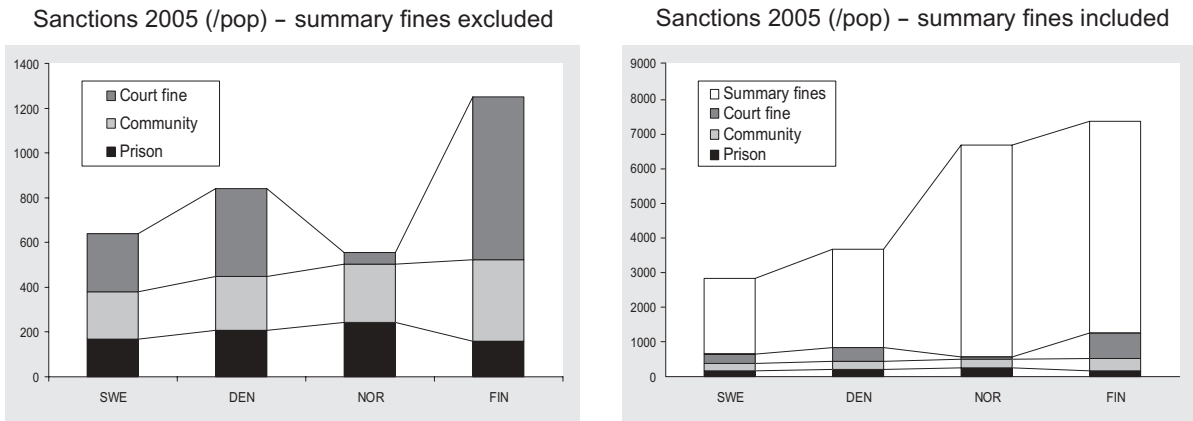
A. The Day-fine System

1. General Remarks.

A fine is the most frequently applied punishment in all Scandinavian countries. It is mainly applied in the case of minor offences, but it serves as an alternative also in middle-rank offences such as less serious forms of assault and minor cases of burglary. As it seems, there are differences in the scope of fines with Finland being the country with the widest use of this alternative. Fines may also be used as an additional punishment to a conditional or unconditional (in Denmark) sentence of imprisonment.

Table 2. Fines in Scandinavian court practices

THE USE OF FINES IN THE SCANDINAVIAN COUNTRIES IN 2005 (/100 000 pop)				
	FIN	SWE	DEN	NOR
PRISON	158	170	208	245
FINES				
Court fine	730	258	393	51
Summary fines	6643	2212	..	6295



2. The Day-fine System

In Finland (and Sweden and Denmark) fines are imposed as day-fines. This system was adopted in Finland in 1921. The main objective of the day-fine system, is to ensure equal severity of the fine for offenders of different income and wealth. In this system the *number* of day-fines is determined on the basis of the seriousness of the offence while the *amount* of a day-fine depends on the financial situation of the offender. The amount of the day-fine equals roughly half of the offender’s daily income after taxes.⁴ The number of day-fines varies between 1 and 120.

An example:

The typical number of day-fines for drunken driving with BAC of 1,00/00 would be around 40 day-fines. The monetary value of one day-fine for a person who earns EUR1,500 per month would be EUR20. For someone with a monthly income of EUR6,000, the amount of one day-fine would be EUR95. Thus the total fine for the same offense would be for the former person EUR800 and for the latter EUR3,800.

If the fine is not paid it may be converted into imprisonment (default imprisonment) through separate proceedings. Two day-fines correspond to one day of imprisonment. The number of default prisoners has varied over time, reflecting also the changes in economic conditions. More recently, the problem of fine defaulters has, once again, become increasingly important.

B. Fines in Finland

The basic structure of the day-fine system has remained untouched since 1921. However, technical calculating rules (for the monetary amount of one day-fine) as well as the maximum number of day-fines and the rules concerning the use of default imprisonment have been revised several times. Also the monetary value of day-fines has been raised from time to time. The basic aims of these reforms has been to raise the ‘penal value’ of a fine in such a ways that it would provide an credible alternative to imprisonment, especially for middle rank offences, and to restrict the use of default imprisonment. The most recent reform of the day-fine system took place in 1999. The reform changed the calculating rules, raised in the minimum size of a day-fine and an extended the use of summary penal fees.

⁴ The exact amount results from a rather complicated calculation. However, the officials (police, the prosecutor and the courts) have a handbook which makes it easy to count the amount of day-fines.

1. Proceedings and Summary Fines

A fine may be imposed either in an ordinary trial or, in the case of certain petty offences, through simplified summary penal proceedings (penalty orders). The vast majority of fines are ordered in a summary process. In 1995, the power to order summary fines was transferred from the court to the prosecutor. Giving the prosecutor an independent right to impose fines was an important reform from the point of view of principle. It was also a substantial change in terms of numbers (over 200,000 cases per year). However, in practice the change was smaller, since also under the former system summary fines were prepared by the prosecutors and the courts had a tendency to rubber stamp the prosecutors' suggestions.

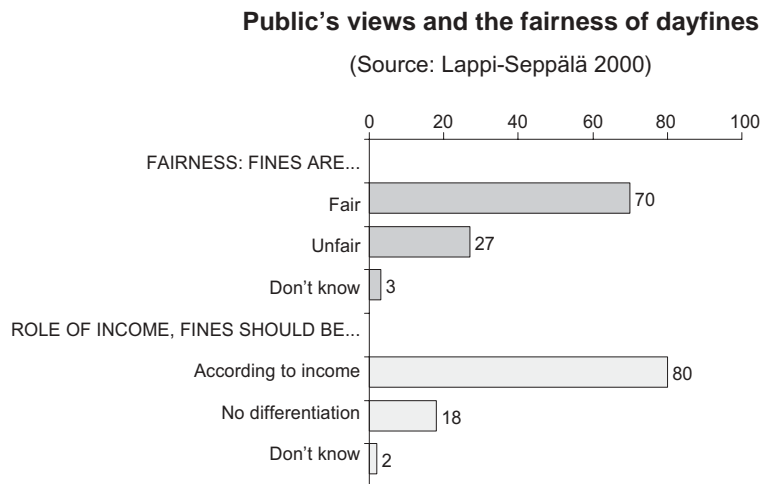
In addition, for minor traffic offences there is a summary penal fee that is set at a fixed amount (a petty fine). This fine is imposed by the police. In the case of non-payment, summary penal fees cannot be converted into imprisonment.

2. Practice

The fine has been the principal punishment throughout the last century. Around 60% of cases handled by the courts result in fines. Of all criminal cases handled by the courts and/or prosecutors, over 80% are punished by fines.⁵ In numbers, this means that the courts impose some 35,000 – 40,000 fines annually, the prosecutors order some 200,000 penalty orders, and the police write some 100,000 summary penal fees.

3. Public Acceptance of the Day-fine System

The day-fine system may also lead to quite intensive fines in cases where the offenders happen to have an extraordinarily high income. Such occasions occur particularly in the field of traffic violations. Every once in a while the media reports of traffic-fines that exceed tens of thousands of euros. These extraordinarily high traffic fines have even raised certain doubts about the legitimacy of the present system. Related to this, the counting rules had been criticized, especially by the conservatives, for leading to unjust results in higher income levels, since prior to the year 1999, the amount of a day-fines was counted on the basis of gross-income (before taxes) instead of net-income (after the deduction of taxes). Moving from fining on the basis of gross income into fining based on net-income was the major principal change, brought by the 1999 reform. According to the bill, the central goal of the reform was to introduce a more just fining system, whereby the "size of the fine is perceived as fair among different income-groups." (Government Bill 74/1998).



Follow-up research was carried out by the National Research Institute for Legal Policy. The central findings of this study were that the fears of the perceived unfairness of the fining system had been grossly exaggerated.⁶ Four out of five respondents regarded the day-fine system as a fair and just method of punishment. Fines imposed for traffic violations were considered fair by 60%, 14% of the respondents

⁵ This is partly due to the fact that there is no general administrative penal law in Finland. Practically all offences are classified as crimes and treated under the label of criminal punishments.

⁶ See Lappi-Seppälä 2002,b.

considered them too mild and 17% too severe (9% refrained from expressing an opinion). The reform of the fining system introduced in 1999 did not bring about significant changes in public opinion. Neither it seems, did the staggering fines imposed in summer 2000 (one over EUR43,000 and the other EUR38,000; both for speeding). But as it turned out, the general public is not well aware of the rules concerning fines for traffic offences. Whether the fines were calculated on the basis on net income or gross income (the main topic of the reform!) turned out to be completely irrelevant to the perceived fairness of the fining system.

C. Effects on Recidivism

It is generally known that offenders receiving fines have the lowest recidivism rates. About 25% of those receiving fines were reconvicted for some form of penalty during the following five years whereas the figure for those receiving a prison sentence was as high as 75%. But as the initial recidivism risk in these two groups is totally different; these kind of figures cannot be used as a basis for any kind of comparison. We need controlled comparisons where two groups are made similar.

There is fairly little systematic research employing control groups on the effects of fines on recidivism. This mainly due to the fact that, outside Scandinavia, fines alone are rarely an alternative or substitute to imprisonment or even to community sanctions.

A study published in the US in 1991 (Gordon & Glaser 1991) compared recidivism after different combinations of fines and other sanctions. Supervision with fines leads to lower recidivism (25%) than mere supervision (36%). Equally, short term imprisonment with supervision and fines leads to lower recidivism (37%) than mere supervision and fines (50%). However, the detected associations were statistically non significant.

Methodologically more advanced US study based on randomized experiment (Turner & Petersilia 1996) compared day-fines with flat-rate fines (no difference according to income). It turned out that day-fine group had lower recidivism-rate (11% to 17%) and fewer technical violations (9% to 22%) than the control-group (latter differences were statistically significant).

The third study is a meta-analysis covering 18 studies (Genderau et al. 2000). The overall effect-size in these 18 studies was -0,04. In other words, after the groups had been matched, those receiving fines had 4% lower recidivism rate than those receiving other type of penalties.

RECIDIVISM RATES AFTER FINES	
Study	Results
Gordon & Glaser (1991), US No data on matching of the groups.	Supervision and fines (25 %) Only Supervision (36 %), non-significant Supervision, prison and fines (37 %) Supervision and prison (50 %), non-significant
Turner & Petersilia (1996), US Randomized experiment. Poor data of treatment of control group, consists of fixed fines.	Arrests - Day-fines (11 %) - Control group (17 %), non-significant Technical violations - Day-fines (9 %) - Control group (22 %), significant
Genderau <i>et al.</i> (2000), Canada	Meta-analysis (18 studies) - Effect-size – 0,04 (= 4 % difference)

V. CONDITIONAL IMPRISONMENT/SUSPENDED SENTENCES

A. The Structure

1. Types and Terminology

A suspended or conditional sentence means that the offender is convicted, but exempted from serving a sentence. The content of the punishment may or may not be specified in the original sentence. The sanctions may be imposed with or without supervision. This all leaves us several combinations. Consequently this sanction appears in different forms and under different labels around the world. There is no agreement on the terminology, either.

In the following the term *suspended sentence* is reserved for those arrangements where the content of the sanction is not yet fixed. *Conditional sentence* means thus arrangements, where the contents of the sanction is fixed, but the enforcement of the sentence is suspended under certain conditions. In those systems where only prison sentences are suspended (as in Finland), it is logical to talk about *conditional imprisonment*. Thus we have the following categories:

Suspended sentence/conditional imprisonment in Scandinavia

TITLE	CONTENT FIXED	SUPERVISION	COUNTRY
Suspended sentence	No	No	SWE
Conditional imprisonment	Yes No formal limits	No	NOR
	Yes No formal limits	On discretion	DEN
	Yes 14 days - 2 years	On discretion only for juveniles	FIN

2. Contents and Conditions

In all cases suspension and the enforcement of the sentence is conditional. These conditions may refer to more general behaviour or only to new offences. Today clear emphasis in Scandinavia is on new offences. General instructions for behaviour are of only marginal importance. In other words, the enforcement of the sentence is conditional in the sense that unless the offender commits a new offence during the probationary period, imprisonment will not be enforced.

If the sentence is not specified (as in Sweden), a suspended sentence represents merely a formal warning. In case the court also pronounces the length of prison term, as in Finland, the sanction has more substance and a heavier symbolic content. This may be reflected also in the criminal proceedings. In Finland the judge first declares that the offender has been sentenced to imprisonment for X months. After that it is declared that imprisonment will be imposed conditionally. These symbolic messages have relevance also in wider communications: newspaper headlines generally refer to conditional imprisonment as imprisonment (where they do not wish to undermine the severity of the sanction). This all has practical consequences: conditional imprisonment in Finland has a far heavier role than the Swedish suspended sentence.

Conditional imprisonment may be ordered *with or without supervision*. Both forms are used in Finland and Denmark. Neither Norway nor Sweden combines supervision with a conditional or a suspended sentence. Sweden uses supervision as part of their probation. Norway ceased to use supervision as part of conditional imprisonment once they changed community service into community punishment (a decision that can be criticized).

Supervision is carried out both by social workers and volunteers workers. Supervision entails always both elements of support and control. Support entails lodging, education or training and/or work, since this is of great importance for reducing the risk of recidivism. The control element may vary depending on other conditions attached with the sentence. Breaches of the rules and conditions may in extreme cases lead to revocation of the suspended sentence. However, as a rule, revocation is possible only due to new criminal offences.

3. Combinations

In addition to the usual condition of supervision, conditional imprisonment can be supplemented with substantial conditions or other elements (such as fines). This blurs the boundaries between conditional sentences and other alternatives in the penal system. Some of these conditions and attachments are quite substantial, as is the case when conditional imprisonment is combined with community service or a treatment order (as in Denmark). In these cases it would be advisable to classify the sanctions according to the most substantial element involved. This advice has also been followed here.

THE USE OF CONDITIONAL SENTENCES IN SCANDINAVIA IN 2005 (/100 000 pop)				
	FIN	SWE	DEN	NOR
PRISON N	158	170	208	245
Conditional + Fine	170	47	147	
Conditional alone	128	70	117	56
All CONDITIONAL SENTENCES	298	70	164	203

Conditional imprisonment with different combinations in Scandinavia

Finland 16 000 = 300 / pop Cond/prison = 1,9	-Fines 56 % -Supervision 8 % -Community service 1 %
Denmark 13 000 = 170 / pop Cond/prison = 0,8	-Fines 20 % -Supervision 20 % -Community service 30 % -Treatment order 8 %
Norway 9 000 = 200 / pop Cond/prison = 0,8	-Fine 28 %
Sweden 10 000 = 120 / pop Cond/prison = 0,7 (0,4)	-Community service 35 %

In all countries but Sweden the content of the sentence is fixed (Denmark applies both forms). In all countries except a Norway suspended sentence may be attached with supervision. In this respect the Norwegian law changed in 2002 when community service was replaced with a new alternative called *community punishment*. Community punishment contains several elements. In addition to a normal community service order, there are other restrictions including obligations to participate in different types of programmes. Community punishment replaced not only the old community service, but also conditional sentences with supervision (something which may be regretted).

4. Combinations

Suspended sentences may appear as an independent sanction or *in different combinations*. Both alternatives are familiar to all Scandinavian systems. All countries recognize the possibility of using suspended sentences (with or without supervision) as the only sanction. All except Sweden combine suspended sentences with fines. All except Norway combine suspended sentences also with community service. Denmark also attaches treatment orders (usually for drunk drivers) with suspended sentences (supervision).

In Finland a suspended sentence (conditional imprisonment) without supervision is a quite common punishment for most middle rank offences. A majority (60%) of all prison sentences are suspended. In sentencing practice there is a clear presumption that all shorter prison sentences (less than one year) are suspended for first time offenders. A suspended sentence with supervision has, in turn, been used successfully instead of imprisonment for juveniles.

B. Conditional Imprisonment in Finland

1. Imprisonment and Conditional Imprisonment

Imprisonment may be imposed either for a determinate period (at least fourteen days and at most twelve years for a single offence and fifteen years for several offences) or for life.⁷ Sentences of imprisonment of at most two years may be imposed conditionally (conditional imprisonment), under certain conditions, prescribed by law.

Conditional imprisonment was introduced in Finland in 1918, originally under the title of conditional sentence. In 1976, the scope of the conditional sentence was expanded. The maximum length of a *conditional sentence* was raised from one to two years. Also, the possibility of combining a conditional sentence with a fine was introduced. The sentencing criteria were also amended: now the use of a conditional sanction was tied to general prevention, instead of the original *special preventive* orientated reasons.

In 2001, the law was revised again. In order to give the courts a more reliable foundation for their discretion the general preventive oriented criteria were replaced by more proportionality oriented sentencing criteria.⁸ Also, the title of this sanction was changed from conditional sentence to *conditional imprisonment*. At the same time, the possibility of ordering conditional fines was abolished. This option was hardly ever used in court practice. In addition, a new combination of unconditional imprisonment and a short community service order were included in the law.

2. Sentencing Criteria

According to the new provisions, a prison sentence of no more than two years can be ordered conditionally, provided that “the seriousness of the offence, the culpability of the offender manifested in the offence, or previous convictions of the offender do not require an unconditional imprisonment”. Subsection 2 places an additional requirement: young offenders under the age of 18 years (at the time of the offence) may be sentenced to unconditional imprisonment only if special reasons call for this option.

3. Subsidiary Sanctions

If conditional imprisonment alone is not considered to be a sufficient sanction for the offence, an *unconditional fine* (subsidiary fine) may be imposed on the offender as well. This option has been used quite frequently in drunken driving. In 2001, the scope of subsidiary sanctions was expanded. If the length of the sentence is between one to two years, a *short community service* order (20–90 hours) may be sentenced alongside conditional imprisonment. In addition, young offenders under the age of 21 years (at the time of the offence) may be placed under supervision (see below).

4. The Probation Period and the Revocation of the Sentence

Imposing the sentence conditionally means that the enforcement will be suspended for a specific probation period determined by the court. The length of the probation period is at least one year and at most three years. The practical meaning of the probation period is that the behaviour of the offender during that period determines whether the original sentence shall be enforced or not.

A person who has been sentenced to conditional imprisonment can be ordered to serve his or her sentence in prison if he or she commits a new offence during the probation period for which the court imposes a sentence of imprisonment. Thus, a behavioural infraction alone is not enough for enforcement of a conditional imprisonment. An additional requirement for losing the benefit of a conditional imprisonment is that the charges for the new offence have been brought within one year of the end of the probation period. It is also possible to enforce only part of the earlier conditional imprisonment or sentences.

The courts impose some 16,000 conditional prison sentences annually. Each year around 700-800

⁷ A life sentence may be imposed for a very restricted number of offences – in practice only for murder. Those serving such a sentence actually spend approximately 12 to 14 years in prison. After this they are released on parole.

⁸ It had turned out that the general preventive sentencing instruction – “maintenance of general respect for the law” (see footnote) – turned out to be too obscure and it may also invite the courts to base their decisions on (empirically) unfounded speculations on the general preventive effects of single court decisions.

sentences are enforced. This equals around 5% of all conditional sentences imposed annually.

5. Supervision of Young Offenders

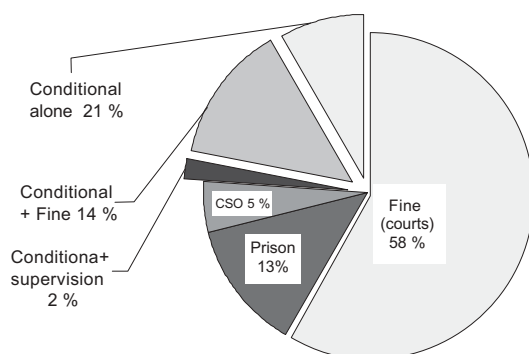
Conditionally sentenced young persons (who were 15 to 20 years old at the time of the offence) may be put under community supervision if this is considered “justified in view of the promotion of the social adjustment of the offender and of the prevention of new offences”). Such supervision is ordered for four out of five conditionally sentenced young persons. This decision is taken by the court in connection with the original sentence.

The supervision is the responsibility of staff members of the Probation Service or of voluntary private supervisors. The supervision primarily consists of regular meetings with a supervisor. In some cases, the offender is required to participate in various group activities. Supervision can be discontinued after six months if it is no longer needed. During the year 2001, 1,154 new offenders were ordered to undergo supervision, and 46% of them were assigned a private supervisor. During that time 2,756 young offenders were under supervision.

C. Implementation and Effects

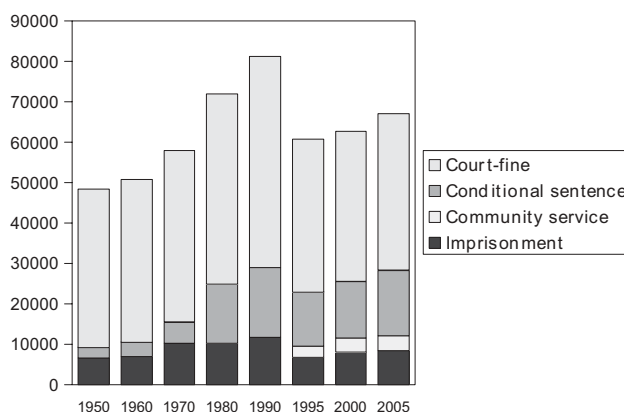
In Finland conditional imprisonment has a strong position as an alternative to incarceration. Conditional imprisonments correspond to roughly a quarter of all sanctions imposed by the courts. Two out of three prison sentences are imposed conditionally.

Conditional imprisonment and other sanctions in Finnish courts 2005

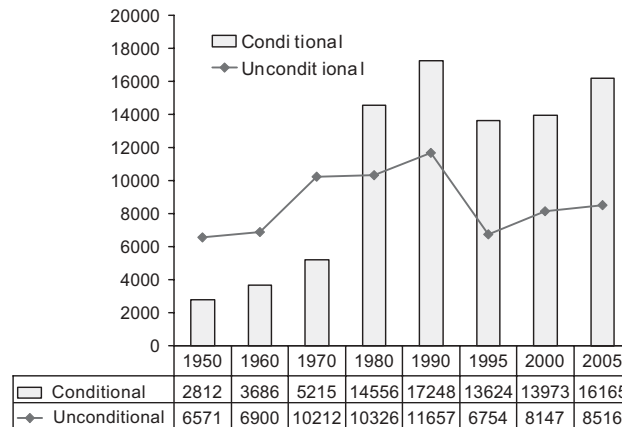


In 1950, 30% of sentences of imprisonment were imposed conditionally. In 1990 the rate was 60% and in 2000 63%. The use of conditional imprisonment increased significantly during the 1970s. A primary factor behind this was, above all, a reassessment of sentences for drunken driving. Conditional imprisonment is one key tool through which Finland has managed to reduce its prison population over the last decades.

The use of sentencing options in the Finnish courts 1950-2005



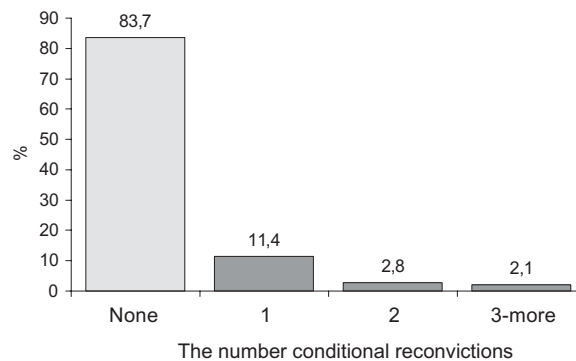
Conditional and unconditional prison sentence in Finland 1950-2005



The wide use of conditional imprisonment has met with some criticism, especially when applied to younger age-groups. Concerns have been expressed that several such sentences may be imposed on the same (young) offenders without this having a discernible impact on their behaviour. Nonetheless, it is likely that large accumulations of conditional imprisonments are rarer than has been assumed. A study followed those who, during 1992, received their first conditional imprisonment. During the following three years, only 16% were again sentenced conditionally, and most of these received only one new conditional imprisonment. Only 2% of this sentencing cohort were given more than two additional conditional imprisonments during the three-year period.

Offenders reconvicted in conditional sentence in Finland in three years time after release in 1992

(Lappi-Seppälä 1999)



Repeated reconvictions were clearly more common among young offenders, compared to adults. But even among the juveniles this was not widespread. About half of the juveniles receiving a conditional sentence were reconvicted and received another conditional imprisonment. However, of all the young offenders reconvicted, three out of four received only one or two new conditional imprisonments.

Around 4% belonged to the problem group who, over the next years, received at least five additional conditional imprisonments, and 10% to the group who received at most four additional conditional imprisonments.⁹ Other sentencing alternatives have been sought for this group of young offenders. After several years of experimenting, a new juvenile punishment was introduced in 2005.¹⁰

⁹ On this see Lappi-Seppälä, 1999.

¹⁰ A juvenile penalty (youth punishment) consists of a community supervision for a period of four months and non-institutional programmes arranged by the Probation Service.

D. Conclusions

The criminal political relevance and value of conditional imprisonment is in its strong symbolic dimension: it still is imprisonment, even if it is only conditional. It is less stigmatizing for the offender and far less costly for society, when compared to prison. It allows different combinations, which have been used quite frequently in many jurisdictions. These features allow also tailoring according to different offender groups. In its basic form, conditional imprisonment functions especially well in two offender groups:

- for middle rank offences for low-risk adult offenders without supervision
- for middle rank and also for more serious offences for juveniles in conjunction with supervision.

There is very little research on the re-offending effects of conditional imprisonment without supervision. A classical Swedish study from the 1960s revealed a constant pattern between custodial and non-custodial sanctions, including conditional sentence (Börjeson 1966). The overall result was that even in the absence of supervision, less intrusive measures tended to lead to lower re-offending rates. This basic result has hardly been challenged, even though we know today much more of the effects of different treatment programmes and intervention.

Should we wish to add more ‘substance’ to the sanction, more elements could be included in supervision. Another option would be provided in the form of specific community sanction, known as probation.

VI. PROBATION AND TREATMENT ORDERS

A. The Structure

1. Terminology

A suspended sentence with supervision may also be called probation. But supervision in a form of probation may also be ordered as an independent sanction (in addition, probation may also refer to parole supervision, which will be discussed later).

Sweden is the only Scandinavian country with a separate independent probation type of sanction. Since the 1960s this sanction – *protective supervision (Skyddstilsyn)* – has remained as the backbone of the Swedish community sanction system. Probation is a non-custodial sentence. Probation means a period of three years, where the sentenced person is supervised during the first year. Misbehaviour can lead to the period being extended. Serious breaches of the probation can lead to the sentence being served in prison instead.

Swedish probation orders. In Sweden, probation is a kind of ‘frame’-penalty. It leaves room for a number of different combinations. Probation can be combined with fines. A court can also combine probation with a short prison sentence of between 14 days and three months. Two other combinations are also possible: probation with special treatment order and probation with community service (see below). Regarding the content, probation appears thus in three different forms:

- *Basic probation* includes only normal supervision. The offender must remain in contact with a probation officer, notify the probation officer of any change in address, and provide essential information on, e.g., employment, earnings and lifestyle. The probation officer can be from the probation system or a layperson. Each client has a special schedule for the probation period that regulates how often he or she meets with the probation officer.
- Probation may also include *community service*. Probation is complemented by an order to perform unpaid work. The court determines the number of hours between 40 and a maximum of 240.
- Thirdly, probation may be combined with a *special treatment plan*, known as *contract treatment*. This sanction is targeted primarily for long term substance abusers where there is a link between the abuse and crime. A contract is made between the court and the client on institutional care, in a home or an open clinic. In contract treatment, treatment is always voluntary (but the choices are limited; either to go to prison or not).

In Sweden some 6,000-7,000 persons annually are sentenced to probation. Of these, little over 1,000 also receive contract treatment and about 1,000 are also sentenced to community service.

2. Swedish Treatment Orders

In addition to those orders combined with probation, there are *treatment orders for juveniles to be carried out by the social welfare authorities*. Offenders under the age of 21 can be sentenced to care under the social service and if such care is deemed more suitable than any other sentence, the court can order the social welfare board to arrange suitable care through the social services. This option is used fairly extensively (around 3,000 cases per year). Treatment by social welfare authorities is among the basic sanctions of the juvenile justice system in Sweden.

The second class of treatment orders concerns *compulsory treatment for alcohol and drug addicts*. This takes place primarily in cases of less serious crime. If a court finds that the offender could be subject to care via compulsory placement in a residential treatment centre, the matter is then left to the social welfare board or, if the offender is already in such a centre, to the board of that centre to rule on the required care. Decisions on compulsory care in individual cases are made by the County Administrative Court on application of the social welfare board. The social welfare board is then responsible for implementing the decision according to the court's ruling.

The third class of treatment orders includes *treatment orders in psychiatric treatment*. Unlike the other Scandinavian countries, psychiatric treatment is classified as a criminal sanction in Sweden. A court can commit a person suffering from a serious psychiatric disturbance to compulsory forensic psychiatric care if his or her condition requires such care. Forensic psychiatric care as a criminal sanction occurs in two different forms: *without* special release examination and *with* special release examination. The former follows the same rules in principle as for psychiatric care in general. Care may continue for a maximum of four months. Extensions of the care period can be made only after a ruling of the County Administrative Court. A court can decide on special release examination if there is a risk that the offender will lapse into serious criminality again. For these patients the County Administrative Court decides on release and parole. In order for the court to commit a person to forensic psychiatric care with special release examination, a forensic psychiatric examination must take place. The annual number of treatment orders in psychiatric care varies at between 300-400.

3. Danish Treatment Orders

In the Danish system, treatment orders appear with conditional imprisonment (see above) and as a form of prison enforcement.

In connection with conditional sentences, persons suffering from substance abuse (alcoholics and drug addicts) or a mental disturbance may be faced with a requirement of treatment for alcohol or drug abuse, or a condition of outpatient psychiatric treatment. The condition may also be a very specific order, for example, that a person convicted of sexual relations with children is not allowed to obtain employment at institutions or schools attended by children. The purpose of both supervision and special conditions is to prevent the offender from relapsing into crime. An action plan is prepared and reviewed in great detail with each client, who has to both accept and understand the necessity of the plan. Most often the clients accept these conditions as they see them as the price they have to pay to avoid deprivation of their liberty.

For those already sentenced to prison, there remains an option to suspend the sentence by undergoing treatment for substance abuse. Persons who are sentenced to prison for 60 days or less can apply for suspension of the serving of the sentence, if they are in obvious need of treatment for their abuse of alcohol. If they comply with requirements (usually one year of treatment and supervision) they can petition for a pardon. They can be pardoned against payment of a fine.

THE USE OF PROBATION AND SUPERVISION IN SCANDINAVIA IN 2005 (/100 000 pop)				
	FIN	SWE	DEN	NOR
PRISON	158	170	208	245
Probation		45		
Probation + Contract treatment		12		
Probation + Community service		11		
Treatment in social welfare		32	6	
All PROBATION ORDERS		100	6	

B. Contract Treatment (Sweden)

For offenders with alcohol and drug abuse problems, probation may be combined with a special treatment plan, so-called *contract care*. Contract care is an alternative to prison, where the penalty for the crime could be to up to two years' incarceration. Contract treatment is probation combined with treatment, normally for substance abuse, where there is a clear link between the crime and the abuse. One condition for a sentence of contract care is that abuse problems or other special circumstances which require care or treatment have been an important factor in the criminality.

The sentenced person signs a 'contract' with the court to complete a treatment programme instead of serving their sentence in prison. If the person misbehaves, the sentence can be transformed to a prison sentence. The treatment lasts between six months to two years. Part of the treatment takes place in an institution. Participation in the treatment is always voluntary. Before passing the sentence, the offender is asked whether he or she is willing to undergo the treatment.

The relation between other sanctions and contract treatment is arranged in two ways: Contract treatment can be used as a normal sub-condition to probation, or it may be used as the very reason for not imposing a prison sentence. In the latter case (a 'genuine' contract treatment), this sanction is used more clearly as an alternative to imprisonment. In this case the court also declares the length of the original prison sentence which would have been passed had the offender not been accepted to take part in the treatment programme.

If the client misbehaves, this is viewed as serious and the penalty can be converted to a prison sentence. Co-operation is required from the offender and the probation authority decides on its suitability in each case.

In Sweden some 1,300-1,400 contract treatment orders are given each year compared to 15,000 prison sentences and 3,000 community service orders imposed annually. The daily average number of offenders in contract treatment is around 300, with the daily average number of prisoners serving a sentence at around 6,500. In other words, contract-treatment reduces the daily prison population by around 5%.

C. Assessing Effectiveness

In assessing effectiveness one must distinguish the different elements in probation orders and related measures. Supervision and surveillance is one thing, support and treatment is another. Research data is available for both; however, the difference between these two has not always been acknowledged.

One major study from Scandinavia made an effort to measure the effects of supervisions, as compared to other sanctions (Bondeson 1977). The study was not based on comparison groups. Instead, all sentenced offenders were divided into nine risk groups with the help of 36 statistical prediction variables. After that recidivism rates were calculated in all nine groups according to the sanctions used for each. The study compared the effects of three sanctions in all nine risk groups: conditional imprisonment without supervision, supervision, and prison with supervision (in parole). The overall result was that recidivism rates seemed to increase in all risk groups as supervision increased and the sanctions became more intrusive.

During the 1990s several studies in the US examined the effects of the intensity of supervision by using comparison groups. The intensity of ordinary probation may have been increased with the help of urine tests, electronic control, and unannounced home visits. Supervision may also have been combined with other sanctions or interventions, such as community service or treatment programmes.

The most well known study (Petersilia & Turner 1993) used a randomized experiment and divided offenders into those under normal probation and those under intensive probation. The study examined 14 ISP programmes in nine US states. Recidivism was measured using both arrests and technical violations. After a one year follow-up, 37% of the ISP participants and 33% of the control group had been rearrested (the difference was statistically non-significant). In addition, technical violations in the ISP group was almost double of that in the control group (65% versus 38%). The overall conclusion was that intensive probation did not decrease recidivism. However, the intensified control increased the probability that technical violations would be detected. This result has been replicated in a number of studies during the 1990s (MacKenzie 2006 p. 311-317 lists 16 such studies). A meta-analysis from 2000 (Genderau 2000) indicates that intensive surveillance has a negative effect in increasing recidivism by 6%.

This finding is as consistent as it is surprising. One could have imagined that increasing surveillance would decrease re-offending. The explanation may be in the simple fact that if one wishes to curb crime by mere surveillance, then the surveillance has to be much more intensive. If normal probation means one or two meetings in a month, and intensive probation five to ten meetings in a month, this still leaves the offender plenty of free time to commit offences, once he or she so chooses. This puts the serious question whether crime prevention by mere surveillance could ever be a wise and defensible option.

This disappointing finding must be supplemented with one important reservation. Although the evidence seems to be quite clear on the point that increased surveillance had no impact on recidivism, there is some evidence that increased treatment of offenders in the ISP programmes may be related to significant reductions in re-arrests. Several studies suggest that re-arrests are reduced when offenders receive treatment services in addition to the increased surveillance and control of the ISP-programmes. Petersilia & Turner reported a 10-20% reduction in recidivism for those who were most active in programmes while they were in the community (MacKenzie 2006 p.318). This conclusion applies also to those programmes and measures directed especially to young offenders (Clausen 2006 p. 149).

RECIDIVISM RATES AFTER INTENSIVE PROBATION AND SURVEILLANCE	
Study	Results
Gordon & Glaser (1991), US No data on matching of the groups. Turner & Petersilia (1996), US	<i>Recidivism in two years</i> - Conditional sentence (12 %) - Supervision, no prison (30 %) - Supervision after prison (61 %) After controlling the risk factors, smaller differences but the same tendency.
Petersilia & Turner (1993), US Randomized experiment. 14 ISP programmes in 9 US states.	<i>Arrests</i> - Intensive probation (37 %) - Normal probation (33 %), non significant <i>Condition violations</i> - Intensive probation (65 %) - Normal probation (38 %), significant
Genderau <i>et al.</i> (2000), Canada	Meta-analysis (47 studies) - Effect-size + 0,06 (= 6 % more recidivism)

Drug-treatment forms a special branch in research literature. Despite numerous studies published in this field (see MacKenzie 2006, p. 241 ff), poor quality in research design prevents definite conclusions. In general, the evidence gives support to drug-treatment both in institutions and in the community. Ongoing international meta-analyses are supposedly going to shed more light on this issue.

D. Conclusion

As it seems, supervision and surveillance alone are unable to produce the desired re-offending results. Should we wish to achieve more in this respect, other elements should be included in the sanction structures. Treatment, and cognitive behavioural programmes, as well as help and support should be attached to sanctions along with supervision.

Taking into account the fact that majority of violent crime is alcohol-related and that drug and substance abuse is closely associated with juvenile crime and traditional property crimes, the treatment of substance abuse problems remains a high priority, both in the realm of community sanctions and in prison. A number of research findings seem to repeat themselves in this field:

- Institutional treatment, in order to be effective, *requires a functional aftercare component*. Very little can be achieved with programmes that start in prison but end once the person walks out.
- *Relapses are part of the program*. Getting hold of one's drug or substance abuse problem is a long-term, incremental process which always includes steps in both directions. A realistic starting point for any programme, therefore, is that relapses happen. This must be taken into account also in those criminal justice interventions which include drug or substance abuse treatment elements.

This still leaves us with the question of how to proceed with those offenders whose offences are too serious to be dealt by with mere supervision and/or for whom neither treatment would seem to be a functional alternative. For higher risk offenders and for offenders convicted for more serious offences, two additional forms of community sanctions are disposable, either as independent sanctions or in combinations with the alternatives already dealt by with: community service and electronic monitoring.

VII. COMMUNITY SERVICE

A. The Structure

Community service has a fairly clear basic content. It involves the performance of unpaid work, during leisure-time and within a given period, for the good of the community. The status and contents of community service may vary in several respects. Community service may be:

- Imposed as an independent sanction or as an adjunct to another sanction, or
- Replace only prison sentences or other penalties.

These combinations may also be found also among the Scandinavian countries. In Scandinavia Denmark was the first to start with this new alternative in 1982. Finland was a late starter in 1991, but in a short period of time, community service became more popular in Finland than anywhere else in Scandinavia.

In the shift of the 2000s the three other Scandinavian countries completed law reforms in order to increase the use of community service, with good results. Sweden created a combination of community service and suspended sentences, thus increasing the number of annual cases from 2000 to around 4000. Denmark changed its policy in 2000 by allowing community service to be used also for drunken driving (which was previously forbidden). In two years' time this increased the number of sentences from 1000 to 4000. Norway, in turn, tried to increase the credibility of community service by changing the title to community punishment, by including also other elements in the sentence, and by expanding the scope of application also to drunken driving. This resulted in an increase from around 500 cases to the present total of a little over 2,500 cases.

Community service in Scandinavia

	Denmark	Finland	Norway	Sweden
Start/ permanent	1982, 1992	1991, 1995	1984, 1991	1990, 1998
Independent or not	No. Condition for Conditional Imprisonment	Yes. Also part of over 1 year conditional Imprisonment	No. Part of "community punishment"	No. Part of suspended sentence or probation
Replacing only Imprisonment	No	Yes	No	Basically: yes
The length of prison sentence	Basically: up to 12 months	Up to 8 months	Up to 1 year In exceptional cases over 1 year	Basically: up to 12 months
The number of hours	30-240	20-200	30-420	20-240
Number of court cases 2005	3 864 68 (/100 000 pop)	3 480 66 (/100 000 pop)	2 632 57 (/100 000 pop)	3 647 40 (/100 000 pop)
Ratio CS/prison	0,33	0,42	0,23	0,23

Today all Scandinavian countries use community service on roughly the same scale. Denmark and Finland are in the lead with 66-68 cases/100,000 inhabitants, followed by Norway (57) and Sweden (40)

However, if measured by the ratio between imposed community service and prison sentences, the situation looks different. Now Finland has then highest application intensity (0,42 community service orders against one prison sentence), followed by Denmark (0,33) and Norway and Sweden (0,23 each).

The use of community service differs also in other respects among the Scandinavian countries. There is evidence that Finland has been more successful in replacing prison sentences with community service, while in the other Scandinavian countries community service has substituted also other, more lenient, options. This result is essentially related to specific legislative solutions, adopted in Finland.

B. Community Service in Finland

In Finland the main arguments while introducing community service were related to prison overcrowding and the lack of suitable 'intermediate' penalties between fines and imprisonment. In Finland, community service is imposed only instead of unconditional imprisonment. The duration of community service may vary between 20 and 200 hours. The prerequisites for sentencing the offender to community service are (a) that the convicted person consents to this, (b) that the sentence does not exceed eight months, and (c) that the offender is deemed capable of carrying out the community service order. Also (d) prior convictions may in some case prevent the use of this option. The offender's ability to carry out the work is evaluated on the basis of a specific *suitability report*. This report may be requested by any one of the parties, the prosecutor or the court. The suitability report is prepared by the Probation Service. If the conditions of the community service order are violated, the court normally imposes a new sentence of unconditional imprisonment.

1. Avoiding Net-widening: the Two-step Procedure

In order to ensure that community service will really be used in lieu of unconditional imprisonment, a *two-step procedure* was adopted: firstly, the court is supposed to make its sentencing decision by applying the normal principles and criteria of sentencing without considering the possibility of community service; secondly, *if* the result of this deliberation is unconditional imprisonment (and certain requirements are fulfilled), the court may commute the sentence to community service. In principle, community service may therefore be used only in cases where the accused would otherwise receive an unconditional sentence of imprisonment.

2. The Number of Hours of Community Service

The court should always determine the number of hours of community service to be served. The length of community service is at least twenty and at most 200 hours. In practice the length of service depends on the original sentence of imprisonment. One day of imprisonment corresponds to one hour of community service. Thus, two months of custodial sentence should be commuted into roughly 60 hours of community service.

3. Contents

Community service consists of regular, unpaid work carried out under supervision. The sentence is usually performed in segments of three or four hours, ordinarily on two days each week. The intention is that this service would be performed over a period that roughly conforms to the corresponding sentence of imprisonment without release on parole (see above).

Approximately a half of the service places were provided by the municipal sector, some 40% by non-profit organizations and 10% by parishes. The share of the State has been under 2%. Ten hours maximum can be served in an effort to address the offender's substance abuse problem, either in terms of a traffic safety course organized by the Traffic Safety Organization or at a treatment clinic.

The Probation Service approves a service plan for the performance of a community service order. The plan is prepared in co-operation with the organization with whom the place of work had been arranged. The offender should be allowed an opportunity to be heard in the drafting of the service plan.

4. Supervision and the Violation of the Conditions

The performance of a community service order is supervised quite closely. The supervision is specifically focused on ensuring proper performance of the work. Unlike in the other Nordic countries, community service does not contain any extra supervision aimed at controlling the offender's behaviour in general. The supervision is strictly confined to his or her working obligations.

Minor violations are dealt with by reprimands, more serious violations are reported to the public prosecutor, who may take the case to court. If the court finds that the conditions of the community service

order have been seriously violated, it should convert the remaining portion of the community service order into unconditional imprisonment. The hours that have already been worked should be credited in full to the offender. In this situation, the length of the imprisonment should be calculated by applying the general conversion scale.

5. The Number of Community Service Orders

The legislators’ aim was that community service should be used only in cases where the accused would otherwise have received an unconditional sentence of imprisonment. Along with the increase in the number of community service orders, the number of unconditional sentences of imprisonment decreased between 1992 to 1997/98. In 1998, the average daily number of offenders in community service was about 1200 and the corresponding prison rate was 2800. It is therefore reasonable to argue that, within a short period of time, community service has proven to be an important alternative to imprisonment.

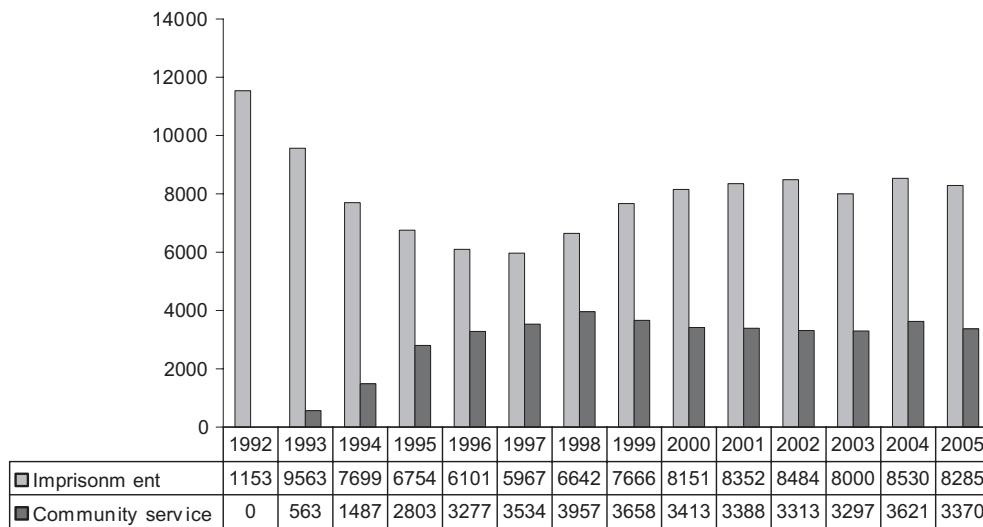


Figure: Imprisonment and community service in Finland 1992-2005 (court statistics)

Between 1998 and 2000 the number of community service orders was slightly falling, while the number of prison sentences was increasing. This reflects partly the fact that for one section of repeated offenders this option has now been ‘saturated’. If offending continues, the courts will, at some point, move from community service to unconditional prison sentence. After 2001, the situation stabilized.

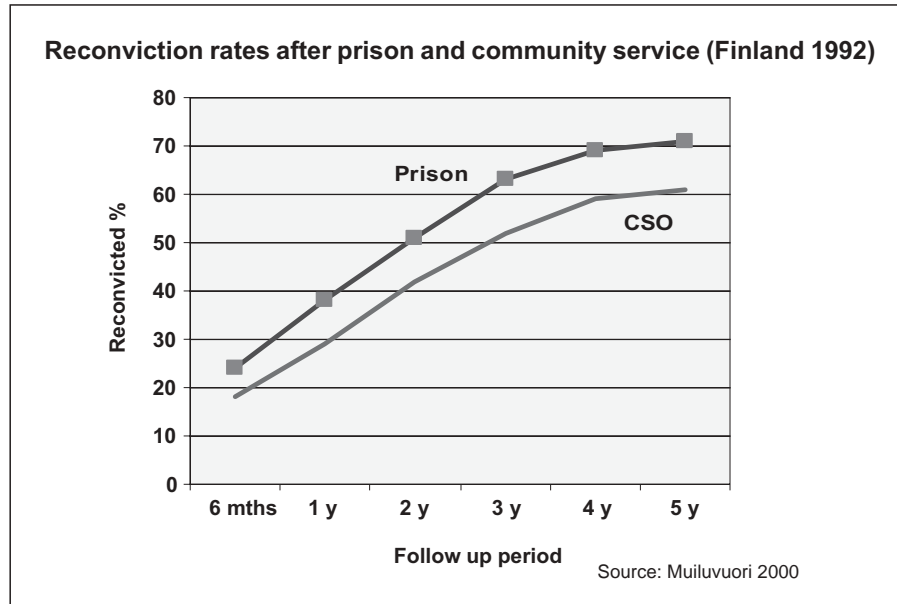
Some 3,500 community service orders are imposed annually by the courts. This represents around 35–40% of the sentences of imprisonment which could have been converted (sentences of imprisonment of at most eight months). Over one half of the community service orders are imposed for drunken driving. Annually, some 250,000–300,000 hours of community service are performed. This corresponds to some 400–500 prisoners (10–15%) of the daily prison population (assuming that in the absence of community service a corresponding unconditional imprisonment would indeed have been imposed). A typical community service order is for 70 to 90 hours. The proportion of interrupted orders has varied by around 15% (of those sentences started each year).

C. Assessing Effectiveness

A Finnish study used quasi-experimental design and compared two matched groups of offenders; one sentenced to community service in that part of the country where community service was in use on an experimental basis, and the other group of offenders with a similar background and convicted for similar offences (mainly drunken driving, which has been the major offence in Finland for which community service has been imposed). The follow-up period was extraordinarily long (five years). Only new sentences leading to conditional or unconditional imprisonment or community service were counted as recidivism.

The study revealed a constant pattern showing that the community service group had fewer reconvictions throughout the follow-up period. The differences in reconviction rates varied depending where

the counting began. If begun from the court's decision the difference after five years was 60% for community service and 66% for the prison group. If begun from the completion of the sentence, the figures were 62% and 72%. And if counting of the follow-up period in the community service group starts from the court's decision and in the prison group from release on parole (which would be sensible), the difference in reconvictions would be 60% (community service) and 72% (prison, see Muiluvuori, 2000).



In a methodologically more advanced study Killias et al, 2000, divided offenders randomly into a community service group and a control group (prison). Recidivism was studied using four indicators: (1) whether offenders were convicted; (2) the number of convictions; (3) whether offenders were arrested; and the (4) number of arrests. In addition the authors compared how much the offenders had advanced, and how many arrests they had before and after the sentence. By all measures the community service group survived better. However, the small size of the sample kept the statistical significance rates low.

RECIDIVISM RATES AFTER INTENSIVE PROBATION AND SURVEILLANCE	
Study	Results
Muiluvuori (2000), Finland Matched groups by age, sex and prior convictions	<i>Recidivism: New prison sentence in five years from the court decision</i> - Community Service (60%) - Prison (66%), non-significant <i>Recidivism: New prison sentence in five years from the completion of the sentence</i> - Community Service (62%) - Prison (72%), significant
Killias <i>et al.</i> (2000), Switzerland Randomized experiment	<i>Recidivism: Convicted in two years</i> - Community Service (21,4%) - Prison (25,6%), non-significant <i>Recidivism: Number on convictions in two years</i> - Community Service (0,39) - Prison (,64), non-significant <i>Recidivism: Arrested in two years</i> - Community Service (33,3 %) - Prison (38,5%), non-significant <i>Recidivism: Number of arrests in two years</i> - Community Service (0,76, but before 1,66) - Prison (2,18, before 1,69), non-significant - But see marked change in arrest rates before and after (above)
Andersson & Alexandersson (1994), Sweden	No significant difference in recidivism rates in regression analyses
Bonta <i>et al.</i> (2002), Canada	Meta-analyses (37 studies) - Effect-size - 0,03 (= 3 % less recidivism)

D. Conclusion

The available evidence suggests that community service is (at least) a promising alternative, in terms of reducing recidivism (using the Maryland University methodology scoring, see for example MacKenzie, 2006). Stronger conclusions are prevented by small research samples which keep statistical significance levels at modest rates.

However, in connection with community service, also other ‘non-reconviction benefits’ (see Introduction) need to be taken into account. These other beneficial features include positive contact with work life (and the resulting enhancement of offender’s economical situation), better self-control over substance abuse and better preservation of family ties. A problem still deserving attention is how to deal with offenders whose substance abuse prevents the use of community service. One answer is provided in the form of Swedish contract treatment.

VIII. ELECTRONIC MONITORING

A. Introduction

1. Different Forms of Electronic Monitoring

Electronic monitoring (EM) may appear in three basic forms: (a) EM as imprisonment diversion applies EM as a front-door option instead of prison; (b) EM as intensive probation aims to enhance the content of other community sanctions; and (c) EM-release is a back-door replacement of imprisonment where EM is used as an extra condition for early release. Most Scandinavian countries use EM either as a front-door or back-door alternative for imprisonment.

In EM the offender is required to stay at home at night-time and also major parts of free time. In the Scandinavian versions offenders are always required either to work or to take part in other forms of activities, programmes or treatment. The concept of passive ‘house arrest’ is deliberately rejected. Conditions further include abstinence from alcohol and substance abuse. The offenders are always subjected to random surveillance, both in the form of face-to-face meeting and/or electronic monitoring.

For offenders in electronic monitoring a delayed schedule is always drawn, indicating where the offenders should stay and at what time. This schedule is electronically monitored, usually (but not always) with the help of a specific tag, attached to the person under supervision. The tag sends a continuous signal to a central computer in the probation service, thus causing an alarm if the offender leaves the designated area.

Today EM is used in all Scandinavian countries. The longest experiences originate from Sweden, where EM has been in use since the mid-1990s, first as a front-door alternative to short prison sentences, and later (since 2001) as a back-door option for an earlier release in longer sentences. Denmark started a back-door early release EM programme in 2005 and Finland did the same in 2006. Denmark, Finland and Norway are preparing legislation to introduce EM as a major front-door alternative. In addition, experiences from EM have been obtained from most Scandinavian countries (especially Finland) using EM as a part of enforcement of prison sentences in liberty.

Electronic monitoring is clearly an expanding practice. It also seems to enjoy growing popularity among politicians in Europe – presumably due to its high profile as a means to protect the public. At the moment, the Commission of the European Union is planning a recommendation for all Member States to include electronic monitoring as a part of their criminal justice system. It offers both prospects and risks. In this respect, experiences from Scandinavia are worth observing while expanding the scope of this new technique as a penal alternative.

As a front door alternative, electronic monitoring is classified in sentencing statistics as a prison sentence which is enforced outside prison.

2. EM in Scandinavia: General Structure

Both front-door and back-door alternatives follow a more or less similar general structure. In all cases, offenders who are *basically* eligible for EM must nevertheless *apply* for this option. Whether the candidates will be approved depends on a number of conditions. Content differs slightly in the front and the back-door versions. Still, common features include:

1. In all cases, the offender must have *permanent housing (address)*. This includes the risk of excluding the worst marginalized offenders from the scope of application. On the other hand, the probation and social welfare services are obliged to find a dwelling for those in need of such. To what extent this is accomplished may need a separate examination.
2. Secondly, in case the offender is living with someone (wife, husband etc), *consent* of that other person is required. No-one can be obliged to stay indoors with another person without asking them too!
3. Thirdly, the offender must have *an occupation or work*. This refers to the fact that the offender has to have something to do. EM is always associated with some sort of activities (in order to avoid idle 'house arrest'). For those offenders lacking regular work or occupation, the probation service is obliged to arrange corresponding activities, either in the form of community-service type of work or other programmes.
4. Fourthly, the offender has to agree to *abstain from all alcohol and substance abuse*. One major element in the supervision in EM is checking that this condition is being observed. This is ensured by using both breath analysis and urine tests.

The detailed content of the enforcement, additional formal requirements, and consequences of the breaches of these conditions vary depending the type of EM (front-door or back-door alternative).

B. Electronic Monitoring as a Front-door Alternative to Imprisonment

1. Sweden

(i) *The structure*

The front-door version of EM started in Sweden in the mid 1990s. First EM replaced short prison sentences of up to three months. In 2001, the scope of the application was widened from three to six months. The number of days to be served under monitoring is the same as would have been served in prison.

In EM the person is to remain at home except for the time allowed by the probation service for employment, training, health-care, participation in probation programmes, shopping for necessities, and other similar tasks. A detailed schedule is drawn up by the probation service, and monitoring is carried out principally by means of an electronic tagging device. Checks are also made in the form of unannounced visits to the person's home. In addition, the convicted person must visit the probation service at least once a week and take part in the programmes they provide.¹¹

If the person leaves or arrives at home at times that do not correspond to the schedule, an alarm is triggered at the probation service office, and the individual concerned will immediately be contacted in order to establish the reason for the discrepancy. Checks are also made in the form of unannounced visits to the person's home, in practice two to three times a week (while the manuals require more frequent contacts). However, the offenders are in a regular contact with the probation service due to the programmes. Home visits include as a rule breath tests to determine whether the person is observing the ban on alcohol consumption. Drug use is checked for by means of urine and/or blood tests at the beginning of the implementation period and subsequently when necessary. Supervision at the person's place of work is performed by a contact person employed by the probation service. There are no electronic checks to determine when the person is present at his or her place of work.

Abuses of EM are met with a swift and palpable response, which usually entails removal from the programme and a transferral to a prison for the remainder of the sentence.

(ii) Practical experience

In 2005 EM was offered to 61% (6,547) of offenders receiving a prison sentence of a maximum of six months. Of these 68% (4,455) applied. Of these 81% (3,631) were approved. The most common reason for not granting EM was that the convict did not co-operate in the investigation carried out by the probation service. Of those approved, 84% (3,061) started the sentence. In all, this means that EM replaced 29% of all prison sentences of a maximum of six months.

Of those sent to EM, 35% have been previously sentenced to imprisonment.

Front-door EM in Sweden 1.4. 2005-31.3. 2006

• Sentences max 6 months	10694
• EM offered	6547
• EM applied	4455
• EM approved	3631
• EM started	3061 = 30 %
• EM interrupted	8-9 %
• EM reconvicted in 1 year	26 %

The failure rate is around 8-9 %. Practically all interruptions relate either to alcohol or drugs. About 6% of the convicted offenders were forced to quit EM, usually as a result of violations of the ban on drugs or alcohol, or because they had otherwise broken the rules.

The recidivism rate among EM offenders is extraordinarily low, around 4% (new conviction within one year, KOS). This, however, reflects to a large extent also the fact that only small risk offenders are accepted. No updated study on recidivism with a control group has been carried out. An earlier study revealed a recidivism rate in EM group was 26% (any crime within three years) compared with 28% of a control group with prisoners (Brå 1999). A cautious interpretation might be that EM does not increase re-offending. Certain results indicate, in addition, that EM may have a somewhat restraining effect on the tendency to relapse into drunken driving.

Half of the EM sentences are imposed on drunken driving. Other major categories are violent crime 15% as well as property and drug offences (7-8 % both).

¹¹ For more information: Intensiv-övervakning med elektronisk kontroll, see Brå-reports 1999:4, 2005:8. and 2006:2.

EM in Sweden 2005 (court statistics)	
Drunken Driving	1504
Violence	429
Property	195
Traffic	158
Drugs	193
Sexual offenses	56
Other	351
All	2886

Interview studies indicate that both convicts and their families were positively disposed towards EM. A majority (two thirds) of victims have a positive view of EM, for example on the grounds that EM allows the offender to uphold his or her contact to the outside world. A minority of victims expressed the view that the sentence was too lenient. On the other hand this view was not only related to the EM, these victims would have preferred a longer prison term for the offenders.

As a corrective measure, EM is considerably cheaper than prison. The cost to the correction authorities for EM is lower than the cost of keeping convicts institutionalized (from SEK500 to SEK850 (Swedish Krona) less per day). Furthermore, EM yields substantial economic gains for society as well as for the individual, since the convicted person can usually continue working at his ordinary place of work, thereby avoiding the loss of income.

Those who served their sentences under EM had a somewhat more favourable social background and current social situation, even with respect to criminality, than the group who of their own volition or on the basis of the probation service's assessment did not serve their sentences under EM.

2. Other Countries

Denmark started to use EM as front-door option in April 2005. The original idea was to cover 150 prison places with this option. As the first experience indicated slightly smaller participation, the Danish government loosened the conditions somewhat. Now all prisoners below the age of 25 (irrespective the type of crime) and with a sentence of not more than three months may apply to serve the sentence under EM. Those belonging to this group are sent a written offer for participating in the EM. For those who apply to EM, a personal inquiry report is prepared. To be approved, the offender must fulfil the general conditions stated above. The enforcement plan, where the offender agrees to all conditions, is prepared with the probation service. Breaches of these conditions lead the sentence to be commuted back to imprisonment. The technique in use is basically the same as that in Sweden.

Norway is planning to pass a proposal in spring 2007 on EM. The sanction would substitute prison sentences of under four months. In Finland, a working group is drafting a proposal on the subject to be presented for the Ministry of Justice in 2007.

C. EM Release as a Back-door Alternative

1. Sweden

EM is used as a back-door alternative in Sweden, Denmark and Finland. Sweden was also the first to apply the back-door model. Experiments with EM began in Sweden in 2001. In 2005 this option was made permanent. At the same also the scope of application was widened. Today, all offenders serving a sentence of at least 18 months may apply for the possibility to serve the last six months under EM. This means that the maximum benefit of EM for a prisoner in Sweden consists of the following elements:

Prison term	2 years
Early release after serving 2/3	18 months
EM option	After 18 months, a max 6 months' EM
Earliest release	Serving 1 year, EM 6 months, normal parole 6 months

The main objective of back-door EM is to reduce levels of re-offending by providing offenders with an opportunity to spend time in the community with more support and control than they would receive following their conditional discharge from prison.

Statistics shows that over the course of 2005-2006, 1,600 prisoners were released from prison serving a sentence of a minimum of 18 months. Of these, 5,000 applied, which is comprises 32% of those released serving a prison term of at least 18 months. Of these, 80% (400) were granted. Of these 77% (311) started EM, which corresponds to 20% of the entire group of long-term prison inmates.

Supervision has been fairly intensive. In addition to the control by EM, the clients were also monitored by means of visits at home, at the workplace and by means of telephone controls. Usually checks were conducted two to four times per week. In the course of these control visits, breath tests were conducted routinely, and urine samples were taken on occasion. Only 6% of the clients were in breach of their release conditions during the period of electronic monitoring. Again, the main reason was use of alcohol or other drugs.

EM-release in Sweden 1.4. 2005-31.3. 2006

All prisoners released serving over 18 mths	1579
• EM applied	502
• EM approved	402
• EM started	311
	= 20 %
EM interrupted	8-9 %
Reconvicted within 1 year	
• Whole EM-goup	11 % (EM) 15 % (Control) n.s.
• Age *.*	6 % (EM) 16 % (Control) sig.

The effects on recidivism were measured with the help of a control group of similar size (260 prisoners). The groups have been matched in terms of criminal record and the estimated risk for re-offending. Five different measures of recidivism have been employed: any subsequent conviction, any subsequent prison sentence, the number of subsequent convictions, the number of offences included in subsequent convictions, and the time-lapse between release and re-conviction. The follow-up period was one year.

11% of EM-released were re-convicted during the follow-up period. The corresponding figure for the control group was 15%. Dividing the samples in sub-groups, the EM group re-offended somewhat later than the control group. Due to the low number of cases the difference is not statistically significant. However, when the samples were split in two sub-groups on the basis of age, more marked differences emerged. Older members of the EM-group had a recidivism rate of 6% compared to 16% in the control group. This difference was also statistically significant.

The EM-release group had more favourable backgrounds than other long term inmates. Most of those in EM-release were first offenders. Virtually none had abused alcohol or other drugs during the six months immediately preceding the application. They were better educated and were also married or cohabiting to a greater extent. Most had a place of their own to live or lived in a house or flat belonging to a family member. They also had a forward-looking form of employment, and could support themselves financially as a result of their own work or studies or a labour market initiative to a greater extent than the others. This all means that EM has targeted the 'safe population' in terms of success. This is obviously politically easier. However, this may also lead to a situation where support is offered to those least in need, while the more difficult prisoner groups are left on their own (a dilemma familiar to those working in social services).

The total impact of EM-release on prisoner rates can be estimated on the basis of the present figures. The average time for released offenders in EM has been little less than four months. With 300 persons in EM during one year this means about 100 prisoners in EM-release on any given day. Thus EM-release reduces the daily prison population by about 100 prisoners.

2. EM-Release with Mobile-Control in Finland

The New Finnish Prison law in 2006 introduced a new form of early release programme "Probationary Liberty under Supervision." This new early-release programme is designed especially for long term prisoners, who need more support and more intensive programmes. Probationary liberty may be available at the most six months prior to normal conditional release. In Finland first offenders are released routinely after half of their sentence and the other after two thirds.

The preconditions for probationary liberty are defined in detail in law. They include: 1) probationary liberty promotes the pre-drafted individual plan for the term of sentence; 2) all information of the prisoner indicates that the conditions of the probationary liberty will be met; 3) the prisoner abstains from alcohol and substance use and agrees to alcohol and substance abuse control.

Supervision is taken care by using electronic monitoring. However, the technique developed in Finland differs from that in most countries. Instead of bracelets attached to the offender's ankle, each offender under supervision is given a mobile phone with a GPS detection system. The offender is required to make regular calls, which also enable the location of the offender's whereabouts. Prison administration, in turn, makes random calls with similar results. The method is less stigmatizing and considerably cheaper than the original EM techniques.

IX. CONCLUDING REMARKS

European sanction policies are characterized by two diverting trends: an increasing use of prison and the adaptation of new community sanctions. The first one reflects the growing punitive and populist trends in national crime policies; the latter seeks to counteract this development by offering more constructive, rational and humane substitutes to incarceration. The Scandinavian countries have been fairly successful in their efforts to regulate the number of their prisoner rates.

Combining the lessons from different countries, it may be possible to draft a list of some pre-conditions for the successful introduction of community sanctions as alternatives to imprisonment.

A. Community Sanctions as Alternatives to Imprisonment?

The key questions are: (1) how to ensure that these sanctions are applied in the first place; (2) how to ensure that they come to replace imprisonment (instead of replacing other non-custodial sanctions); and (3) how to uphold and maintain the general credibility of these sanctions. The following list summarizes some of the main points, developed elsewhere in more detail.

1. *Extra barriers should be constructed in order to ensure that the new alternatives are really used instead of imprisonment.* In most countries, community service seems to substitute prison sentences only in roughly 50% to 60% of cases (Kalmthouth 2000 p.127). This rate can be improved by demanding directly – as is the case in Finland – that only prison sentences may be commuted to community service (leading to a 'replacement rate' of over 90% in Finland). Another way would be to define new alternatives as modes of enforcement of prison sentences, as has been done in Sweden with electronic monitoring. The expanding practices of EM as a condition for earlier release in Scandinavia provides another version of the same arrangement.

2. *Effective use of new alternatives and coherent sentencing practices require clear (statutory) implementation criteria.* The courts should be given clear guidance as to when and for whom new sanctions are to be used. They should also be provided with all the necessary material, including social inquiry reports that they need, in order to be able seriously to consider the use of these sanctions. The role and position of new alternatives in the existing penal system (how they relate to other sanctions) should also be clarified.

3. *The overall success of any community sanction requires resources and proper infrastructure.* Community based sanctions can only be applied within a community orientated infrastructure geared to the specific requirements of these sanctions. Their implementation is dependent on the existence of an organization like the probation service. Often co-operation with private, semi-public and public organizations or institutions is also required. The State and the local communities should provide the necessary resources and financial support.

4. *Supervision, support and swift reactions are needed in order to keep the failure rates down and to maintain the general credibility of new sanctions.* There is a clear relationship between the failure rate and the quality and intensity of supervision: the less control and supervision, the higher also the dropout rate. There should also be a clear and consistent practice when the conditions of the sentence are violated. Varying and sloppy practices create mistrust and resistance on the part of public prosecutors, the judiciary and the public.

5. New alternatives usually require the offender's consent and co-operation. Treating the offender not as a passive object of compulsory measures, but as an autonomous person, capable of reasoned choices, is a value by itself, and as such, it should be encouraged whenever possible. In addition, experience indicates, that explicit and well-informed consent is a highly motivating factor for the offender. Through his or her consent, the offender has also become committed to the required performance in a manner that gives hope for good success rates. *Arrangements should be made in order to enhance the motivation of the offender for co-operation and mutual trust.*

6. *Issues of equality and justice must not be neglected.* Community sanctions may often lead to discrimination, since they are easily used for socially privileged groups of offenders. Accusations of social discrimination are weighty counter-arguments. Measures must, therefore, be taken in order to shield the system from these errors. Clear and precise implementation rules and procedures are one important means to this end. Another way is to tailor the system of community sanctions to meet the demands of different offender groups with their different problems. Sweden, for example, has a specific sanction –'contract treatment'– for those who suffer from drug or alcoholic addiction as a substitute for short- term prison sentences. Finland plans to start a similar experiment where emphasis will be placed on using this sanction for those offenders who are excluded from community service due to their addiction problems.

7. *The idea has to be sold over and over again.* If it happens that new alternatives prove to be a success, there are no guarantees that this state of affairs will continue by itself. Prosecutors and judges may lose their confidence, the enforcement agencies may lose their motivation and the general public may withdraw its support. Maintaining the general credibility of community sanctions and demonstrating their appropriateness is an ongoing process which does not end with the adoption of the requisite legislation and the arrangement of an initial training phase.

The key groups responsible for the implementation of the sanctions must be given constant training and general information of the general benefits of community sanctions and the drawbacks of the wide use of custodial sanctions. Taking care of community relations is also important: The community should be informed of the benefits and crime control potential of community sanctions. Also the value of volunteer work needs clear recognition. Finally, the practices must be subordinated to impartial scientific evaluation in order to obtain necessary information for further development.

8. *Be aware of net-widening: avoid excessive and cumulative community sanctions and too inflexible back-up sanctions.* The increasing number of community sanctions testifies to their political attractiveness. Unfortunately, political desire to show both 'toughness' and 'progressive effectiveness' has led to excessive combinations where different elements have been added up. The results may be overly demanding and excessively severe sentences with high failure rates. The desire to add community sanctions as 'extra ingredients' to custodial sanctions (custody plus) is one example of this. Also, too-demanding community sanctions (too many hours of community service, unrealistic behavioural restrictions, etc) with too inflexible backup-sanctioning may easily backfire and lead to increased use of imprisonment.

B. Punishment and Public Opinion?

We are left with one final obstacle, often referred to in political discussions and public debates: The punitive demands of the public and the politicians' need to listen to 'the voice of the people'.

As it seems, policy choices are being determined more and more by the expressed or assumed demands of the public. This phenomenon is most visible in those countries with the most dramatic increase in prisoner rates – the UK, New Zealand and the US – but similar signs are to be seen also in other countries.

Due to its increasing importance, public opinion needs to be analysed in much more detail. Such an examination would reveal that the concept of 'punitive public opinion' turns out to be much more problematic and nuanced than usually assumed. This is largely due to poor research design of regular public opinion polls. The available space allows only a few comments (see in more detail my third lecture in UNAFEI Resource Material Series No. 61 (September 2003), "Enhancing the Community Alternatives – Getting the Measures Accepted and Implemented").

1. The first fault in opinion polls is oversimplification: simple questions produce punitive responses. The ways in which attitudes are measured tend to exaggerate popular appetite for punitive measures. Questions are too vague and too general. As a consequence the respondents fill the gaps of information with their own imagination which, in turn, is coloured by the information given in the media.

For example, the questions concerning proper sentencing levels are answered specifically with persistent or violent criminals in mind, while the clear majority of offenders who appear before the courts, are poorly educated, unemployed young men charged with property offences. Answers about penalties for drunk drivers are given with 'killer drivers in mind,' while a normal drunk driver (in Scandinavia) is someone who had too many drinks the night before and got caught in an early morning roadside traffic control on his or her way to work. If the questions are rephrased to correspond more accurately to the real life situations, the strength of the punishment decreases.

Questions should be *more specific* and they should avoid value-laden terms. Asking "are courts tough enough on persistent criminals?" is guaranteed to elicit disagreement from the vast majority of the population. Including more information and more details in the question, produces much more lenient responses.

2. The second problem relates to the *factual knowledge behind the views* expressed in the polls. People, in general, have poor knowledge on issues related to crime and punishment. More precisely, people underestimate the factual severity of sanctions, overestimate the effectiveness of criminal sanctions and have overly pessimistic view of the development of crime. Empirical research, further, shows that those who know less of the facts of crime and crime control also have the highest fears and most punitive demands (*Hough & Roberts 1998*).

In other words:

- people, in general, think that crime is rapidly rising, when it is not;
- offenders are receiving much more lenient sentences than they actually do; and
- tougher sentences are an effective means of preventing crime, which they are not.

This leaves us with the difficult question, how should we react to public demands, which, on all probability are based on mistaken facts and assumptions. After all, in these cases we may well conclude that if people would have had correct information of the facts *then* they would also have shown different views on the appropriate penalties.

3. The third problem deals with the *alternatives presented for the respondents in these polls*. Opinion polls ask usually only people's opinions on punishments, as if punishments were the only alternative society has on its disposal. Again, there is evidence that once people are provided with also other measures, the popularity of punishment quickly starts to decline.

If one is worried about juvenile crime and the only alternative offered is punishment, it should be no wonder if people in general need more to be 'done' (in this case, more punishments to be delivered). But if

other alternatives are offered, such as are giving more support for parents to raise their children, and resources for schools to improve teaching, as contrasted with the building of more (expensive) prisons, most sensible people would have no difficulties in making other kinds of choices.

4. Putting this all together: the way public appetite for punishment is presented portrays a far too one-sided and much too punitive picture of people's true views and feelings. Carefully designed studies show that public opinion is much *more complex and nuanced* than is generally assumed. Many people have sophisticated views about punishment; many are ambivalent about the appropriate response to offending. Whilst the majority think that the courts are generally too soft, majorities also tend to recognize that prison is expensive and damaging (Hough & Roberts 2001).

One interesting finding relates close to the idea of community sanctions. People are ready to forgive even serious crimes, if the offender is willing to change. There is an element of 'forgiveness and redemption', an idea that people must be given a second chance, if they are willing to make a honest effort. And this may be much closer to our own experiences of how people really think, compared to affirmative answers given to simple question such as, should there be more punishment -and more pain- in this world.

METHODS OF DIVERSION USED BY THE PROSECUTION SERVICES IN THE NETHERLANDS AND OTHER WESTERN EUROPEAN COUNTRIES

*Dr. Peter J.P. Tak**



I. INTRODUCTION

One remarkable feature of present day criminal law enforcement in the Netherlands is that only a small percentage of all the crimes recorded by the police are actually tried by a criminal court. Although the number of registered crimes increased more than fivefold between 1970 and 2005, the number of cases tried in court merely doubled.

One important reason for the discrepancy between the number of registered crimes and crimes tried by the courts is that public expenditure for the law enforcement agencies at large has not kept pace with the rising crime rate. Consequently, the police have been increasingly forced, because of resource considerations, to fix priorities in detecting and investigating cases. This is clearly illustrated by the sharp decline in cases which are solved. Between 1970 and 2005, the percentage of all registered crimes which were cleared up fell dramatically from 41% to 19%.

A second reason why relatively few cases are tried by criminal courts is that an increasing number of cases are settled out of court by the prosecution service. While this movement originally was driven by efforts to socialize, humanize and rationalize the administration of criminal justice, the emphasis has increasingly shifted towards the need to reduce the pressure on the criminal law administration. One consequence has been that the prosecution service has been gradually allocated adjudicatory powers, which were formerly the exclusive domain of the judiciary.

The prosecution service plays a pivotal role in the administration of criminal justice. That role derives from the prosecution service's power over the police, its prosecution monopoly and the expediency principle underlying its decisions on (non-)prosecution.

When utilizing these powers the prosecution service exercises discretion. The discretionary prosecutorial power has been considerably expanded over the past twenty years in the Netherlands, both in law and in practice.

The police do not make an official report of every established offence, but may confine themselves to dismissal with a warning, or to the issuing of a formal caution. They, too, have discretionary powers. This practice is not based on an explicit provision in the law. On the contrary, the law contains the principle that the making of an official report by the police is obligatory. The discretionary powers exercised by the police are derived from the discretionary powers of the public prosecutor not to prosecute.

The department of public prosecutors can issue general and special directives on the detection and investigation of the entire range of offences. Obviously, it is impossible to detect and investigate all crimes. Thus, priorities have to be established. Investigative activities must be concentrated on certain types of crime, while police activities in respect of other types of crime will have a low priority.

The detection and investigation policy of the police and the prosecution policy of the public prosecutor are complementary. In respect of the investigation of criminal offences, all investigating police officers are subject to the prosecution service. Formally, the public prosecutor is the senior investigator (Sects. 148 CCP and 13 Police Act). In practice, however, the police deal with most cases without prior consultation with the public prosecutor, except in more important criminal cases, where they may give detailed instructions.

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Otherwise, consultation takes place at a more abstract level, in order to determine the policy for the investigation of certain types of crime and for the use of special investigation methods (undercover agents, infiltrators etc.). This is due to the rather restricted strength of the prosecution service as well as to the recognition that with regard to investigative techniques and tactics the police possess more expertise than the prosecution service.

II. THE FILTER FUNCTION OF THE PROSECUTION SERVICE

The present report deals with the 'filter function' of the prosecution service. It is concerned with the extent of the service's discretionary powers to divert a case out of the formal flow of criminal justice.

The prosecution service generally receives its cases from the police. Many offences, primarily petty cases, do not come to the attention of the police and in fact remain outside the criminal justice system entirely, to be absorbed by society.

This is also the case when the prosecution service decides to waive a case and not to proceed further with it. Thus, although such acts deviate from the norms of acceptable social behaviour, and go beyond the boundaries of tolerance set by society for acts and actions, society is nevertheless able to deal with such acts without formal legal procedure. Society is capable of absorbing some types of crime without harm.

The offence can also be dealt with outside formal court procedures. For example, the offence can be diverted to a settlement or reconciliation between the victim and the offender, without the further involvement of the criminal justice system.

Other such methods include the use of a caution, an oral or a written admonition, a transaction, a simplified procedure, a referral to legal bodies other than the criminal courts, and various other forms of diversion. These methods aim at diverting the suspect out of the criminal justice system at the earliest possible stage. Once such an alternative method has been applied in a case, prosecution can no longer take place.

The extent to which the prosecution service diverts cases away from the criminal justice system primarily depends on the legal basis for the prosecutorial power.

Two basic principles provide the basis for prosecutorial policies: the legality principle, and the opportunity principle (the expediency principle).

The primary premise of the legality principle is that prosecution must take place in all cases in which sufficient evidence exists of the guilt of a suspect, and in which no legal hindrances prohibit prosecution.

The principle of opportunity, on the other hand, does not demand compulsory prosecution. Instead, it allows the prosecution service discretion over the prosecutorial decision, even when proof exists as to the occurrence of the criminal offence and the identity of the offender, and when there is no legal hindrance bar proceeding with the matter.

In the Netherlands, the expediency principle has only recently (1926) been expressed in the Code of Criminal Procedure.

Section 167 subs. 2 of the Dutch Code of Criminal Procedure reads: "the public prosecutor shall decide to prosecute when prosecution seems to be necessary on the basis of the result of the investigations. Proceedings can be dropped on grounds of public interest".

In the Netherlands the alternatives to prosecution are diverse but two major methods of diversion are used by the prosecution service: non-prosecution and transaction, which will be discussed.

A. Non-Prosecution

The prosecution service may decide not to prosecute in a case where a prosecution would probably not lead to a conviction, due to lack of evidence or for technical considerations (technical or procedural waiver).

The prosecution may also decide not to prosecute under the expediency principle. The expediency principle laid down in Section 167 CCP authorizes the prosecution service to waive (further) prosecution “for reasons of public interest”.

In appropriate cases, the prosecutor can decide to suspend prosecution conditionally. The suspended non-prosecution has no statutory footing, and is therefore theoretically dubious, but it is generally accepted that the prosecution service is allowed to suspend a prosecution. Explicit general or special conditions for a suspended prosecution do not exist, but in practice the prosecutor imposes conditions similar to the conditions attached to a suspended sentence.

To harmonize the utilization of this discretionary power the top of the prosecution service, the Board of Prosecutors-General, issued national prosecution guidelines. Public prosecutors were directed to follow these guidelines except when special circumstances in an individual case were spelled out.

Under these guidelines, a public prosecutor could waive prosecution for reasons of public interest if, for example:

- a response other than penal measures or sanctions is preferable, or would be more effective (e.g. disciplinary, administrative or civil measures);
- prosecution would be disproportionate, unjust or ineffective in relation to the nature of the offence (e.g. if the offence caused no harm and it was inexpedient to inflict punishment);
- prosecution would be disproportionate, unjust or ineffective for reasons related to the offender (e.g. his age or health, rehabilitation prospects, first offender);
- prosecution would be contrary to the interests of the State (e.g. for reasons of security, peace and order, or if new applicable legislation has been introduced);
- prosecution would be contrary to the interests of the victim (e.g. compensation has already been paid).

The grounds for non-prosecution due to technicalities may be:

- wrongly registered as suspect by the police;
- insufficient legal evidence for a prosecution;
- inadmissibility of a prosecution;
- the court does not have legal competence over the case;
- the act does not constitute a criminal offence; and
- the offender is not criminally liable due to a justification or excuse defence.

Public prosecutors are not obliged to motivate their decisions not to prosecute due to technicalities or due to policy considerations. They are, however, obliged to categorize their decisions under one of the reasons or grounds for non-prosecution previously mentioned. This categorization is no guarantee of a uniform application of the reasons for non-prosecution. However, it provides information on the prosecution policy pursued in each of the nineteen prosecutorial jurisdictions and provides insight into the difference in these prosecution policies. It is one of the means to harmonize these prosecution policies.

In 2000, the proportion of unconditional waivers on policy considerations was relatively high. Approximately 14% of all crimes cleared were not further prosecuted for policy reasons. The rationale was that prosecution should not be automatic, but should serve a concrete social objective. Such a high proportion of waivers on policy grounds was seriously criticized. The prosecution service was instructed to reduce the number of unconditional waivers by making more frequent use of conditional waivers, reprimands or transactions.

Today the percentage of unconditional policy waivers has dropped to around 3%.

The decrease in the percentage of unconditional waivers did not lead to an increase in the number of cases tried by a criminal court. This is because an increasing number of cases were either waived conditionally or settled out of court with a transaction.

B. Transaction

Transaction can be considered a form of diversion in which the offender voluntarily pays a sum of money to the Treasury, or fulfils one or more (financial) conditions laid down by the prosecution service in order to

avoid further criminal prosecution and a public trial.

The opportunity to settle criminal cases by way of a transaction has long existed. Until 1983 this opportunity to settle a case financially was exclusively reserved for misdemeanours in principle punishable only with a fine. Following the recommendations of the Financial Penalties Committee, the Financial Penalties Act of 1983 expanded the scope of transactions to include crimes which carry a statutory prison sentence of less than six years (Sect. 74 CC).

The restriction that the transaction is excluded for crimes carrying a statutory prison sentence exceeding six years has a limited impact. The overwhelming majority of crimes carry a statutory prison sentence of less than six years.

The following conditions may be set for a transaction:

- a. the payment of a sum of money to the State, the amount being not less than €3 and not more than the maximum of the statutory fine;
- b. renunciation of title to objects that have been seized and that are subject to forfeiture or confiscation;
- c. the surrender of objects subject to forfeiture or confiscation, or payment to the State of their assessed value;
- d. the payment in full to the State of a sum of money or transfer of objects seized to deprive the accused, in whole or in part, of the estimated gains acquired by means of or derived from the criminal offence, including the saving of costs;
- e. full or partial compensation for the damage caused by the criminal offence;
- f. the performance of non-remunerated work or taking part in a training course lasting 120 hours.

Acceptance of the public prosecutor's offer to settle a case financially out of court is, as a rule, beneficial for the offender: he or she avoids a public trial, the transaction is not registered in the criminal record, and he or she is no longer uncertain about the sentence. On the other hand, by accepting the transaction he or she gives up the right to be sentenced by an independent court with all legal guarantees (Sect. 6 ECHR).

The almost unlimited power given to the prosecution service in 1983 to settle criminal cases by a transaction without the intervention of a court has been strongly criticized. The most important criticism was that the increased transaction opportunities introduced a kind of plea bargaining system, represented a real breach of the theory of the separation of powers, undermined the legal protection of the accused, favoured certain social groups, and entrusted the prosecution service with powers which should remain reserved for the judiciary. Furthermore, it was feared that with nearly ninety percent of all crimes brought within the sphere of the transaction, the public criminal trial, with its protections for the accused, would become the exception and not the rule.

Despite this criticism, the introduction of the broadened transaction was a great success. More than one third of all crimes dealt with by the prosecution service are now settled out of court by a transaction. This is in line with the criminal policy plan, which formulated the target that one-third of all prosecuted crimes be settled by way of a transaction.

Transactions for crimes seem to be very popular both for the prosecution service and the offender. They save the prosecution service and the offender time, energy and expenses and furthermore protect the offender against stigmatization. Quite often high transaction sums for environmental crimes committed by corporations are accepted in order to avoid negative publicity.

To minimize the risk of arbitrariness and lack of uniformity in the application of transactions, the Board of Prosecutors-General has over the years issued guidelines for the common crimes for which transaction is most frequently used, relating to the principles to be taken into consideration regarding transaction and prosecution.

The role of the prosecution service in the Netherlands has changed considerably in the last decades. Increasingly, the prosecution service has been vested with dispositional powers. Whenever a prosecutor dismisses a case under conditions or settles a case through a transaction, the decisions of the public prosecutor are similar to the decisions of the judge.

So far these have been the Dutch experiences with processes aimed at avoiding the need to go to trial. Some of these processes have a beneficial effect on the reduction of the prison population but the main aim of the development of these processes was to reduce the caseload of the courts.

In the second part of this report I will deal with the experiences of diverting cases in other prosecutorial services in continental Europe.

III. PROSECUTORIAL DISCRETION IN EUROPE

As you may know, there are more than 50 States in continental Europe, each with its own criminal procedural law system. In almost each one of these criminal procedural law systems there are processes aimed at avoiding the need to go to trial; in short, diversion processes are applied.

Dealing with all these countries and with all the various diversion processes would lead to a very lengthy text or almost to a book. Therefore I have selected some European countries whose systems in particular are interesting. The selected countries are Austria, England and Wales, Finland, France, Germany, Italy, and Sweden.

In England and Wales the Crown Prosecution Service has a wide discretionary power to divert cases from court. The system of England and Wales in particular is interesting because unlike in other European criminal justice systems, the Crown Prosecution Service has a weak position, compared to the police, concerning settlements out of court or diversion.

The second group of systems I would like to deal with are the French and Finnish systems, in conjunction with the Italian system, where criminal mediation and various ways of imposing penalties without a court trial have been developed.

Other major criminal justice systems in Europe are German procedural law oriented systems like the systems of Sweden, Austria and Germany itself. It is interesting to see that in these systems little diversion is known, with the exception of Austria which has recently developed a comprehensive package of new diversion measures.

This makes a total of seven criminal justice systems to address. As we will see, there is a large variety of diversion processes.

A. England and Wales

Let us start with England and Wales.¹ England and Wales have a common law-based adversarial criminal justice system, in contrast with most European systems which are civil law-based inquisitorial systems. The police have complete discretion regarding prosecution decisions and can independently decide not to prosecute or to prosecute. In the latter case, prosecution is carried out by the Crown Prosecution Service, established in 1985. The CPS may continue the prosecution or may drop it. Both the police and the CPS may divert a case from court through a caution.

Under which conditions may the CPS or the police divert a case and what are the criteria for diversion?

The preconditions and criteria for diversion have been modified by recent legislation (Sect. 23 CJA 2003). The first requirement is that the authorized person has evidence that the offender has committed an offence. The second requirement is that a relevant prosecutor decides:

- a) that there is sufficient evidence to charge the offender with the offence; and
- b) that a conditional caution should be given to the offender in respect of the offence.

The third requirement is that the offender admits to the authorized person that he or she committed the offence.

The fourth requirement is that the authorized person explains the effect of the conditional caution to the

¹ See J. Sprack, *Emmins on Criminal Procedure*, Oxford University Press 2004, p. 64 ff.

offender and warns him or her that failure to comply with any of the conditions attached to the caution may result in being prosecuted for the offence.

The fifth requirement is that the offender signs a document which contains:

- a) details of the offence;
- b) an admission by him or her that he or she committed the offence;
- c) his or her consent to being given the conditional caution; and
- d) the conditions attached to the caution.

These pre-conditions are intended to ensure that, because a caution is a statement of guilt (which can be cited in court), the offender really is guilty and would be convicted if prosecuted. They are due process safeguards, intended to inhibit the police from cautioning whenever they adjudge a suspect to be guilty but they cannot, or would rather not, collect sufficient evidence to support a prosecution.

Caution is in England and Wales the most frequently used method of diverting a case from court. It is applied on a very large scale. Almost 30% of all suspects are cautioned by the police. What is the position of the CPS in this situation?

One of the functions of the CPS is to exercise control over the 'public interest' dimension of prosecutions, although it cannot do anything about cases which were cautioned by the police when they should have been prosecuted. Indeed, the police can even tie the hands of the CPS by promising that a case will be dropped. Although discontinuance is the prerogative of the CPS alone, it has been held to be an abuse of process for prosecution to be continued after a promise, even from the police, that it will be dropped (*R v Croden Justice ex p Dean*, 1993, QB 769). In this case the 'deal' was discontinuance in exchange for the suspect giving evidence for the prosecution in a murder trial. This illustrates both the structurally weak position of the CPS compared to the police, and the way the police use prosecution and non-prosecution in the 'public interest' as part of broader policing strategies.

The CPS can, in principle, ensure that cautionable cases are not prosecuted by discontinuing them. Nearly one-third of discontinuances are on 'public interest' grounds. However, the CPS only rarely recommends that a caution be substituted. A realistic view of the proportion of cases discontinued by the CPS that should be cautioned by the police on public interest grounds (rather than marked for prosecution) would be somewhere between around 6% and a third.

How is the substantial number of 'public interest' discontinuances to be explained? Well over half of them are because a nominal penalty is expected, the defendant is charged with other serious offences or the offence is in some other way too trivial to be prosecuted. At a time of managerial-style constraints on public expenditure, Crown Prosecutors have become increasingly focused on issues of cost-effectiveness in prosecutions.

B. Finland and France

In Finland and France mediation is widely applied as settlement out of court but in both countries mediation has a very different meaning.

1. Finland

In Finland some 5,000 cases annually are referred to mediation and about half of these cases have been sent to mediation by the prosecutor.

Mediation has been used since 1983, starting from local experiments and slowly expanding from there. However, the system does not cover the whole country. Today, all towns with a population over 25,000 and most over 10,000 offer mediation services. Eighty percent of Finns live in a municipality that has an agency for mediation.

Mediation does not form part of the criminal justice system but co-operates with the system as far as the referral of cases and their further processing is concerned. There is no legislation on the organization of mediation, but plans and proposals are being prepared. The Criminal Code has also been revised recently, so that it now mentions an agreement or settlement between the offender and the victim as a possible ground

for non-prosecution, non-punishment by the court or mitigation of the sentence.

Mediation is based on volunteer work. Participation in mediation is always voluntary for all the parties. The municipal social welfare authorities usually assist in co-ordinating the mediation services, but mediators are not considered public officials.

Mediation can start at any time between the committing of the offence and the execution of the sentence, and can be initiated by any one of the possible parties. Three-quarters of all cases are referred to mediation either by the prosecutor (44%) or by the police (30%).

In cases where the initiative for mediation comes from the prosecutor, he or she sends the case to the mediation office with an announcement that the decision whether or not to prosecute will be made within a short period of time (usually one to three months). In other respects, the prosecutor remains fairly passive during the mediation process.

Once the process has started, it normally leads to a written contract. The contract contains the type of offence, the content of a settlement, e.g. how the offender has consented to repair the damages, place and date of the restitution as well as the consequences for a breach of the contract.

2. France

In France,² the law of 4 January 1993 created the *médiation pénale*. There are two kinds of mediation: one for crimes and another for misdemeanours. Since the law of 23 June 1999, Sect. 41-1 CCP states that: Where it appears that such a measure is likely to secure reparation for the damage suffered by the victim, or to put an end to the disturbance resulting from the offence or contribute to the reintegration of the offender, the district prosecutor may, directly or by delegation:

- 1) bring the duties imposed by law to the attention of the offender;
- 2) direct the offender towards a health, social or professional organization;
- 3) require the offender to regularize his situation under any law or regulation;
- 4) require the offender to make good the damage caused by the offence;
- 5) with the consent of the parties, initiate mediation between the offender and the victim.

The 1999 law created another system called *composition pénale* as mediation for misdemeanours (Sects. 41-2 and 41-3 CCP). This is not a kind of mediation in the strict sense but a kind of financial settlement out of court as also is known in the Netherlands under the technical term 'transaction'.

Section 41-2 CCP states that prior to any public prosecution being instituted, the district prosecutor may propose, directly or through an authorized person, criminal mediation to an adult person who admits having committed one or more designated misdemeanours such as destruction, domestic violence and abuse of trust. This would involve one or more of the following orders:

- 1) to pay to the Public Treasury a mediation fine. The amount of such a mediation fine, which may not exceed either €3,750 or half of the amount of the maximum fine for the offence, is fixed in accordance with the gravity of the facts as well as the income and expenses of the offender. Payment may be made by instalments, in accordance with a schedule of payments fixed by the district prosecutor, within a period which may not exceed one year;
- 2) to hand over to the State the object which was used to or intended to be used to commit the offence or which is the product of it;
- 3) to surrender a driving licence for a maximum period of six months, or a permit to hunt for a maximum period of four months to the clerk's office of the first instance court;
- 4) to perform unpaid work for the benefit of the community for a maximum of sixty hours, over a period which may not exceed six months or to follow training within a health, social or professional organization for three months maximum.

Where the victim is identified, the district prosecutor must propose to the offender that he or she compensates the damage caused by his or her offence, unless the offender can show that the damage has already been compensated. The prosecutor must require that this happens within a period which may not exceed six months. He or she informs the victim of this proposal.

² See J. Pradel, *Procédure Pénale*, Editions Cujas, 13 édition, 2006.

The district prosecutor's proposal for criminal mediation may be brought to the attention of the offender through a judicial police officer. Here it takes the form of a written decision signed by the prosecutor, which specifies the nature and the measures proposed and which is endorsed on the file.

Criminal mediation may be proposed in a public centre for legal advice. The person to whom criminal mediation is proposed is informed that he or she may be assisted by a lawyer before giving his or her consent to the district prosecutor's proposal. This consent is recorded in an official record. A copy of the official record is given to the offender.

Where the offender consents to the measures proposed, the district prosecutor addresses the President of the *Tribunal de Grande Instance* by way of a petition seeking approval of the mediation. The district prosecutor informs the offender of this and, where necessary, the victim. The President of the *Tribunal* may proceed to hear the offender and the victim, assisted, where necessary, by their lawyers. The decision of the President of the *Tribunal de Grande Instance*, which is notified to the offender and, where necessary, the victim, is not open to appeal.

Where the offender does not accept mediation or, after having given his or her consent, does not fully comply with the measures decided upon, or where the approval required is not given, the district prosecutor decides what further action to take. In the case of prosecution and conviction, account is taken, where appropriate, of the work already accomplished and sums already paid by the offender.

Prosecution is suspended between the dates when the district prosecutor proposes criminal mediation and the expiry of the time granted for the mediation to be carried out.

Successful completion of criminal mediation terminates prosecution.

Finally, the law of 9 March 2004 created a French kind of plea bargaining. This principle is contained in Sect. 137 and the procedure of plea bargaining in the Sects. 495-7 to 495-16 CCP. According to this Section, the offender can ask for the use of this procedure. The public prosecutor receives the offender's declaration of guilt and proposes a penalty to him or her:

- if he or she accepts, the judge can approve the penalty and his or her decision will be read during a public hearing. If the judge refuses to approve the punishment, the public prosecutor will then initiate prosecution according to the normal rules;
- the offender should have ten days to give an answer to the public prosecutor;
- if the offender refuses, the public prosecutor can present the offender in court or before the liberty and custody judge.

C. Italy

Similar diversionary measures have been developed in the 1988 Code of Criminal Procedure of Italy³ which has been a model for many diversionary measures in other Codes of Criminal Procedure in Europe.

In Italy, according Sect. 112 of the Constitution, the prosecutor is obliged to prosecute whenever there is sufficient evidence to charge the offender. According to this section the prosecutor has no other choice than prosecution or dismissal due to lack of evidence. It follows that the prosecutor cannot be vested with the right to settle a case out of court. Nevertheless room for discretion of the prosecutor is left with regard to the cases in which the penalty can be imposed without trial: the sentence agreement (*patteggiamento*) and the penal order (*procedimento per decreto*).

The sentence agreement consists of an agreement between the prosecutor and the offender on the sentence to be imposed. This form of diversion is characterized by an exchange between a sentence discount and the defendant's waiver of the right to stand trial. In other words, by means of a sentence discount, the accused is encouraged to waive his or her right to have his or her case dealt with in a public trial. This saves time and expense for the system. Since the policy criteria according to which the prosecutor should give his or her consent are not defined by the law, the decision depends on his or her choice, which is not always based only on technical reasons. Anyway, it is important to underline that, once the parties have

³ See G. Conso/V. Grevi, *Compendio di Procedura Penale*, 3^a Editione, CEDAM, Padova 2006.

reached an agreement, the judge must verify whether the conditions to pronounce the requested sentence have been met.

There are three prerequisites for this proceeding without trial: the request of one party (prosecutor or defendant), the consent of the other party, and judicial supervision. In order to reach an agreement, the initiative can be taken both by the prosecutor and the defendant. If the request is made by the defendant, it is necessary to get the consent of the prosecutor and vice versa. The request must express the will of ending the proceeding with a sentence, the contents of which must be specified. In particular, the parties must indicate the legal basis of the offence, the aggravating and mitigating circumstances and their balancing, the type and level of penalty.

The penalty may be a fine, a non-custodial sanction or a custodial sanction. The defendant's request or consent can be tied to the pronouncement of a suspended sentence. In any case, the sanction is to be reduced up to a maximum of one-third as regards the applicable one, provided that the sentence does not exceed five years' imprisonment; but, if the sentence exceeds two years' imprisonment, the *patteggiamento* is not admitted for Mafia crimes and organized crime. Once the request has been made by one party, the other party must declare to accept it.

Of course, neither the prosecutor nor the defendant is bound by the other party's request. Nevertheless, it is important to underline that the prosecutor's dissent, unlike the defendant's, shall be justified.

In order to avoid the collapse of the trial and a useless waste of time and expense, the request shall be made and the consent be given during the investigation stage or at the latest within the preliminary hearing; it can be said that the law presses the parties to reach an agreement at the earliest stage, as that allows the maximum saving for the system.

Once the parties have reached an agreement concerning the appropriate level of penalty, the judge must verify whether there are the conditions to pronounce the requested sentence or not. The powers of the judge are substantial.

First, he or she must check that there is sufficient evidence. Otherwise, the accused must be acquitted *ex officio*, notwithstanding his or her request or his or her consent to be sentenced. It means that the agreement between the parties is not exactly like a plea bargain. In fact, the defendant is not required to plead guilty, as his or her request to be sentenced, or his or her consent to the prosecutor's request, does not involve a guilty plea.

Secondly, the judge must verify that the charge corresponds to the facts alleged; that the application of the aggravating and mitigating circumstances and their balancing have a legal basis; that the requested penalty does not exceed five years' imprisonment and its level is commensurate with the seriousness of the offence.

Only if both tests are satisfied does the judge pronounce the requested sentence, otherwise, unless there are conditions for an acquittal, the judge rejects the request and the proceeding will continue.

If the request is granted, the agreed sentence is imposed. The judge can refuse to impose the sentence but cannot change it.

A trial is also avoided when the proceeding ends with the issuing of a penal order to pay a fine (*procedimento per decreto*).

There are two conditions required by law. Firstly, the offence shall be prosecuted *ex officio*. Secondly, the fine must be commensurate with the actual offence.

If the prosecutor considers these conditions met, he or she may request the judge to issue such a penal order. The request shall be motivated and shall indicate the level of the fine, which can be reduced up to one half of the minimum fixed by law.

As in the case of the sentence agreement the judge must check the sufficiency of the evidence and verify that the charge corresponds to the alleged facts and that the fine is commensurate with the seriousness of the offence.

Only if both tests are satisfied the judge pronounces the penal order as requested by the prosecutor. The judge has no power to change it. The order shall contain the charge and a reasoned motivation for the decision, including those related to the penalty discount.

The order is notified to the accused, who instead of paying the fine can ask to be tried in a public court trial.

Let us now turn to the systems which are German procedural law oriented and start with Germany⁴ itself.

D. Germany

Leaving the ample option of conditional dismissal (Sects. 153a ff CCP) aside, the German prosecutor has no authority to settle the case with a suspect or defendant out of court. The prosecutor is nevertheless frequently involved in negotiations designed to dispose of a criminal case by consent. Such negotiations with the defence can occur in the context of preparing a penal order (*Strafbefehl*), i.e., a written judgment drafted by the prosecutor and issued by the court without a hearing (Sect. 407 CCP). Penal orders can be used for adjudicating *Vergehen* when the sanction consists of a fine, the suspension of a driver's licence, and/or a suspended prison sentence of not more than one year. The defendant's prior consent is not required, but he or she can make the penal order ineffective by filing an appeal and demanding a trial. It is therefore useful, at least in non-routine cases, for the prosecution and the defence to discuss the possible sanction in advance and to make sure that the defendant will accept the penal order. Many defendants are strongly interested in having their cases resolved without a public trial, and defence lawyers then approach the prosecutor in charge of the case and raise the possibility of a penal order. Especially in cases where there is a white-collar defendant, there can be extensive negotiations before a penal order acceptable to all sides is drafted and submitted to the court. Courts have the authority to reject a proposed penal order and order a trial but very rarely do so.

Prosecutors are also involved in negotiating consensual judgements before, or during, trial. Since the 1980s, a German version of plea bargaining has developed and quickly proliferated although there is no legal basis for it. The Federal Court of Appeal in 1997 effectively approved of the practice if certain conditions are met (*Entscheidungen des Bundesgerichtshofes in Strafsachen*, Band 43, p. 195). In many cases, defence counsel and the court engage in negotiations either in advance of a contested trial, or when the trial has progressed to some extent, with a view toward finding an amicable settlement, the defendant offering a (partial) confession and the court indicating its willingness to impose a lenient sentence. Although these negotiations are conducted mainly between the defence and the professional judge(s), the prosecutor usually takes part and in effect has a veto power. If he or she decides to file an appeal against a negotiated judgment he or she can negate most of the efficiency benefits associated with the proposed 'deal'. This kind of negotiated justice has been heavily criticized by scholars but has been embraced by practitioners. 'Deals' occur in all kinds of cases, most frequently in drug and white-collar cases. This, however, is not a process aimed at avoiding the need to go to trial and the conclusion is that in Germany there is little opportunity to settle cases out of court.

E. Sweden

The same is applicable to Sweden. Like Germany, in Swedish law, the principle of legality is applied, but there are many exceptions to this principle.

The prosecution service has possibilities to waive prosecution or to terminate a case, more or less similar to those in Germany. All possibilities are based on the absence of public interest to prosecute or where prosecution would be in conflict with public interest, for example: if continued inquiry would incur costs not in reasonable proportion in relation to the importance of the matter and the offence, if prosecuted, would not lead to a penalty more severe than a fine. Like in Germany, in Sweden a kind of penal order is known but applied in a different way.

⁴ See L. Meyer-Gossner, *Strafprozessordnung*, in *Beck'sche Kurz-Kommentare*, 47. Auflage, 2005.

According to chapter 48 Sect. 1 – 12a CJP, a prosecutor may impose a punishment on the suspect by means of a summary penal order (*strafföreläggande*). A summary penal order means that the suspect is, subject to his or her approval, ordered to pay a fine according to what the prosecutor considers the offence deserves. A summary penal order may even concern a conditional sentence or such a sanction coupled with a fine. The conditional sentence according to the Swedish law differs from the punishments with similar names in other legal systems.

The summary penal order may be used as a sentencing form as regards all the offences in respect of which fines are included in the range of penalties. There are no limits as to the severity of the fine, which means that the prosecutor may impose the same sum as permitted by a court. A conditional sentence may be imposed even for more serious offences, which is for offences which do not have fine in the range of penalties, but only imprisonment, provided that it is obvious that the particular offence does not deserve a more severe punishment than a conditional sentence.

The summary penal order may also include a decision on compensation of damages to the victim of the crime, that is, a decision on a civil law matter, provided that the compensation consists of a payment.

The summary penal order is a final decision in a particular case and has the same validity and consequences as a judgment of the court. It may be issued only if the offender confesses to the offence and accepts the order. Otherwise, the prosecutor has to bring the case to court after all.

There is no legal possibility for a settlement out of court in Swedish law. Something which could be called the first step in this direction is perhaps represented by the Mediation Act 2002 (*Lag, 2002:445, om medling med anledning av brott*). The Act contains basic rules concerning mediation between victim and offender. A possible agreement on compensation for damages, reached on the basis of mediation, cannot replace a sentence for the crime. However, the fact that the offender has undergone mediation may influence the decision of the prosecutor in waiving prosecution. The prosecution service itself is not engaged in mediation activity.

F. Austria

Unlike Germany and Sweden, Austria⁵ in 2000 reformed the Code of Criminal Procedure and introduced a comprehensive package of new diversion measures to be applied under general criminal law.

Diversion as understood in Austria means the early termination of criminal proceedings by the public prosecutor or the court, in minor or, at least, less severe cases. Diversion is possible from the moment the public prosecutor has official knowledge of the offence, until the end of the main trial. Laws do not allow diversion by the police. The main agent in the field of diversion is the public prosecutor, but it may also be applied or offered by the court.

I concentrate on diversion by the public prosecutor because this report deals with measures enabling the avoidance of a court trial.

Legal prerequisites for application of diversion are:

- the crime in question is not a petty offence and also not one requiring traditional criminal penalties in the interest of special and general prevention;
- the offence has to fall within the jurisdiction of the district court or of the single judge at the regional court (*Landesgericht*); this basically means that the offence is to be sanctioned by not more than five years of confinement;
- the offence falls under the remit of the public prosecutor;
- crimes resulting in fatalities are excluded from diversion;
- the guilt of the suspect should not be severe;
- the public prosecutor deems the circumstances of the case clear and settled with no outstanding evidence; and
- the suspect should voluntarily accept the diversion offer.

⁵ See E.E. Fabrizio, *Die Österreichische Strafprozessordnung*, Manz Verlag, Wien 2004, p. 173-198.

The CCP provides four different measures of diversion:

- payment of an amount of money (diversion fine);
- community service;
- determination of a probationary period (1-2 years) possibly combined with supervision of the probationer and/or the compliance with obligations; and
- victim offender mediation (which actually means out of court conflict resolution).

According to the CCP, the consent of the victim is an essential precondition for Victim Offender Mediation (VOM). This declaration of consent, however, is not necessary if it is refused on grounds that are not to be taken into consideration within criminal proceedings, like retribution or revenge.

Conflict resolution is carried out by specially trained social workers (mediators). The mediator informs the public prosecutor about the progress made as well as about the outcome of the conflict resolution. The decision whether the VOM has been successful as a prerequisite for the waiver of the prosecution, has again to be made by the prosecutor. The public prosecutor does not demand in advance a specific procedure or a specific outcome of the VOM. The participants, as well as the mediators, are free to decide upon their way of solving the conflict. Apart from the monetary payment, VOM is the only diversion measure where the public prosecutor may additionally require the payment of a lump sum up to €145,-.

To stress the importance of restorative elements within criminal proceedings, the Austrian legislature has decided that the other diversion measures (the diversion fine, community service and the probationary period) must be combined with a compensation order.

IV. CONCLUSION

As we have seen, there exists a large set of diversionary measures in the various procedural criminal law legislations of the Western European countries. The main aim of these diversionary measures is to reduce the caseload of the courts by avoiding court trials for trivial or less severe criminal cases. It gives criminal courts more room for an in-depth investigation of the truth at the court session in the most serious cases.

Many of the diversionary measures also aim to serve as an alternative to imprisonment. This is in particular the case for diversionary measures such as mediation, community service, financial settlement or the order to participate in a training course which in many systems can be imposed by the public prosecutor or which may be proposed by the public prosecutor and imposed by a judge in a non-full-fledged court procedure.

In many cases indeed diversionary measures may lead to a reduction of the prison population but it is difficult, if not impossible, to determine whether these non-custodial sanctions actually have this function. Other circumstances such as increased crime could lead to more, and to more severe, prison sentences so that an overall reduction in incarceration cannot be determined.

Another question is whether the measures applied in order to avoid a trial have an effect on crime rates.

Some would argue that the diversionary measures, because of their leniency, do not deter people from committing offences. Others would argue that there is no clear empirical evidence that the degree of imprisonment is decisive for the general level of crime control in society. Based on published research it may thus be that high rates of imprisonment do not curtail crime in general nor do low rates encourage crime.⁶

But one conclusion may be drawn from the use of diversionary measures: reducing the number of cases that have to be processed in the trial phase decreases the workload of the courts which in many countries are overburdened. Diversionary measures give the courts room to concentrate on cases which deserve full court attention.

⁶ See U. Zvekic, *Alternatives to Imprisonment in Comparative Perspective*, UNICRI, Nelson-Hall Publishers, Chicago 1994, p. 8-9.

INTERVENTIONS WITH DRUG MISUSING OFFENDERS AND PROLIFIC AND OTHER PRIORITY OFFENDERS

*Mr. Peter Wheelhouse**



I. INTRODUCTION: BACKGROUND

In England and Wales, there is a long history of supervising offenders and trying to reduce reoffending by the use of programmes and interventions.

Any offender serving a sentence of 12 months or longer and all offenders aged 18-21 are subject to supervision on licence by the National Probation Service following their release. All additional licence conditions have to be 'necessary and proportionate' in order to comply with Human Rights legislation. The Probation Service manages a very large number of offenders on licence - around 50,000 offenders are discharged from prison on licence every year with licence conditions which, in the case of 'lifers,' may last for many years.

Any offender given a community sentence – (the Community Order, introduced by Section 177 of the Criminal Justice Act 2003 replaced other community sentences) will be managed by the Probation Service. The Order consists of one or more of twelve requirements determined by those passing sentence from a 'menu' of available options.

The same requirements can also be applied to a suspended prison sentence. Around 135,000 offenders each year are given a community sentence that requires supervision in the community by the Probation Service. A number of 16 and 17 year olds who are sentenced under pre-Criminal Justice Act 2003 legislation can be sentenced to Community Rehabilitation Orders, Community Punishment Orders, Community Punishment and Rehabilitation Orders and DTTOs. These orders may be supervised by probation authorities; otherwise, sentences for those under 18 are managed by the YOT.

In addition, about 13,000 high risk offenders are managed under the Multi Agency Public Protection Arrangements (MAPPA), of whom about 1,500 are considered very high risk.

But significantly, there is a 'gap' in these supervision arrangements relating to those offenders sentenced to periods in custody of less than twelve months and a significant number of offenders who are criminally active or at risk of being active but are not being routinely detected and are not being managed in the criminal justice system. This was particularly true in relation to drug misusing offenders (defined in this context as those offenders who commit significant amounts of crime to support their own substance misuse) and prolific and other priority offenders.

In addition, a study conducted by the Social Exclusion Unit on behalf of the Prime Minister in 2002 to explore how to cut rates of reoffending by ex-prisoners reported that prison sentences were not succeeding in turning the majority of offenders away from crime. Of those prisoners released in 1997, 58% were convicted of another crime within two years; 18-20 year old male prisoners were re-convicted at a rate of 72%.

The report concluded that there was considerable evidence of the factors that influence reoffending. Building on criminological and social research, the SEU identified nine key factors:

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- education
- employment
- drug and alcohol misuse
- mental and physical health
- attitudes and self-control
- institutionalization and life skills
- housing
- financial support and debt
- family networks.

The evidence showed that these factors can have a huge impact on the likelihood of a prisoner reoffending. For example, being in employment reduced the risk of reoffending by between a third and a half; having stable accommodation reduced the risk by a fifth.

Many prisoners had experienced a lifetime of social exclusion. Compared with the general population, prisoners are thirteen times as likely to have been in care as a child, thirteen times as likely to be unemployed, ten times as likely to have been a regular truant, two and half times as likely to have had a family member convicted of a criminal offence, six times as likely to have been a young father, and fifteen times as likely to be HIV positive.

Many prisoners' basic skills are very poor: 80% have the writing skills, 65% the numeracy skills and 50% the reading skills at or below the level of an 11 year old child. 60-70% of prisoners were using drugs before imprisonment. Over 70% suffer from at least two mental disorders. And 20% of male and 37% of female sentenced prisoners have attempted suicide in the past. The position is often worse for 18-20 year olds, whose basic skills, unemployment rate and school exclusion background are all over a third worse than those of older prisoners.

There is a considerable risk that a prison sentence might actually make the factors associated with reoffending worse. For example, a third lose their house while in prison, two-thirds lose their job, over a fifth face increased financial problems and over two-fifths lose contact with their families. There are also real dangers of mental and physical health deteriorating further, of life and thinking skills being eroded, and of prisoners being introduced to drugs. By aggravating the factors associated with reoffending, prison sentences can prove counter-productive as a contribution to crime reduction and public safety.

II. DRIVE FOR CHANGE

The absence of supervision arrangements for a very significant number of offenders and the identification of the wide range of unmet needs of many offenders, raised the question of whether programmes directed specifically at the needs of targeted groups of offenders might deliver significant and disproportionately large reductions in offending and reoffending by those groups. Further research into those groups supported this proposition. The key research findings are summarized below.

A. Research Findings Relating to Drug Misusing Offenders and Crime

1. General

Drug-related crime has been the subject of considerable attention in recent years. As well as imposing substantial economic and social costs upon society and victims of crime, it has a high profile among the public, the media and politicians. The question of how addiction treatment influences criminal behaviour is important for the implementation and evaluation of drug treatment programmes and the development of policies to tackle drug misuse. Although clinical services mostly focus on tackling drug misuse and its associated health problems, the reduction of crime is also seen increasingly as a goal of drug misuse treatment.

Drug misusers frequently come into contact with the law, as the use of illegal drugs makes them liable to arrest. There are also other links between drug misuse and crime. The regular use of illicit drugs places an excessive economic burden upon the user which, in most cases, cannot be met by legitimate means. Two common ways of obtaining drugs, or obtaining money for drugs, are through acquisitive crimes and through drug dealing or supply. Some drug users support their habit through prostitution, though this is less common.

2. Economic Costs

The economic costs and consequences of drug misuse and treatment were investigated among 549 clients recruited from 54 residential and community treatment programmes to the National Treatment Outcome Research Study (NTORS). This update to a previous analysis using NTORS showed that addiction treatment had an estimated cost of £2.9 million in the two years prior to treatment and £4.4 million in the subsequent two years. Economic benefits were largely accounted for by reduced crime and victim costs of crime. Crime costs fell by £16.1 million during the first year and by £11.3 million during the second year. The ratio of consequences to net treatment investment varied from 18:1 to 9.5:1, depending on assumptions. In short, the most conservative estimate suggests that for every £1 spent on treatment, £9.50 is saved in the costs of reduced crime. Thus there are clear economic benefits to treating drug misusers. The original cost-savings analysis using NTORS had shown a ratio of consequences to net treatment investment of 1:3.¹

3. Link Between Drugs and Arrestees

The New English and Welsh Arrestee Drug Abuse Monitoring (NEW-ADAM) programme is a national research study of interviews and voluntary urine tests designed to establish the prevalence of drug use among arrestees (suspected offenders arrested by the police). This rolling programme covers 16 locations in England and Wales and each data collection cycle lasts two years (eight sites were visited in the first year and the remaining eight sites in the second year). The first eight sites were revisited in the third year.

The survey data collected provided information on the characteristics, drug use and offending behaviour of adults entering the criminal justice system. Summary data are presented from the 16 custody suites visited in the first two years. As interviewed arrestees are also asked about their offending behaviour (focusing on acquisitive crime), the relationship between drug use and certain types of criminal activity can be explored. The key points were:

- Urine tests of arrestees revealed that 69% of arrestees tested positive for one or more illegal drugs, and 36% tested positive for two or more such substances;
- 38% of arrestees tested positive for opiates (including heroin) and/or cocaine (including crack);
- 18% of the interviewed arrestees were repeat offenders, regularly using heroin and/or cocaine and/or crack;
- average expenditure on drugs, by those who had reported using drugs and spending money on them in the last 12 months, was highest for those consuming heroin and cocaine and crack, at £323 in the last seven days compared with £190 for drug users generally;
- arrestees who reported using heroin and cocaine and crack in the last 12 months represented just over one-tenth of the arrestees interviewed, yet they were responsible for nearly one-third (31%) of the illegal income reported. On average, arrestees who had generated illegal income and who used heroin and cocaine and crack in the last 12 months reported an average illegal income of more than £24,000 per year (median £12,490);
- 60% of arrestees who reported using one or more illegal drugs in the last 12 months and committing one or more acquisitive crimes acknowledged a link between their drug use and offending behaviour. This proportion rose to 89% among arrestees who said that they had committed one or more acquisitive crimes and that they had used heroin and cocaine and crack in the last 12 months.

4. Changes in Crime after Treatment

The reductions in crime are among the more striking findings from NTORS. One year after starting treatment, there were substantial reductions in the numbers of crimes, and these reductions were maintained through to follow-up after four to five years. There were also reductions in the use of heroin and other illicit drugs, reduced injecting and sharing of injecting equipment and improvements in psychological health.

There were substantial reductions both in the numbers of crimes committed and in the percentage of clients engaged in crime. At the one year follow-up, acquisitive crimes were reduced to one-third of intake levels, and the rate of involvement in crime was reduced to about half of intake levels. The number of shoplifting crimes was reduced to about one-third of intake levels, and for the more serious offence of burglary, offending was reduced to less than one-quarter of intake levels. Many of the greatest reductions in criminal activity occurred among the most criminally active drug misusers. Among high-rate offenders, crimes were reduced to 13% of intake levels. This represents a huge reduction in criminal behaviour.

¹ Godfrey, C., Stewart, D. and Gossop, M. (2004). *Economic analysis of costs and consequences of drug misuse and its treatment: two year outcome data from the National Treatment Outcome Research Study (NTORS)*. In *Addiction* 99(6): 697-707.

Similarly, for drug-selling crimes, one year after starting treatment, there were substantial reductions in the numbers of drug-selling crimes committed and in the percentage of clients engaged in drug-selling crime. The number of drug-selling offences was reduced to less than one-fifth of intake levels. In view of the massive number of offences committed prior to intake, this represents a large and important reduction. The percentage of NTORS clients who were involved in drug-selling was also reduced to less than two-thirds of the level at intake.

The reductions in crime were found among clients from both the methadone and the residential programmes and reductions were found for acquisitive crime and for drug-selling offences.

Among the methadone patients, the number of acquisitive crimes after one year had fallen to less than one-third of intake levels and this type of crime remained low throughout the follow-up period. After four to five years, rates of acquisitive crime fell to less than one-quarter of intake levels. Drug-selling crimes were also significantly lower during the full follow-up period than at intake. For drug-selling offences, the numbers after four to five years fell to 17% of intake levels.

B. Research Findings Relating to Disproportionate Impacts by Groups of Offenders

Research carried out in 2001 concluded that, of a total offending population of around one million, only approximately 100,000 offenders (10% of all active offenders) were responsible for half of all the crime committed in England and Wales (Home Office, 2001). In other words it appeared that a small number of offenders were far more criminally active than others, contributing disproportionately to the overall crime rate. Indeed, further analysis showed that the most active 5,000 people in this group were estimated to be responsible for one in ten offences (Home Office, 2002). Although some of the assumptions behind this figure have been challenged (e.g. Garside, 2004), it is generally accepted that focusing additional resources on these most active offenders could bring about a better outcome in terms of reduced crime rates and could improve public confidence in the criminal justice system.

The Persistent Offender Programme was launched in 2002 as part of the Narrowing the Justice Gap programme (Narrowing the Justice Gap, 2002) with the aim of targeting resources from across CDRPs at offenders in the community with six or more convictions over the previous 12 months. These schemes were evaluated in 2003 (Home Office, 2005c). However, this evaluation was primarily focused upon staff and offender perceptions of the scheme and did not conduct a full reconviction analysis.

Other research on the effectiveness of similar schemes, such as the Burnley/Dordrecht Initiative (Chenery and Pease, 2000) and Intensive Supervision (Gendreau, Goggin, and Fulton, 2001) showed mixed findings but indicated little evidence of a reduction in reconviction due to the schemes.

Some schemes did report promising early results on convictions (Chenery and Deakin, 2003; Worrall, Mawby, Heath and Hope, 2003). However, such research was limited by small sample sizes and the lack of well matched comparison groups. Other PPO research has had more of a focus on implementation issues such as emphasizing partnership working (Mawby and Worrall, 2004; Worrall and Mawby, 2004). For a fuller discussion of effectiveness please refer to Moore *et al.* (2006).

The Home Office evaluation (Home Office, 2005c) reported that the selection criteria for the Persistent Offender Programme were seen by practitioners as being too rigid. They felt the scheme did not take into account important factors in an offender's pattern of behaviour, such as:

- the number of crimes that an offender could be responsible for without a conviction;
- offences that were left unreported; and
- the type of offence committed.

As a result, areas operating the scheme felt that offenders who were included were not necessarily those causing the greatest harm to their communities. Areas involved argued for a more flexible and localized definition that could include a wider definition of 'other priority' offenders.

These themes – tackling the most active offenders, local criteria for selection and local delivery of programmes to address offending – were central to the development of the Prolific and other Priority Offenders Programme.

III. A NEW POLICY APPROACH

The above findings and other factors – such as the unwillingness of drug misusing offenders to refer themselves to drug treatment services – pointed to the need for a new policy response. A response that focused on groups of individuals with specific characteristics rather than a response directed at crime types. Most importantly an approach would be required that took account of some of the reasons for some of the highest harm-causing individuals and addressed those reasons as well as the specific offending. Such a holistic approach would need the involvement of a wide range of agencies. Two programmes were designed to meet these needs – the Drug Interventions Programme (DIP) and the Prolific and other Priority Offenders (PPO) Programme.

A. The Drug Interventions Programme (DIP)

The Drug Interventions Programme (DIP) began in 2003 as a three-year programme to develop and integrate measures for directing adult drug-misusing offenders out of crime and into treatment. The Programme involves criminal justice and drug treatment providers working together with other services to provide a tailored solution for adults - particularly those who misuse Class A drugs - who commit crime to fund their drug misuse. Its principal focus is to reduce drug-related crime by engaging with problematic drug users and moving them into appropriate treatment and support. It aims to break the cycle of drug misuse and offending behaviour by intervening at every stage of the criminal justice system to engage offenders in drug treatment.

The programme took as its premise two key facts: a) significant numbers of drug misusing offenders were not referring themselves to drug treatment services and their Class A drug use (and accordingly levels of offending) were escalating; and b) those same offenders were in constant contact with the criminal justice system. The programme set out to use the criminal justice system as a way of coercing offenders into drug treatment and at the same time ensuring they were closely managed and connected to the other services of which they were in need.

The Programme was constructed around a combination of new laws (described in more detail later in this paper), new working practices, new investment and a renewed emphasis on partnership working and multi-agency delivery. It was supported by very strong political sponsorship, being amongst the Prime Minister's top projects.

Drug testing on charge had been originally introduced on a pilot basis in 2001 and had been successful in engaging offenders. Extended extensively as part of the Drug Interventions Programme, drug testing is central to the Programme and is used to identify problematic drug misusing offenders in order to try to encourage them to enter drug treatment. It is also a key component that enables other measures such as required assessment and restriction on bail to be implemented.

Key partners to the Home Office are the criminal justice agencies such as the police, prisons, probation officers and the courts, along with the Department of Health, the National Treatment Agency, treatment service providers and those who provide linked services such as housing and job-seeker support.

The Programme is continuing beyond the original three-year period, with the aim of gradually ensuring that the constituent interventions and processes become the established way of working with drug-misusing offenders across England and Wales.

B. The Prolific and other Priority Offenders (PPO) Programme

The PPO Programme was announced by the Prime Minister in March 2004. The Programme was conceptualized as being an end-to-end process that specifically targeted the small number of most active and/or problematic offenders. In essence, it was designed to give offenders a choice between the cessation of offending with the acceptance of support in the form of rehabilitative programmes or to carry on offending resulting in prompt arrest and punishment.

The PPO programme is comprised of these three complementary strands.

- *Prevent and Deter*

This strand is aimed at those young offenders who are most at risk of becoming the next generation of prolific offenders. Principally, the Prevent and Deter strand aims to stop the supply of new prolific offenders by reducing the opportunities for reoffending, so that those who are already criminally active do not graduate into prolific-offending lifestyles; and more generally reducing the numbers of young people who become involved in crime in the first place.

- *Catch and Convict*

The goal of this strand is to prevent PPOs from offending through apprehension and conviction, through licence enforcement, and by ensuring a swift return to the courts for those PPOs continuing to offend. Catch and Convict (C&C) reflects the need for robust and proactive criminal justice processes to ensure that there is effective investigation, charging and prosecution of PPOs.

- *Rehabilitate and Resettle*

This strand aims to rehabilitate PPOs who are in custody or serving sentences in the community through closer working between all relevant agencies and continued post-sentence support. Rehabilitate and Resettle (R&R) provides support and priority access to services in the community, and pre-release support for those serving custodial sentences.

The essential feature of the PPO programme was that it should tailor responses to local problems and should avoid a prescriptive approach regarding implementation. In doing so, the PPO programme embraces the use of local knowledge, practitioner expertise and previous experience of similar schemes. The individual stakeholders, practitioners and specific agencies are responsible for all the decision-making aspects of the programme throughout; from how to choose the prolific offenders through to which interventions they may receive and how often they may receive them. These factors were all designed with a specific intention: to reduce the crime levels of the offenders on the PPO programme.

IV. LEGAL FRAMEWORK

A. Drug Interventions Programme

Although the overall intention of the programmes was to work in co-operation with drug-misusing offenders, it was recognized that these were a difficult group to access and that many of them were resistant to any form of intervention. There was accordingly a need to have a set of powers to form a structure that increased the chances of offenders engaging with drug treatment workers and moving out of crime and into treatment. These powers are set out below.

1. Drug Testing in Custody Suites

The power to drug test in custody suites was first introduced in the 2000 Court Services Act and required individuals charged with certain offences ('trigger offences' – see below) to undergo a drug screening test for crack, cocaine and heroin. The intention of the provision was to identify those offenders who had Class A drug habits and move them into treatment.

Following successful early pilots, the 2005 Drugs Act included a provision to move the point at which a drug test may be carried out to a time post-arrest rather than post-charge. Drug testing on arrest has become the preferred alternative to drug testing on charge. Testing on arrest enables us to identify adults misusing specified Class A drugs earlier in their contact with the criminal justice system, so that they may be steered into treatment and away from crime as soon as possible. It has also increased the volume of drug-misusing arrestees identified – approximately three times more offenders are arrested than charged. This provides an opportunity to screen more people at some stage of their detention - and ensures that those who misuse drugs but are not charged with an offence are nevertheless helped to engage in treatment and other programmes of help.

Testing on arrest has been implemented in individual police stations through notification letters to the Chief Constables of the affected forces from the Home Office. Only police stations named in these notification letters can test on arrest. If, for operational reasons, the police in an affected police force area wish to set up an additional police station with drug testing facilities the Home Office must be consulted in

advance.

Section 63B of Police and Criminal Evidence Act 1984 (PACE) (as amended by Section 7 of the Drugs Act 2005) provides for a sample of urine, or a non-intimate sample, to be requested by a police officer and taken from persons in police detention for the purpose of ascertaining whether they have a specified Class A drug (crack, cocaine or heroin) in their body if:

- (a) the person concerned has been arrested or charged with a 'trigger' offence; or
- (b) the person concerned has been arrested or charged with an offence and a police officer of the rank of Inspector or above, who has reasonable grounds to suspect that the misuse by the person of any specified Class A drug caused or contributed to the offence, has authorized the taking of the sample.

Trigger offences are primarily drawn from the Theft Act 1968, the Misuse of Drugs Act 1971 and the Vagrancy Act 1824. The Theft Act offences are generally concerned with acquisitive property crime, of the kind often committed by drug users to finance their drug habits. The Misuse of Drugs Act offences concern heroin and crack/cocaine. The Criminal Justice and Court Services Act 2000 (Amendment) Order 2004 (S.I. 2004/1892) added new trigger offences to Schedule 6: handling stolen goods, begging, and persistent begging, as well as attempts at the existing trigger offences, where relevant.

Under Section 63B(6) of PACE a sample may only be taken by a person prescribed by regulations made by the Secretary of State. The persons so prescribed are set out in the Police and Criminal Evidence Act 1984 (Drug Testing of Persons in Police Detention) (Prescribed Persons) Regulations 2001 (S.I. 2001/2645) which came into force on 19 July 2001. The persons so prescribed are:

- a) a police officer;
- b) a person employed by a police authority or police force whose contractual duties include taking samples for the purpose of testing for the presence of specified Class A drugs;
- c) a person employed by a contractor engaged by a police authority or police force whose duties include taking samples for the purpose of testing for the presence of specified Class A drugs.

Under the Drug Interventions Programme, the sample taken will be oral fluid and not urine.

Persons are requested to give a sample for testing and cannot be forced to do so. However, persons commit an offence under Sections 63B and 63C of the Police and Criminal Evidence Act 1984 where they refuse without good cause to provide a sample for which they are liable, on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding level four on the standard scale (£2,500), or both.

An individual's detention without charge may be extended up to 24 hours of the relevant time solely for the purpose of conducting a drug test.

2. Required Assessment

In the early days of the Drug Interventions Programme, an individual offender would have been asked whether they wished to see a drugs worker based in the custody suite. Accepting this offer was voluntary on the part of the individual. This caused some problems as many offenders would refuse the offer and engagement accordingly failed.

Part 3 of the Drugs Act 2005 introduced a new power for the police to require persons who have tested positive for a specified Class A drug when tested on arrest or charge to attend two assessments of their drug use, an initial assessment (Section 9) and a follow-up assessment (Section 10) with a suitably qualified person. A "suitably qualified person" is somebody who is competent to carry out the initial assessment and will, in almost all instances, be a Criminal Justice Integrated Team worker, who will also be employed to carry out voluntary assessments in the same area. All such workers will have, or be working towards, the relevant Drug and Alcohol National Occupational Standards (DANOS) competencies.

The person is required to attend and stay for the duration of either assessment in question. If they fail to do so, without good cause, they commit an offence and may face criminal sanctions. While the expectation is

that competent drug workers will be able to gain the co-operation and active engagement of the individuals they assess, the legislation does not actually require input from the individual. This avoids the potential difficulties of workers having to make subjective judgements in each case about the degree of the individual's engagement.

These powers can only be exercised in respect of persons aged 18 and over, (with provision for the Secretary of State to amend this minimum age by an order, which must be approved by both Houses of Parliament). In addition the powers can be exercised only where the relevant Chief Officer of police has been notified that arrangements for conducting initial and follow-up assessments have been made for the age group concerned.

The initial assessment is to enable the assessor to establish the person's dependency upon, or propensity to misuse specified Class A drugs and whether they might benefit from further assessment, or from assistance or treatment (or both). In addition the assessor will provide harm minimization advice and, as appropriate, an explanation of the types of assistance and treatment available. The Drugs Act 2005 (Section 10) provides that where a police officer requires a person to attend an initial assessment and remain for its duration [and where the age and notification conditions are met] that officer must at the same time also require the person to attend a follow-up assessment and remain for its duration (although this requirement will cease, if the person is informed at the initial assessment that he or she no longer needs to attend a follow-up assessment). The purpose of the follow-up assessment is to provide a further opportunity for the individual to discuss their drug misuse with a drugs worker and to obtain advice relating to that misuse and, if the follow-up assessor considers it appropriate, to draw up a care plan.

The requirement to undergo a required assessment and remain for the duration ceases if the person is charged with the related offence and the court grants conditional bail under the Bail Act to undergo a relevant assessment and participate in any relevant follow-up. If an individual is remanded in custody before the required assessment has been carried out, this will constitute "good cause" for not attending and they will not therefore be liable to prosecution for failure to attend.

3. Restriction on Bail

Section 19 of the Criminal Justice Act 2003 amended the Bail Act 1976 to provide for a Restriction on Bail for adults who have tested positive for specified Class A drugs (heroin, cocaine or crack). The purpose of the provision is to reduce reoffending whilst on bail. Given the compelling research evidence linking the use of crack, cocaine and heroin with acquisitive crime there is a real concern that if such offenders are placed on bail they will reoffend in order to fund their drug use. It is also important to take every opportunity to encourage drug-misusing offenders into treatment, where their drug use can be addressed.

Where the relevant conditions are met the defendant will be asked at the initial bail hearing to undergo an assessment of their drug problem (a relevant assessment) and agree to participate in any follow-up recommended by the assessor. If the defendant agrees, they will, in most cases, be released on conditional bail. However, if they refuse, the normal presumption for bail is reversed and the court will not grant bail unless satisfied that there is no significant risk of the defendant committing an offence whilst on bail. It acts as an incentive for those charged with offences to address any drug misuse or lose the right to be considered for bail pending trial. Restriction on Bail was extended to all Local Justice Areas in England from 31 March 2006. This means that any adult defendant who is brought before any court in England with a positive drug test result following testing on arrest or charge could have the provision applied to them irrespective of the area in which they live, within England.

Section 19 of the Criminal Justice Act 2003 amends the Bail Act 1976 by placing on the courts a new qualified obligation when considering bail applications, in cases where a defendant has tested positive for a specified Class A drug.

Subject to the notification to the courts by the Secretary of State, the provision applies when a defendant:

- a) is aged 18 or over; and
- b) has tested positive for a specified Class A drug either:
 - i) under Section 63(B) of the Police and Criminal Evidence Act 1984 (drug testing after charge)

- in connection with the offence; or
- ii) under Section 161 of the Criminal Justice Act 2003 (drug testing after conviction of an offence but before sentence)²; and
 - c) either the defendant has been charged with an offence under Section 5(2) or 5(3) of the Misuse of Drugs Act 1971 (possession or possession with intent to supply) relating to a specified Class A drug, or the defendant has been charged with any offence which the court is satisfied was caused, wholly or partly, by the defendant's misuse of a specified Class A drug or was motivated, wholly or partly, by his or her intended use of a specified Class A drug.

It is the accepted view that the combined evidence of a positive test and trigger offence amounts to "substantial grounds for believing that the offence in question was caused or motivated by the intended use of a specified Class A drug".

It does not apply when a defendant has refused to provide a sample for drug testing; a positive test is a prerequisite for the provision's application and even if the reason for it not being available is as a result of the defendant refusing to provide a sample the provision does not apply.

Where the person has either

- been offered and agreed to undergo a relevant assessment; or
- undergone a relevant assessment and been offered and agreed to participate in the relevant follow-up

the court, if it grants bail, shall impose as a condition of bail that the person undergo the relevant assessment and any proposed follow-up or, where the person has already undergone a relevant assessment, participate in the relevant follow-up.

Where the person has been offered but refuses to undergo a relevant assessment or, where the person has already undergone the relevant assessment, has been offered but refuses to participate in any follow-up, the court may not grant bail unless it is satisfied that there is no significant risk of the person committing an offence while on bail.

4. Conditional Cautioning

Conditional Cautioning was introduced by the Criminal Justice Act 2004 and allows, for the first time in England and Wales, for a condition that is conducive to restoration or rehabilitation to be attached to a police caution. Where the condition is not met, the offender may be charged and prosecuted with the original offence. Until Conditional Cautioning was introduced there was no statutory provision for cautions to have conditions attached, though some police forces had used voluntary schemes to encourage offenders into drug treatment (eg. deferred cautioning and "Caution Plus"). These schemes, although useful, had no statutory sanction in the case of non-compliance.

Conditional Cautioning with a Drug Interventions Programme drug rehabilitative condition provides an early opportunity in the criminal justice process to identify drug-misusing offenders. Individuals receiving a DIP drug rehabilitative Conditional Caution can be engaged and moved into appropriate treatment services before their lifestyle spirals into a more serious cycle of drug misuse and crime. Conditional Cautioning is not a soft option as it calls for a genuine and practical commitment to an individually-tailored programme. There is a sanction of prosecution for the original offence if the offender does not comply. National uptake of the scheme has so far been low across all conditions but the disposal is now being rolled out across England and Wales.

B. Prolific and other Priority Offenders Programme

No new legal arrangements have been constructed to support the Prolific and other Priority Offenders Programme. The designation of an offender as a "PPO" is purely administrative and has no specific statutory definition. Depending on the individual status of the offender there may be statutory provisions available (for example if the offender has been released from prison on licence or is on a community sentence); otherwise the levers with the offender are drawn more from the skills of the officers involved and the concept of 'legal

² Section 161 is not in force.

audacity'. In some circumstances, the absence of a legal status specifically defining a PPO can cause difficulty, for example during Court proceedings.

V. MAKING IT HAPPEN

The Drug Interventions Programme and the Prolific and other Priority Offenders Programme are both ambitious programmes. Key to delivery of both programmes is the ability of a range of agencies both within and outside the criminal justice system to work together at a national and local level. This is quite simply because the research evidence suggested that although the programmes were targeted at reducing crime and reoffending, the delivery of those reductions would only be achieved if there were a holistic approach to offenders. This meant that as well as involving traditional law enforcement agencies such as the police service, the Crown Prosecution Service and the Courts, there was a need to include drug services, health professionals, housing support workers, training experts and social workers.

A. Delivery Structures

The need for the involvement of such a wide group of agencies and stakeholders meant that it was not appropriate to ask a single agency to deliver the Programmes. It was decided that structures that had the best chance of engaging the widest range of agencies should be used.

1. Drug Interventions Programme

Drug Action Teams (DATs) are the partnerships responsible for delivering the Government's drug strategy at local level. DATs are partnerships combining representatives from local authorities (education, social services, housing), police, health, probation, the prison service and the voluntary sector. They were chosen as the key delivery route for the Drug Interventions Programme.

DATs ensure that the work of local agencies is brought together effectively and that cross-agency projects are co-ordinated successfully. Their work involves commissioning services, monitoring and reporting on performance and communicating plans, activities and performance to stakeholders.

Each DAT has a DAT Chair and Co-ordinator. The DAT Chair is the most senior official within the DAT and will also have a senior position within one of the constituent agencies. The DAT Co-ordinator is responsible for the day-to-day management of the DAT and has a team working for him or her. The DAT co-ordinator works alongside community safety managers in Crime and Disorder Partnerships (CDRPs). In some areas DATs and CDRPs are merged into one organization. Both DATs and CDRPs are accountable to the Home Secretary.

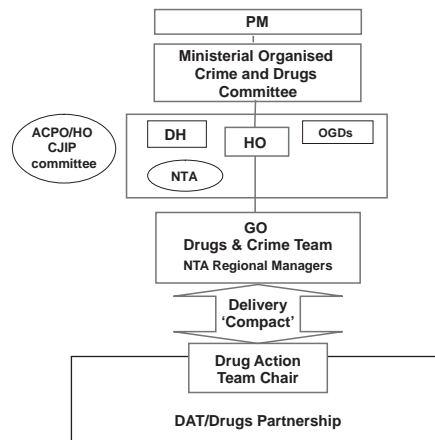
2. PPO Programme

For the PPO programme, every Crime and Disorder Reduction Partnership (or Community Safety Partnership in Wales) was responsible for setting up and implementing their PPO scheme. Occasionally, neighbouring CDRPs would collaborate to deliver a joint scheme. Additionally, there was a responsibility to establish a PPO scheme with the police and the probation service as lead partners in the delivery. In order to ensure that at least 5,000 offenders were identified for the programme across the country, CDRPs/CSPs were required to identify, as a minimum, between 15-20 offenders in their area for targeted monitoring and intensive management. In the high crime areas (such as some inner London boroughs), or in CDRPs that covered two or more police Basic Command Units, a larger number of offenders were required. Within the first two months of the programme's implementation (September and October 2004) a total of 7,801 individuals were identified as PPOs (Home Office, 2005a).

B. Governance

Although the delivery of both the DIP and PPO Programmes is concentrated at the point of delivery (the front line), the importance of successful implementation meant that central Government wished to ensure

The New Look: A clear line of command.



that some form of central influence was retained. The diagram below shows how the line of control was established.

C. Case management

1. Drug Interventions Programme

As indicated previously, an essential objective of the Drug Interventions Programme is to ensure that, while individual interventions are expanded, there is a step-change in the delivery of an end-to-end system for those drug misusers in the CJS and those leaving treatment, and that there is appropriate support in the community and in prisons.

‘Throughcare’ has been developed as the term used to describe arrangements for managing the continuity of care provided to a drug misuser from the point of arrest through to sentence and beyond. Those areas across England and Wales with the highest levels of drug related crime – commonly referred to as ‘intensive areas’ – have received additional resources to build capacity and establish Criminal Justice Integrated Teams (CJITs) to provide a more intensive response, using a case management approach. They provide a clear focus in the community for referrals and assessments. Although non-intensive areas may not have an integrated team in place, the DATs are ensuring delivery of key parts of the Programme such as ‘Throughcare’ and ‘Aftercare’ and are working towards the integrated approach.

The Drug Interventions Programme, the National Treatment Agency, prisons and probation have developed a national framework, setting out arrangements for continuity of care between the CJIT and custody. In many cases, the throughcare process begins in the police custody suite or, increasingly, at court, where an offender is given the opportunity to see a specialist non-police drugs worker. The aim is to provide information and, where appropriate, referral to treatment or other means of assistance.

This approach, known as arrest referral, had existed, in a variety of models and with varying degrees of effectiveness, for a number of years and arrest referral has been available across all police force areas in England and Wales since April 2002. Under the Programme, arrest referral has become part of the integrated programme of interventions. Arrest referral workers work in partnership with, or increasingly as part of, the CJITs. Their work goes beyond the initial model of simple assessment and onward referral to include a basic level of treatment services (known as ‘Tier 2’), delivered as part of the case management approach described above. This is key to bridging the gap between referral and entry into treatment, a phase at which a high proportion of people are at risk of being lost from the system.

‘Aftercare’ is the package of support that needs to be in place after a drug-misusing offender reaches the end of a prison-based treatment programme, completes a community sentence or leaves treatment. It is not one simple discrete process involving only treatment but includes access to additional support with issues

which may include mental health, housing, managing finances, family issues, learning new skills and employment.

2. Prolific and other Priority Offenders Programme

A similar 'case management' approach has been developed with PPOs. Once suitable individuals are identified, schemes are expected to manage offenders through a combination of enforcement measures and incentives to change behaviour and by multi-agency working. The aims of the schemes are to:

- enhance arrest, investigation, detection, charging and prosecution of offenders, bringing to justice as much of the criminality committed by the targeted PPOs as possible (by proactive police work such as increased supervision and tracking);
- reduce reoffending of PPOs, and consequently reduce the number of victims of crime;
- develop a rapid and effective partnership intervention which enables effective supervision and monitoring of PPOs; and
- address non-compliance/reoffending speedily and effectively.

The individual stakeholders, practitioners and specific agencies are responsible for all the decision-making aspects of the programme throughout; from how to choose the prolific offenders through to which interventions they may receive and how often they may receive them. In doing so, the PPO programme embraces the use of local knowledge, practitioner expertise and previous experience of similar schemes. These factors were all designed with a specific intention: to reduce the crime levels of the offenders on the PPO programme.

D. Workforce Development – Drug Interventions Programme

A key to the success of the Drug Interventions Programme is the quality and co-ordination of care delivered by the Criminal Justice Integrated Teams (CJITs) in the community, the CARATs teams in prisons and the role of key partners such as treatment providers. With the increased demand placed on the sector, it was vital that we both increased the workforce in real terms and ensured the continuing professional development of its members.

Specific work-streams to support those objectives included targeted recruitment campaigns, where appropriate; for example, a successful one in London helped recruit 34 new workers. A DIP Advanced Apprentices Scheme aimed at 18-24 year olds who do not currently work in the sector was developed and during the two-year scheme apprentices will work towards achieving a level three National Vocational Qualification. A DIP Drug Strategy Workforce Working Group reported directly to the Drug Strategy Workforce Steering Group covering apprenticeship schemes, the workforce HR monitoring tool, the DIP recruitment micro-site, and retention and validation studies.

E. Performance Management

Prior to the introduction of the Drug Interventions Programme, there were no reliable data about drug-misusing offenders and any interventions used with them.

DIP introduced the Drug Interventions Record (DIR) as a single form used by both community agencies and prisons to improve information sharing, avoid duplication and thereby improve continuity of care of drug-misusing offenders. It gathers comprehensive and accurate information from all areas, particularly by formalizing and standardizing arrangements in non-intensive areas. The DIR is providing comprehensive and reliable information for the first time. This is producing a much fuller and more accurate picture of the real work being carried out at a local level than was previously possible. The data gathered are also key to the wider work being undertaken on the effectiveness of the over-all Programme and individual interventions.

DIP performance management uses the data provided by the Drug Interventions Record (DIR), financial information and drug-related crime data through a comprehensive data collection, analysis and reporting tool – DIRWEB – into which all data are drawn from a wide variety of schemes. This product is fed into a monthly consolidated performance assessment (the DIP Performance Assessment Matrix) which also feeds into the joint police, crime and drugs monthly performance analysis (the Joint Interim Performance Assessment – JIPA). This enables schemes to be monitored for efficiency and effectiveness and for poor performers to be identified so that appropriate action can be taken.

F. Key Success Criteria

The key elements that make successful local programmes can be summarized as:

- strong local leadership;
- committed staff with limited caseloads;
- rapid information sharing;
- effective management of treatment and care plans;
- seamless and consistent messages for offenders;
- wrap-around services fully involved;
- consistency on breaches – i.e. follow up all RoB failures;
- intensive police surveillance for offenders who are non-compliant;
- convincing police commanders that drug offenders and PPOs can deliver their targets.

VI. DOES IT WORK? – RESULTS AND EVALUATION

A. Drug Interventions Programme

Approximately 3,500 people are now entering drug treatment every month as a consequence of the Drug Intervention Programme, and this number has increased markedly since the introduction of Tough Choices in April 2006. By November 2006, the quarterly average number of new clients entering drug treatment through DIP had increased by 44% compared to the period preceding the onset of Tough Choices.

Home Office analysis shows that approximately eight out of every ten persons entering drug treatment through DIP are being retained in treatment for 12 weeks or more, and this is true of those persons committing the highest volume of crime. Tough Choices has boosted the overall number of persons entering drug treatment, but this would appear to be particularly the case for low-level offenders. This would suggest that these new measures are reaching offenders at an earlier stage in their offending careers. Analysis suggests that well over half of this group are assessed as requiring drug treatment, indicating that significant problems exist amongst these individuals. The vast majority of these individuals are also likely to have had prior contact with DIP or go on to have a subsequent contact, again suggesting that there are significant treatment needs for these offenders that were not previously being addressed.

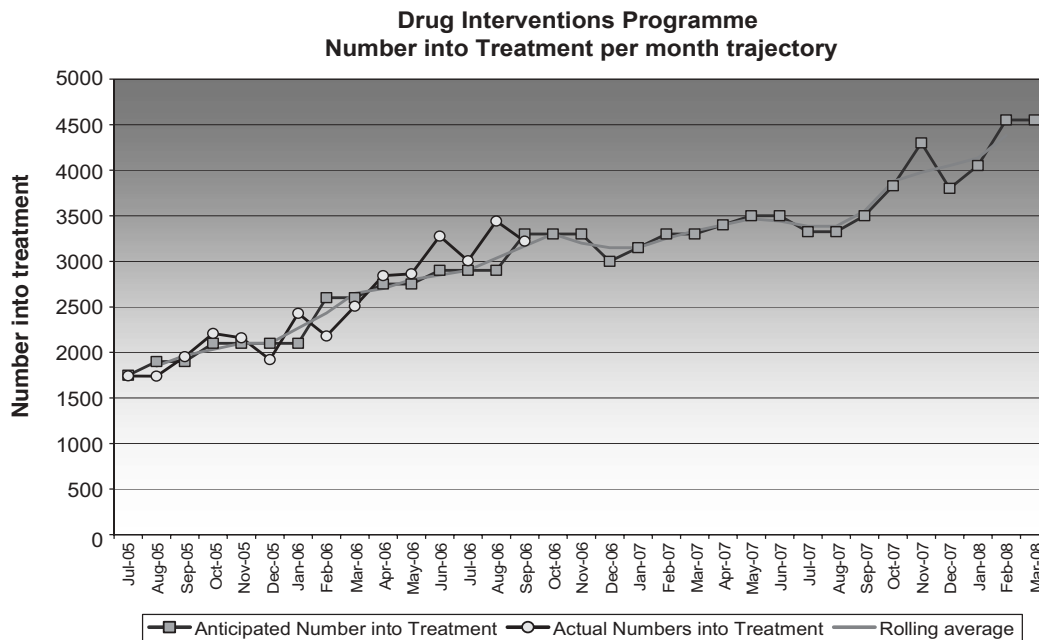


Figure 1. Number of persons into treatment each month under the Drug Interventions Programme

A number of high-level outcome measures have been developed to monitor the progress of the Drug Strategy. The Drug Harm Index (DHI) was developed as the overarching measure of the progress of the Drug Strategy and attempts to measure the overall harm caused by Class A drug use in relation to its social and economic cost. The overall cost of drug harm is calculated using data that describes a variety of health,

crime and community outcomes known to be associated with Class A drug use. These include information on new HIV and new hepatitis (B and C) cases, drug related deaths, acquisitive crimes known from research to be related to Class A drug use, and community or neighbourhood perceptions of the problems of drug use in local areas. It is not possible to collect data on all the harms caused by Class A drug use, only those for which sufficiently robust and reliable data exist. The overall costs of these harms are summed and expressed as an index and overall changes monitored on a yearly basis. A more detailed discussion of the methodology underpinning the Drug Harm Index can be found in Macdonald *et al.* (2005).

The latest calculation of the DHI shows that between 2003 and 2004 the DHI has fallen in value from 104.8 to 87.9, a drop of 16.9 points or 16.1% (Figure 2). This compares to a 9% drop between 2002 and 2003. The previously reported fall in the DHI between 2002 and 2003 was primarily driven by reductions in the number of drug deaths, Hepatitis C episodes, commercial and domestic burglaries, BCS perceptions of drug nuisance and thefts of (domestic) vehicles. Taken together these accounted for 75% of the change in DHI value between 2002 and 2003. The 16.9 point change in the DHI value between 2003 and 2004 is mostly due to substantial falls in a number of drug-related crime types (e.g. burglary, shoplifting, robbery and vehicle theft). The only significant health-related factor is drug-related deaths, but between 2003 and 2004 these increased from 1,255 to 1,427.

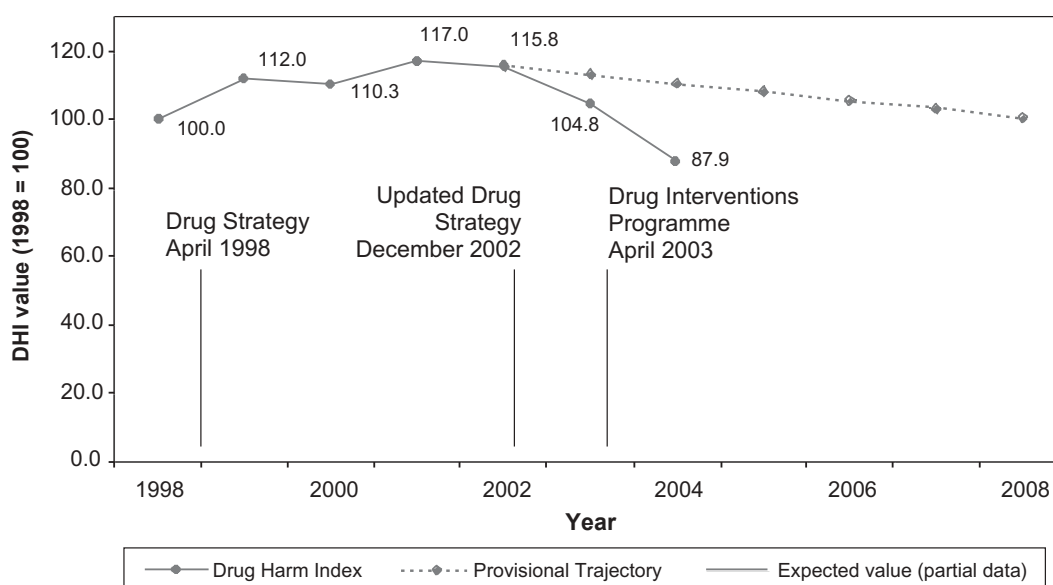


Figure 2. The Drug Harm Index and updated trajectory

One of the drawbacks of the DHI is that it has limited use as a performance management tool since much of the data is only available on a yearly basis and some measures have a substantial time lag. For example, new cases of HIV infection may be describing the harms that were generated several years previously and not in the year for which the data was recorded. As an alternative, a proxy measure of drug-related acquisitive crime has been developed to monitor trends on a monthly basis. This involves calculating the proportion of police recorded acquisitive crime that may be drug-related using data from the Arrestee Survey - a representative study of some 7,500 arrested persons in 60 police custody suites across England and Wales undertaken on a yearly basis. The survey asks a series of questions relating to offending behaviour and drug use, and participants are asked to undergo saliva testing for the presence of Class A drugs. In this way, drug-related fractions are calculated for each acquisitive offence type and these fractions are then applied to police-recorded crime data for the same offence categories. The totals are then summed to provide an overall estimate of the level of drug-related acquisitive crime.

Figure 3 describes the overall level of drug-related acquisitive crime for England and Wales. It would appear that, overall, since the onset of the Drug Interventions Programme drug-related acquisitive crime has fallen by around 22%. This downward trend has slowed in the last 12 months so that the average

monthly year-on-year reduction is just over 3% in the 12 months to November 2006.

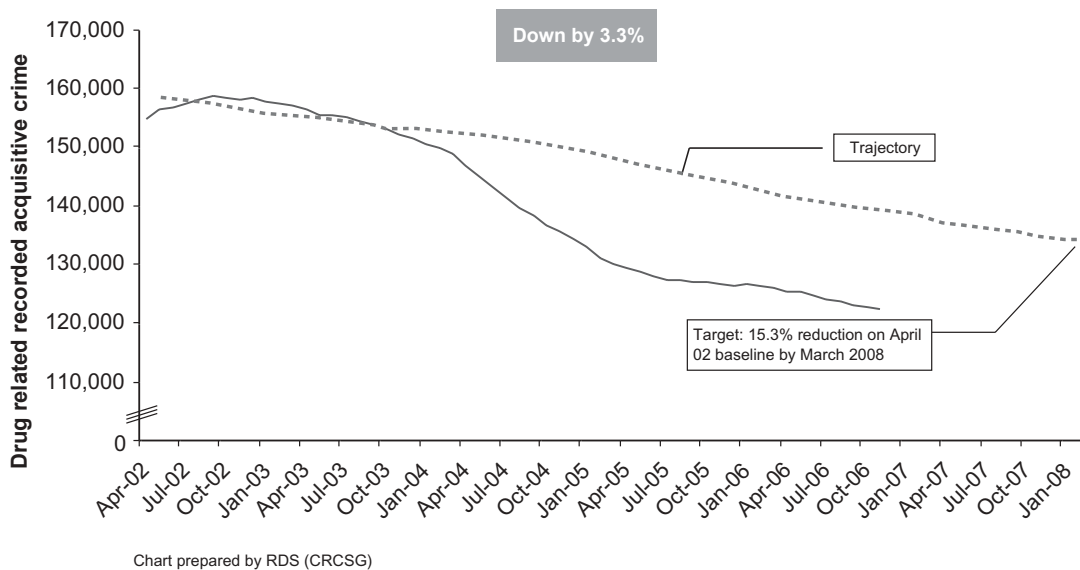


Figure 3. Drug-related recorded acquisitive crime: rolling 12 monthly average to November 2006

Of course, it is not possible to be certain as to what extent these overall changes can be attributed solely to the Drug Interventions Programme. Nonetheless, the accumulation of research evidence demonstrating the impact of treatment on reduced offending and performance data showing increasing numbers entering treatment through DIP and being retained in treatment for a minimum of three months would indicate that some positive outcomes on offending will have undoubtedly accrued from DIP.

This is confirmed by emerging findings from a Home Office evaluation of DIP. This showed significant reductions in self-reported offending, drug use and drug expenditure amongst those clients engaged in the DIP caseload for three months or longer. This is based on a comparison between the month prior to contact with CJIT and the month following engagement with CJIT for a period of three months or longer. The analysis indicates that these reductions are, in part, due to the provision of case management and treatment under DIP. However, in the absence of an appropriate control group we cannot say for certain that these reductions are solely attributable to CJITs. The key findings for self-reported offending and drug use are as follows:

- Self-reported crime amongst DIP clients engaged in the caseload for at least 3 months fell by 12%, from 36% of clients reporting crime in the month prior to contact with DIP to 24% in the month following engagement with DIP for a period of three months or more;
- The odds of DIP clients engaged in the caseload committing crime almost halved during this period, with a reduction in the mean number of crimes per client from 7.2 to 2.7;
- The use of heroin amongst clients engaged with DIP for three months or longer fell from 77% in the month prior to contact with DIP to 46%, a reduction of 31%. Frequent use of heroin fell from 63% of DIP clients to 15%, a reduction of 48%;
- The reported use of crack cocaine amongst clients engaged with DIP for three months or longer fell from 59% in the month prior to contact with DIP to 35%, a reduction of 24%. Frequent use of crack fell from 24% of DIP clients to 5%, a reduction of 19%;
- The proportion of clients spending £1,000 or more per month to fund their drug dependency fell by 38%, from 56% of DIP clients to 18%.

B. Prolific and Priority Offenders Programme

There are approximately 10,000 individuals currently subject to the PPO scheme in England and Wales, a number which tends to fluctuate as offenders leave the scheme and new offenders join. Home Office monitoring data shows that the most common reason for leaving the PPO scheme is an observable reduction in offending (54% of persons leaving), while a further 24% leave to join other schemes, such as the Drug Intervention Programme. Indeed the overlap between these two programmes has led to a decision to align the two schemes more closely to ensure greater co-ordination in the management of offenders.

Home Office analysis suggests that approximately 30% of PPOs have drug dependency problems. These people are markedly more likely to be high crime-causing offenders both in relation to the volume of offences committed and their seriousness. These individuals are also more criminally versatile with offences spanning a broader range of categories when compared to DIP clients who are not PPOs, and PPOs who are not dependent on drugs (see Figure 4).

Characteristics of caseload	DIP caseload	Drug misusing	PPOs
Estimate size of caseload	40,000	2,900	10,000
Average age	31	29	25
% of male offenders	81	96	96
Average number of convictions	42	67	47
... of which % acquisitive	50	52	37
% High Crime-Causing Users (HCCU)	18	36	Not known
% criminally versatile (convictions in 4 to 8 different offence types)	47	72	82
% with serious offences (burglary, robbery, violence, sexual)	34	68	Not known

Figure 4. Comparison of offending characteristics of DIP and PPO caseloads, and drug misusing PPOs

A national evaluation of the PPO scheme examined the offending behaviour of a cohort of 7,500 offenders who entered the PPO programme in the two months following its launch in September 2004. The evaluation also involved detailed interviews with PPO staff and offenders engaged on the programme. The main findings were as follows:

- The PPO cohort exhibited a sharp reduction in offending following entry onto the PPO programme. In the first 17 months of the scheme the PPO offenders had a reduction of 62% in the overall level of convictions compared to the beginning of the scheme. This is shown in Figure 5.

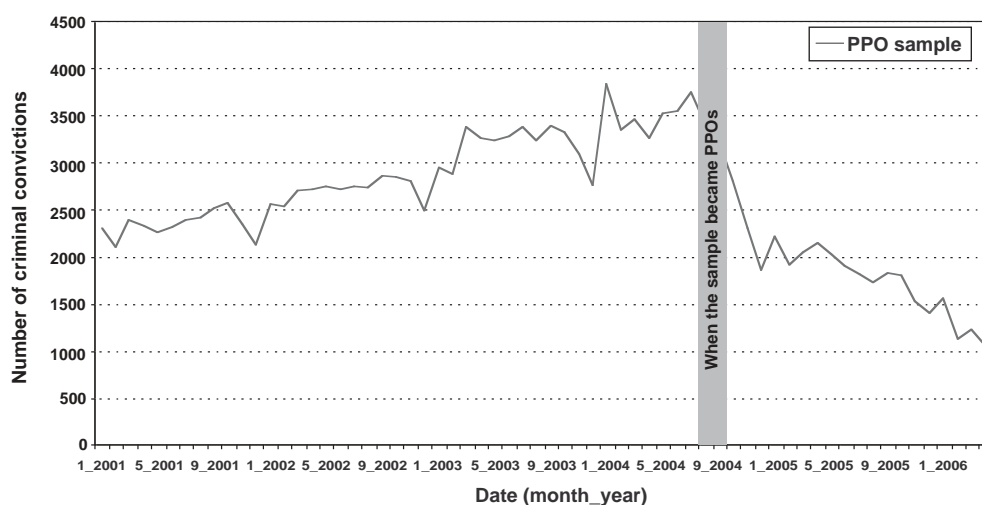


Figure 5. PPO cohort’s criminal convictions leading up to and following the PPO scheme

- Comparing the total number of convictions in the 17 months before and following the PPO

- programme shows that there has been a 43% reduction in the offending of the entire cohort;
- The PPO cohort had a reduction in the rate of their offending following entry onto the programme. The average rate of offending fell from 0.51 convictions per month per PPO in the 12 months prior to entry onto the scheme to 0.39 for the 12-months following entry, a reduction of 24%;
- The PPO cohort had a marked decrease in the number of days between committing their offence and being sentenced in court in the year following entry to the programme. PPOs were, on average, likely to be processed 13 days quicker in the first 12 months of the programme than the corresponding period prior to their entry onto the scheme.

The evaluation attempted to generate a robust control group (using a statistical technique known as propensity score matching). This was judged to have been less successful than originally hoped and ultimately limited the conclusions that could be drawn about the specific impact of the PPO initiative on levels of offending, as distinct from other interventions and factors that may also have influenced offending levels amongst PPOs. Thus it is not possible to state the extent to which the reduction in offending observed in the PPO cohort is solely attributable to the PPO intervention. However, the interviews with both PPO staff and offenders engaged in the programme were positive.

- The majority of PPOs were largely positive about the programme and reported a reduction or had stopped offending altogether since engaging with the scheme;
- PPOs were aware of the additional enforcement aspects of the scheme and the consequences of non-compliance. The PPO programme was viewed by offenders as more stringent than their previous criminal justice experiences;
- Regarding the rehabilitative elements of the programme, the majority of PPOs welcomed the additional support and interventions they had received whilst on the scheme;
- Staff were largely positive about the scheme, and were able to discuss instances of success for the programme in terms of both 'Catch and Convict' and 'Rehabilitate and Resettle'.

While no firm conclusions could be drawn around the specific impact of the PPO scheme on levels of offending at this stage, (as distinct from other interventions targeting this group of individuals), the results are nonetheless encouraging.

VII. SUMMARY AND WHERE NEXT

A. Summary

The success of the Drug Interventions Programme and the PPO Programme has been well recognized nationally and at local level within partnerships who have seen the impacts on local offending and offenders. That success has undoubtedly been the result of empowering those local partnerships and of taking a holistic approach to the needs of offenders and ensuring that all agencies are engaged and can deliver as part of a co-ordinated system. The introduction of new powers has also been key to getting drug-misusing offenders engaged in treatment and for prolific offenders the intensive use of intelligence, surveillance and legal audacity have changed the way offenders are managed.

The current state of Drug Interventions Programme includes:

- drug testing in over 175 custody suites – 98 BCUs;
- drug workers in all custody suites and many courts;
- testing at the point of arrest and required assessment for those testing positive implemented in all DIP 'intensive' areas in England;
- Restriction on Bail rolled out to all Local Justice Areas in England;
- 'integrated teams' in intensive and non-intensive areas;
- Conditional Cautioning powers in place;
- targeted interventions for children and YP;
- better integration with CARATs staff;
- more DRR (community sentences) commencements and completions;
- over £500m spent.

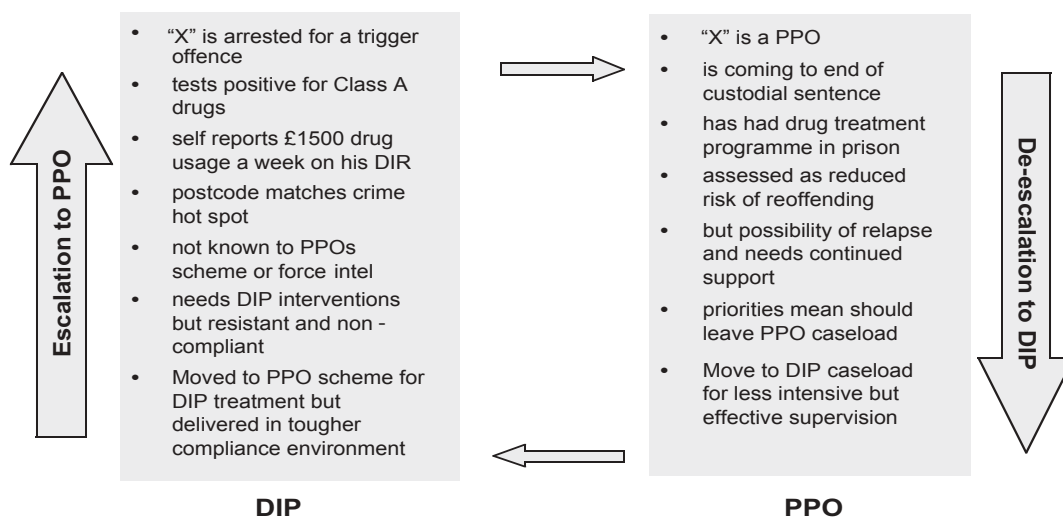
The current state of Prolific and other Priority Offenders Programme includes:

- schemes operating in every area;
- over 10,000 prolific adult offenders being intensively managed;
- 4,000 young people on the Prevent and Deter scheme;
- Premium service for PPOs in the criminal justice system – e.g. in the courts;
- Schemes being aligned with DIP programme;
- Evaluations evidencing significant crime reduction for PPOs.

B. Where Next?

The key challenge for the future is to convert these Programmes into an accepted way of working as a standard business model. The dangers of such a move are that the focus and enthusiasm that surround the Programmes dissipates into much wider ways of working. As we are already seeing, the local partnerships and agencies are taking the Programmes individually and jointly to new levels within their own areas.

In order to support this, the Home Secretary has given instruction that the Drug Interventions Programme and the Prolific and other Priority Offender Programme should be closely aligned at local level. This will provide an opportunity for offenders to be managed within and between both Programmes, depending on the nature and risk of their offending profile at any one time. For example, a drug-misusing offender who is using a very significant amount of Class A drugs and whose offending levels are escalating, and who shows little sign of voluntarily complying with the DIP model, may be moved on to the PPO model which contains a much more intense scrutiny regime with a much stronger enforcement component. Conversely, a PPO who has developed a more controlled life and who is no longer considered suitable for the PPO scheme, may be taken off that scheme and moved to the DIP scheme. A diagram of how this might work is given below.



Beyond the alignment of the two Programmes, there is a wider ambition to move the two Programmes into the wider offender management schemes. The United Kingdom is developing the National Offender Management Service, which will be responsible for the statutory supervision of both the Prison and Probation Service and the aspiration is to work towards a position where the DIP and PPO schemes can be integrated with the National Offender Management Service approach. This will be supported by the new Crime Reduction Strategy which, for the first time, will specifically focus on people as well as products, and a new Reducing Reoffending strategy which similarly recognizes the importance of case-managing individual offenders.

In a further exciting development, some larger police forces are adopting offender management as a key role at the centre of their force strategy. This is all in recognition of the fact that so much work takes place in crime reduction and target hardening of individual types of crime or circumstances, that all crime is connected by individuals and that the circumstances which drive those individuals to commit crime cannot be addressed simply by making it harder for them to steal cars or burgle houses.

EFFECTIVE CORRECTIONAL PROGRAMMES

*Brian A. Grant, Ph.D**



I. INTRODUCTION

There are a wide variety of programmes that purport to provide effective treatment for the needs of offenders. However, only programmes that have been evaluated with appropriate research methodologies and which demonstrate a reduction in recidivism should be considered for implementation. Many programmes have been designed without adherence to the principles of risk, need and responsivity, as defined by Andrews and Bonta (2002), and therefore may not provide the most effective treatment.

To determine which programmes are most likely to produce reductions in recidivism a number of authors have conducted extensive reviews of the programme outcome literature through the use of meta-analysis (for example, Andrews *et al.* 1990; Gendeau, Little & Goggin, 1996; Lipsey, 1995; Lösel, 1995). The results from these reviews suggest a set of characteristics that can be used to judge the quality of a programme.

While research has shown positive effects of treatment on offender behaviour there remains a need for high quality research to support and further guide programme developers. In particular, programme research is needed to demonstrate which programmes are effective across cultures and to identify those programme characteristics that may be sensitive to cultural differences. In addition, not all correctional jurisdictions are able to put in place extensive programming regimes and research is needed to demonstrate the best approaches to use when resources are limited.

II. WHAT WORKS IN PROGRAMMING

Meta-analysis has also been used to identify the programme elements that are most likely to have an impact on recidivism. A number of meta-analyses have shown similar results (Andrews *et al.* 1990; Gendeau, Little & Goggin, 1996; Lipsey, 1995; Lösel, 1995), but the study by Andrews *et al.* (1990) illustrates the conclusions.

Andrews *et al.* (1990) reviewed 154 correctional treatment evaluation studies and classified the programmes they evaluated into one of four treatment groups:

(i) Criminal sanctions:

Studies in which there was a variation in the sentence, but no variation in the rehabilitation component. In these studies, options comparing more vs. less probation, or probation vs. incarceration were compared to determine which produced a lower rate of recidivism.

(ii) Inappropriate correctional service:

These studies were not consistent with the risk/need principles. These studies provided intervention for low risk offenders and used non-directive relationships based on psychodynamic counselling. Other kinds of interventions included in this group were group counselling programmes that did not use pro-social modelling, non-directive educational and vocational programmes and programmes like Scared Straight, designed to discourage continued criminal activity by showing what prison is like.

(iii) Appropriate treatment:

These options included delivery to higher risk offenders and used behaviourally oriented interventions. They also compared rates of response and included a small number of non-behavioural studies that

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addressed criminogenic needs.

(iv) Unspecified treatment:

This was the fourth category and was used where the treatment was unspecified, or could not be classified as either appropriate or inappropriate.

The authors compared the recidivism results across the different programme types and the results of the analyses are summarized in Table 5. The effectiveness measure used was the Phi coefficient, a measure of association, in this case demonstrating the impact the programme type had on recidivism. A positive number indicates the programme decreased recidivism, while a negative number indicates the programme increased recidivism. As can be seen in Table 1, programmes that followed the risk/need principles and were structured and behavioural in content have the highest Phi coefficient. Studies that evaluated the use of criminal sanctions or used programme elements that were described above as being inappropriate either had no effect, or increased recidivism.

Table 1: Type of Intervention and Impact on Recidivism

Type of treatment	Number of studies	Mean Phi
Appropriate	54	.30
Unspecified	32	.13
Inappropriate	38	-.06
Criminal sanctions	30	-.07

Summarizing the outcome of a number of meta-analyses, Gendreau (1996) has proposed a set of eight principles of effective programme design. Listed below are the principles, with examples of how they are applied in programmes currently being delivered at the Correctional Service of Canada:


1. The risk and need levels of offenders are specified and used in selection of participants and criminogenic needs are targeted.

Offenders admitted to the Correctional Service undergo an extensive assessment of their risk and needs. Risk is assessed by both dynamic and static risk factors to identify those offenders most in need of programming. The areas of programming they require are identified by the needs assessment and only those needs identified as relevant to the offender are addressed through programming. The assessment takes between two and three months and includes a review of court and police documents, interviews with the offender, and specialized assessment in areas such as substance use, education and learning, mental health, sexual offences and violence.

2. Programmes are highly structured with content and contingencies under the control of the facilitators, not the participants, and antisocial attitudes are not reinforced.

All programmes have structured manuals that define the objectives and activities for each session. Programme facilitators must follow the defined programme and must not change how the components are taught. All of the programme components are covered consistently every time the programme is completed and participants are unable to lead the programme off-track to meet personal goals that may be inconsistent with the programme goals. Examples of pages from a well-structured programme manual are presented in Figure 1.

Figure 1: Example from the Aboriginal Offenders Substance Abuse Program Manual (Correctional Service, 2006)



SESSION 4
 Introduction to the Program - Part C

SESSION OBJECTIVES

1. To introduce the program to group members.
2. To identify the meaning of responsibility, commitment and personal integrity.
3. To understand the concept of community.
4. To understand the concept of the model of change.
5. To identify at what stage of change you are in, relative to your substance use.
6. To define group norms and guidelines.

ELDERS

The Aboriginal Offender Substance Abuse Program is grounded in culture. In order for the program to be effective and ultimately, successful it is crucial that an Elder take the necessary time in this session.

The opening and closing of the session are natural times for the Elder to involve him or herself. There may be many other times throughout the session when Elder input is not only necessary but crucial. Customs, rituals and ceremonies are intrinsic to Aboriginal culture and are important for the well-being, education and self-worth of the group's participants. It is, therefore, important that the Elder introduce these when the timing is appropriate.

SESSION RESOURCES

- Handouts - 4.1, and 4.2
- Overheads - 4.1 and 4.2
- 1" Binder/Quo tang
- Pens or Pencils
- Journal
- Flipchart and/or Whiteboard/Markers

FACILITATOR NOTES

The introduction to the program, in three parts, is intended to have participants become intimately familiar with the program and as a group "invest" in it. These sessions are about learning what it is to make a "commitment" and the importance of being a member of a group or community and the guidelines that go along with any group. It is important to note that commitment may look different depending on where an individual may be in relation to the stage of change. It is not uncommon to have participants in the pre-contemplation and contemplation stage of change at the beginning of a program. Change is a dynamic process and individuals may fluctuate throughout.

Motivation is particularly key to engaging participants at this initial stage of the program. Participants should be acknowledged for taking this first important step in their healing journey. It is also important to convey that this is their group and their input is critical.

The "wampum" (commitment string) has been selected for this session as the wampum has been used by several Aboriginal cultures and is an appropriate cultural activity for certain areas and has much to do with making a commitment or binding agreement.

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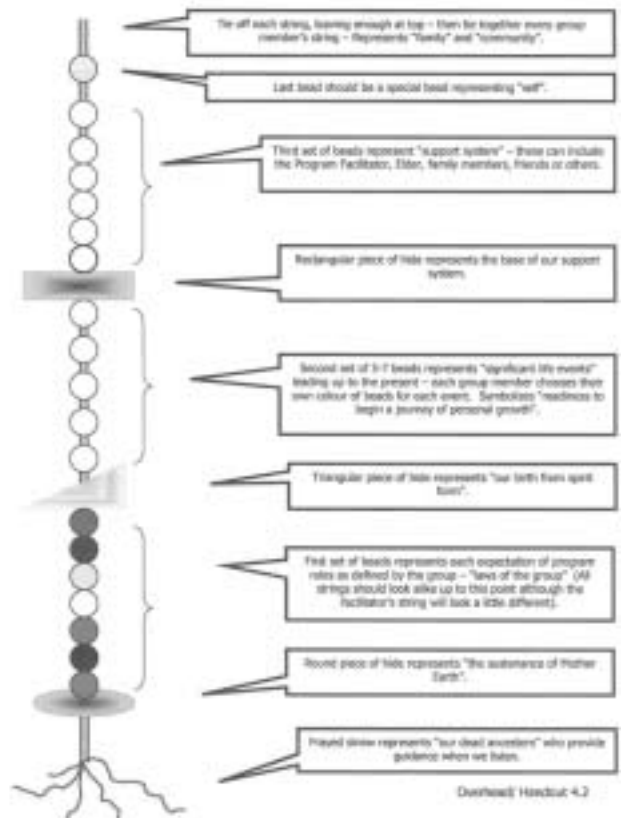
WAMPUM COMMITMENT STRING

Directions:

Have the color-coded rules that the group did on flipchart so that it is visible to everyone.

1. Demonstrate how to prepare the sinew for the beads and leather by tying a knot at the bottom of the string leaving about 2 inches that will be frayed later and symbolizes the guidance (when we are quiet and 'listening') we receive from our ancestors who have passed.
2. String the circle of leather on first, which represents Mother Earth's support and sustenance, and have them put their initials or a symbol in ink at the bottom of the leather so they can be identified later.
3. Add the color of the bead that represents the first group rule, the second, third, etc. This section of everyone's string should look exactly alike.
4. Add the triangular piece of leather that represents their body, mind and spirit.
5. Have each group member start with the color of bead of significant life events starting with their first event.
6. Add the rectangular piece of leather that represents the structure and importance of a support system and then the color of the beads associated with each person they have identified as part of their support.
7. Add the last bead that represents self and have them tie it off securely so that the beads can not slip off.
8. There should now be ample sinew left at the top of their strings to tie them all together representing total commitment to the group and their support of one another as well as symbolizing family and community.

Overhead/Handout 4.1



Overhead/Handout 4.2

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3. Account for the response rate of participants.

For example, highly structured programmes are most appropriate for offenders who are not effective at conceptualizing ideas; higher levels of interpersonal interaction are required for high anxiety offenders; and additional contingencies are put in place for offenders who have low motivation.

Core programmes are cognitive behaviourally based to meet the learning needs of offenders. They include skill development exercises that make use of role playing and practice. In addition, specialized programme options are available for women and Aboriginal offenders. These programmes address the different impacts that criminal behaviour has on these groups and provide programming that is socially and culturally appropriate for the offenders' needs. Offenders requiring high-intensity programming are often less motivated to participate. Therefore, to encourage their continued participation more than one facilitator is used to better engage the offender in the programme. These programmes also make use of one-on-one counselling, in addition to highly structured group work, as a method of maintaining the motivation of the offenders.

4. Offender characteristics are matched to staff; including personal characteristics (gender, age, life experiences, training) and relationship styles (empathy, fairness, firmness, spontaneity).

Through training, programme facilitators are encouraged to show empathy and understanding of the offenders' challenges while at the same time remaining firm on the programme objectives and avoiding the reinforcement of antisocial attitudes. In the case of Aboriginal programmes, Aboriginal people are used as facilitators to better match offenders and facilitators in terms of cultural backgrounds.

5. Positive reinforcers outnumber punishers by a ratio of 4:1.

Training sessions demonstrate how to deliver positive reinforcers during group sessions to encourage both positive change in behaviour and participation in the programme activities.

6. Intervention periods of three to nine months are used since shorter periods do not provide sufficient time for relationships to develop and there is need for time in the treatment setting to practice the interventions learned.

High intensity programmes last three to four months, or longer, to provide sufficient time for the offender to integrate the ideas that are discussed. For moderate and low intensity programmes the duration is less than recommended here, but this is overcome by the use of maintenance programmes that are delivered after the completion of the main programme. The maintenance programmes may be delivered in the institution or in the community to reinforce the concepts learned in the programme and to further encourage the offender to make the changes needed to address their needs.

7. Programme staff are adequately trained with an understanding of the theory behind the intervention; they are provided with time to become experienced and familiar with the programme content before delivering it; and smaller programmes (number of locations where the programmes are being delivered) are often observed to be more effective.

Training of facilitators can take up to two weeks and refresher courses are also offered. The programme manuals and training plans outline in detail the theoretical models for the programmes and explain the programme details. Training usually requires that facilitators deliver sample lessons from the training manual and participate, as would an offender, in the programme lessons taught by other facilitators. The hands-on experience with the programme materials ensures in-depth knowledge. All facilitators are evaluated at the end of training to determine if they have achieved sufficient knowledge and understanding of the programme prior to being able to deliver the programme in an institution or in the community. On-going follow-up monitoring of the facilitators is part of the programme quality control.

8. Assessment and evaluation of the programme is on-going and integral to the programme so changes in behaviour and attitudes can be measured, skill development can be assessed and programme outcomes can be demonstrated.

Prior to the start of most programmes an assessment battery, consisting of a structured interview, questionnaires and standardized assessment tools are completed. During the programme and at its end,

these assessment tools are completed again to determine if there have been changes in the offenders' knowledge, attitudes, beliefs etc. Results of these assessments are used first by the facilitators to ensure that the programme is achieving its objectives. These assessment results are also accumulated and used in research, with additional data on release outcome, to determine if the programme is effective in changing recidivism and improving the release options of offenders.

In addition to these principles, Gendreau argues that the following components are important for successful interventions:

- (i) Pro-social attitudes and behaviours are reinforced during treatment sessions;
- (ii) Pro-social behaviours are modelled, or demonstrated, in treatment;
- (iii) Role playing and practice of learned behaviours is needed;
- (iv) Focus on skill development;
- (v) Relapse prevention is included in the programme training.

In addition to identifying the characteristics of effective interventions, Gendreau offers the following summary of interventions that are not effective with correctional populations:

- (i) Programmes that rely on psychodynamic therapies requiring high levels of introspection, self evaluation and good verbal skills;
- (ii) Nondirective therapies in which antisocial attitudes are not challenged and groups in which criminal attitudes and behaviours are reinforced;
- (iii) Treatment strategies that rely on punishment, such as 'boot camp', intensive supervision, and shock incarceration;
- (iv) Programmes that externalize blame, fail to develop empathy for the victims of crime and are directed at venting anger towards the system, or that only accept self-motivated offenders;
- (v) Programmes that provide intensive services to low risk offenders.

A final point on the effectiveness of programming: a study recently completed for the Correctional Service (French & Gendreau, 2003) looked at the impact of correctional programming on offenders' behaviour while offenders were still in custody. The findings demonstrate that with increased programme options institutional incidents decline. That is, with programming, correctional institutions become safer places.

III. EXAMPLES OF TREATMENT APPROACHES

Four treatment approaches will be presented in this section, stages of change, relapse prevention, motivational interviewing and harm reduction.

A. Stages of Change

Prochaska and DiClemente (1992) propose a model of readiness to change that allows treatment providers to match treatment to an individual's willingness to change. In their model, they propose five stages of change and provide examples of what should be addressed at each stage and what is required for the person to move to the next stage (Connors, Donovan & DiClemente, 2001). These stages are meant to be representative of what happens and individuals will not pass through the stages as if they were discrete events.

(i) *Pre-contemplation*

In the pre-contemplation phase an individual has no intent to change his or her behaviour and the behaviour may be viewed as being both positive and negative for the individual. During this phase it is not useful to focus on changing behaviour, but rather to use motivational techniques that will move the person to the next phase. The person may need to acknowledge that there is a problem, develop a better understanding of the negative consequences of the behaviour, and develop an understanding of the factors that trigger it. An individual at this stage may believe they are in control and can stop anytime and believe that the benefits of using outweigh the benefits of not using.

(ii) *Contemplation*

In the contemplation stage the individual is thinking about their problem and is looking for information that will help them to understand it. They are looking at the positive and negative characteristics of the behaviour, but they are not yet prepared to stop it. Intervention at this stage involves providing increased

understanding of the effects of the behaviour, evaluation of life goals and consideration of the context in which the person may be living. In the case of offenders, if they are incarcerated it is a good opportunity to point out the negative impacts that being in prison have on their life and what the alternatives might be.

At this stage, the person must make a decision to act if they are to move to the next stage. They might begin to take some preliminary action such as meeting with a counsellor, changing their behaviour, or reducing the risks associated with it.

(iii) Preparation

The third stage is preparation for change. Persons in this stage are prepared to change both their attitudes and their behaviour. They may have taken some early steps to monitor their behaviour with the goal of reducing the frequency of it. They are ready to be encouraged to participate in treatment so intervention should work to increase their commitment to stopping the behaviour. This can be done by further development of information on the consequences of the behaviour and the positive benefits they may experience by reducing it or stopping completely.

At this stage individuals will need to establish goals and priorities that can be set to help them stop the negative behaviour. They will need to develop a change plan that can guide their efforts to change.

(iv) Action

In the action stage individuals have begun to change their behaviour. They are learning new skills that help them to remain free from the negative behaviour. Their desire to change at this stage makes them ideal candidates for programmes that apply behaviour change practices in treatment. Treatment needs to provide skills development that will assist in the cessation of the behaviour while providing alternatives to their former lifestyle. Participants also need to learn about what may trigger their negative behaviour so that they can avoid these situations.

Prochask and DiClemente (1992) suggest that interventions in this stage should last for an average of six months, and work is needed with the individual to increase their belief that they can maintain the desired changes in behaviour.

(v) Maintenance

The final stage in this model is maintenance, the process by which the individual maintains his or her desired behaviour. This is a critical phase as it is the one that must last for the remainder of a person's life if they are to avoid resuming their former ways. They must have in place practices that will allow them to avoid substance abuse and continue to practice the skills learned in treatment. Very often, treatment programmes do not provide for maintenance support. Rather, the programme is delivered, the person successfully completes it and then is expected to maintain the change without any additional support. Effective programmes have maintenance components that provide support and skills reinforcement during the maintenance stage.

An individual does not move through these stages in a straight line. They may move from pre-contemplation to preparation, only to slip back to the contemplation stage. Or, they move all the way to maintenance, but as a result of life circumstances, may find themselves starting the process again (Connors, Donovan & DiClemente, 2001). This is both expected and normal and is one of the reasons that effective programmes stress the need for understanding of lapses in drug and alcohol use during and after treatment.

B. Relapse Prevention

Relapse prevention should be an important component of treatment programmes. As noted earlier, relapse is a common occurrence and the individual needs to be prepared for it when it occurs. The goals of relapse prevention are to provide information useful in recognizing high risk situations that may lead to relapse and providing the skills needed to deal with the relapse when it does occur. At the time of a relapse, it is important that the client does not give up.

Seven models of relapse are identified by Connors, Donovan and DiClemente (2001), but there is a consistency across the approaches they present. The model presented by Marlatt and Gordon (1985) is based on cognitive behavioural principles and is a good example to use here. In this model, relapse is seen as

the interaction between the high risk situations associated with the behaviour and the individual's perceptions of his or her ability to control the situation and therefore to avoid the behaviour. The individual's expectations about the usefulness of the behaviour in the particular situation will also play a role in whether or not they choose to relapse (Connors, Donovan & DiClemente, 2001).

When the high risk situation arises, the individual who has learned coping skills to deal with the event or environment will be more likely to resist the relapse. The coping skills that have been learned will provide alternative courses of action which hopefully will avoid the relapse. Individuals who have not learned appropriate coping skills will be less able to choose alternative behaviours and therefore will be more likely to return to the undesired behaviour.

For the Marlatt model, there are two key components that must be addressed during treatment; identifying high risk situations and developing coping skills to deal with them in a positive way. Treatment programmes that use relapse prevention spend time helping the offender to identify their unique high risk situations through review of past events and their outcomes. Events that consistently lead to the behaviour become the targets for developing coping strategies.

Developing coping strategies follows the identification of the high risk situations. For each high risk situation the offender must identify a number of alternative ways of dealing with the risk created. For example, if meeting with friends in a large group is a high risk situation, then coping strategies might include avoiding being with friends in large groups, leaving the group when it gets large, or finding alternative activities that are normally done only in small groups of two or three people. Other coping strategies that have been identified in the research literature include: reminders of the consequence of the behaviour, thinking about the positive effects of avoiding the behaviour, recalling positive periods without the behaviour, and remembering that avoiding the behaviour is an important personal goal.

The coping strategies are identified on an individual basis following discussion in groups. After identification of coping strategies, they must be practiced in role play activities. Through the identification of high risk situations, development of coping strategies and practicing the strategies, the offender is better prepared to deal with the situations when they occur.

Relapses are to be expected and may be viewed as learning experiences. Analysis of the relapse events, the antecedent behaviours and the results, will assist in the development of more effective coping strategies that can be used during the next high risk situation. Following the relapse, or lapse, the client needs to be reassured that they can continue without the behaviour. The treatment programme should include discussion of what to do after a relapse and how to restart the process of avoiding of the behaviour. This is one of the main reasons for the importance of treatment maintenance programmes. It is during the maintenance sessions that lapses and relapses can be addressed in a supportive environment.

C. Motivational Interviewing

Miller and Rollnick (1991) state that "motivational interviewing is a particular way to help people recognize and do something about their present or potential problem. It is particularly useful with people who are reluctant to change and ambivalent about changing." (p. 52)

Many offenders are not willing to commit to changing their negative behaviour. There are too many positive features associated with their lifestyle. They are in the pre-contemplative stage of change. However, treatment providers must work to encourage these individuals to move forward along the continuum towards change. Motivational interviewing is one of the methods that have been shown to be effective for starting the change process.

Miller and Rollnick (1991) present five general principles of motivational interviewing.

(i) Express empathy

For motivational interviewing to be effective the counsellor must express empathy with the client. The client is accepted for what he or she is at the time of counselling, there is no judgment about how they arrived at that point, or the consequences of their behaviour. Accepting the individuals as they are reduces their resistance to the counselling setting. Ambivalence about change is acceptable for the client.

(ii) Develop discrepancy

Developing discrepancy has to do with gently demonstrating the conflicting values in a person's life and guiding them towards the more appropriate goals. This is different from confrontation that may result in resistance to change. While discussing the current situation with the client the counsellor looks for positive personal goals that the individual has and contrasts these with the current behaviours that prevent the achievement of these goals. The object is to encourage the client to see the importance of the alternative goals they have and to give these greater priority than the desire to use drugs and alcohol.

(iii) Avoid argumentation

The counsellor needs to avoid argumentation to maintain a positive therapeutic relationship with the client. However, this does not mean that the therapeutic interview follows the clients' thoughts. Rather, inconsistencies are detected and used to correct judgments and beliefs. Miller and Rollnick (1991) refer to this as "soft confrontation". They also note that in many treatment settings argumentation can occur around the need to admit to having a problem. This is unnecessary at this early stage of change, and may only be recognized as a goal much later. Recall that the purpose of motivational interviewing is to prepare the client for change, to move them along the continuum so they are ready to start the change process, or in some cases after a relapse, to restart the process.

(iv) Roll with resistance

It is to be expected that the offender will be resistant to change, and it is the job of the counsellor in motivational interviewing to work with this resistance to find ways to reframe and redirect the resistance. Redirecting the resistance can motivate offenders to find their own solutions, which is the ultimate goal of the programme.

(v) Support self-efficacy

The offender will often feel that they are unable to succeed in treatment so it is pointless for them to try. Motivational interviewing helps the offender to believe that they can change; it works with their desire to change and develops confidence that change is possible. The counsellor may encourage small steps towards change to assist the offender to build on success.

Motivational interviewing is often used as an adjunct to other therapies. An offender who is in the pre-contemplative or even the contemplative stage of change is not ready for a directive behavioural programme. Motivational interviewing can move them along so they better understand the need for change, see the value it may provide for them, and provide the belief that they have the ability to maintain the behaviour if they desire. Miller and Rollnick (1991) also point out that results from an assessment process can be an effective tool during motivational interviewing. A parole officer reviewing the results of objective testing can provide the offender with concrete evidence of how his or her behaviour compares to that of other offenders.

The report produced by the Correctional Service of Canada's Computerized Assessment of Substance Abuse (CASA) is designed to be shared with the offender for this reason. It is our intention, in the near future, to include normative data in the report, so offenders can see how their problem compares to that of other people. This approach should help to address problems of denial that are common among drug and alcohol abusers.

D. Harm Reduction

Harm reduction is a concept that grew from awareness of the deadly consequences of injection drug use following the appearance of HIV/AIDS. Through the very common practice of sharing syringes and other drug paraphernalia it became possible for an individual to suddenly have an incurable, fatal disease. People working with drug abusers recognized the need to take some action that would lessen the probability of the spread of disease without passing judgment on the drug using behaviour. From those origins, harm reduction has become a strategy for dealing with the behaviour and consequences of all types of substance abuse and is applicable to other behaviours as well. The approach is often misunderstood and rejected outright by some decision makers and programme delivery experts due to a lack of understanding of the approach.

Harm reduction is more than a number of specific interventions. It is an approach to intervention that seeks to reduce the negative consequences of substance abuse to the individual and to the society. Rather than looking at drug or alcohol misuse as an inherently bad thing, harm reduction takes no position on the

acceptability of the behaviour. However, it recognizes that substance abuse has negative effects and therefore actions can be taken to reduce those harms. Simply reducing the harms may help to stabilize the behaviour of individuals, assist in keeping them alive, and reduce the negative consequence for the community in which the substance-abusing individual lives.

Harm reduction is not a treatment programme, but an intervention. However, one of the values of harm reduction is that it can provide opportunities for further intervention with addicted individuals that may lead to their participation in more traditional programming, thereby leading to a reduction in their use of drugs and alcohol, and in many cases to their total abstinence from drug and alcohol use, if that is warranted.

Marlatt (1998a) provides a more detailed picture of harm reduction approaches in different countries as it relates to different substances, populations and challenges. Marlatt (1998b) provides a set of five principles for harm reduction (pp. 49 - 58):

(i) Harm reduction is a public health alternative to the moral, criminal and disease models of drug use and addiction.

Harm reduction does not presume that substance abuse is morally wrong and must therefore be punished using criminal sanctions, nor does it take the view that substance abuse is a disease that requires treatment. However, given the negative consequences of substance abuse, encouraging people to stop using is a goal as indicated in the next principle.

(ii) Harm reduction recognizes abstinence as an ideal outcome, but accepts alternatives that reduce harm.

Harm reduction can be viewed as having a continuum of responses. At one end of the continuum is the cessation of all substance-abusing behaviours, thereby eliminating all of the harm associated with substance abuse. At the other end of the continuum is any small reduction in the harms caused by substance abuse. Frequently, harm reduction becomes associated with only the most controversial options such as safe injection sites. While safe injection sites are at the leading edge of harm reduction, they are not the place to start developing a harm reduction policy. Correctional systems can take a harm reduction approach by ensuring that its policies and procedures go as far as they can to reduce the harms associated with substance abuse.

(iii) Harm reduction has emerged primarily as a 'bottom up' approach based on addict advocacy, rather than a 'top-down' policy promoted by drug policy makers.

As a result of how the harm reduction approach was developed, it is well accepted and meets the needs of people who require intervention.

(iv) Harm reduction promotes low-threshold access to services as an alternative to traditional, high-threshold approaches.

Traditionally, many programmes required a commitment to total abstinence before a person could be accepted into treatment. If there was drug or alcohol use during the programme the person was removed from treatment. These types of strict rules set a high threshold for participation. Programmes that have low-threshold access have very few rules for initiating and participating in the intervention. Effective needle exchange programmes do not require anything of the substance abuser other than collecting clean syringes. It is easy to imagine a needle exchange programme that required participation in treatment, completion of forms, etc. to obtain clean needles. Experience has shown that any of these requirements reduces the effectiveness of needle exchange. Another example of a low threshold programme is a methadone treatment programme offered in Halifax, Canada, in which there are a minimum number of requirements for participation, unlike most methadone programmes. Individuals in this programme must obtain their methadone each day, and must undergo urinalysis to check for the presence of other drugs. The presence of other drugs results in counselling, and cessation of methadone only occurs if the level of use of other drugs is seen as a threat to health.

(v) Harm reduction is based on the tenets of compassionate pragmatism versus moralistic idealism.

Making condoms available in correctional settings is one example of compassionate pragmatism. We recognize that sexual activities will occur in prison, we want to prevent the spread of diseases, and providing condoms does not provide any security risk, therefore they are made available.

Harm reduction approaches are not only applicable to treatment after an addiction or problem behaviour has occurred. Harm reduction approaches can be applied to prevention programmes as well. Recognizing that there is safe and unsafe behaviour associated with an activity and promoting the safer action is one way to reduce harm. Programmes to reduce drinking and driving are an example of harm reduction programmes at the prevention level. These programmes recognize that people will consume alcohol away from home, and to reduce the likelihood of accidents, provide alternatives to driving. These alternatives include taking a taxi, arranging for a designated driver, or staying overnight at the location of the event.

IV. PROGRAMME RESEARCH

Determining what works and developing an evidence based correctional approach requires an understanding of research and its importance. Ideally, a correctional agency will have, at least, a small number of research staff who can carry out research projects and maintain knowledge of new and developing trends in the research world. Where research staff are not available, efforts are needed to build relationships with universities and colleges to encourage research in corrections that is consistent with local cultural and social norms.

A. Research Needs

Research requires the systematic collection of information, but this information can serve more than one person. Basic information on when offenders are admitted to an institution and when they leave can be useful for research. Assessment information for offenders may not only assist in ensuring services are delivered appropriately, but can assist correctional management in planning and developing their correctional systems.

To conduct research on an intervention, it is necessary to know what is being evaluated. That is, it must be possible to describe the programme or intervention and the intervention must be applied consistently so all participants receive the same service. It is not possible to effectively evaluate programmes that are constantly changing since one will never know what is producing the observed results.

With knowledge about the offender population being studied it is possible to subset the population to look at how the intervention impacts different groups. Under the responsivity principle we would expect differential effects for subgroups of the population. Therefore, knowing the population allows one to determine who the programme works for. Examples of characteristics one might look at are age and gender, risk and need, type of crime committed and level of motivation.

The third requirement is for measures of outcome. Outcome measures are the things that you hope to change through the intervention. Early in the programme development cycle the behaviours that are being targeted for change should be clearly identified and these behaviours should be monitored. In correctional settings, the easiest behaviour to measure is recidivism. While this is often a relatively crude measure, it is the goal of most programming to reduce the commission of new offences. Measuring recidivism then is the key element in evaluating correctional programmes.

However, waiting until recidivism occurs can take a long time and often estimates of the effectiveness of programmes are needed earlier. In addition, there is value in determining if there are immediate impacts of a programme on attitudes and behaviour, impacts that may be reduced over time. Intermediate measures of outcome can be very effective in understanding which parts of a programme or intervention are effective, and in new interventions, can identify problems early in the development process. Intermediate measures of outcome might include assessment of attitudes to determine if there was change, assessment of understanding and learning to determine if the information presented has been understood, and assessment of the level of programme participation and programme performance.

For a correctional organization without a strong history of research support it can be challenging to convince senior managers of the value that research can provide. When resources are limited, and funds used to pay for research must be taken from programme funds, it is easy to decide that research is an unnecessary luxury. However, research helps to answer fundamental questions, and can actually lead to increased efficiencies in the operation of the correctional system. Providing programming is expensive and knowing who it works best for, under what conditions, and what intensity of programming is needed, increases the probability that resources will be used in the most efficient manner.

Research helps to eliminate programmes and interventions that do not have an impact on the offender. Many interventions have little or no impact on offender behaviour and yet are continued at great cost because management does not know the impact.

B. Measuring Recidivism

The effectiveness of a correctional intervention is frequently measured using recidivism. However, defining what is meant by recidivism is important as there are a number of factors that influence the rate of recidivism that is observed.

In the United States recidivism is often measured by using arrest information. This is available in a national database from their national police, but it must be remembered that arrest does not mean conviction. Therefore, in the U.S., recidivism rates may appear higher than in other countries that use convictions as a measure of recidivism. In Canada, recidivism is usually measured in terms of convictions because the national police force maintains an extensive database containing all convictions for criminal offences. It is necessary when reading research reports, and when writing reports, to be clear about the type of measure being used to calculate recidivism.

Other factors that can affect the recidivism rate include the length of the follow-up period, the status of the offender during the follow-up period, and the types of offences included in the measurement of recidivism. The length of the follow-up period is the most critical factor in studies that report recidivism rates. Short follow-up periods will often result in evaluations making a very weak programme look successful, as the offenders have not had time to commit additional crimes, or more accurately, to be detected by official sources (the police) for having committed a new crime. For this reason, studies that report recidivism with a follow-up period of less than six months are not very useful. The minimum period of follow-up should be one year, and two years is much better. To determine the length of the follow-up period needed one must also consider the type of offender being studied. For example, sex offenders who have child victims must be followed for extended periods of time, as their recidivism generally takes longer to show in official records.

The status of the offender during the follow-up period is also important. An offender who is being supervised in the community on parole will be more likely to be detected for having committed new offences than one who is not being supervised. Therefore, studies using supervised and unsupervised offenders must be careful to correct for the different probabilities of detection.

Finally, there must be a determination of what types of offences will be included in the recidivism measure. Frequently, offences that receive fines only, or very short sentences (less than 30 days), are not included in follow-up data collection, particularly if the group being studied has in the past been convicted of serious offences. It is necessary to ask if a conviction for a minor assault that results in five days in jail should be considered a failure, or a slip that does not help to understand the problem being investigated.

Follow-up periods may be fixed or variable. Studies with fixed follow-up periods may include periods after the sentence has been completed. Variable follow-up periods are often used when a group of offenders with different release dates are used in a study, but the study must conclude on a particular date. The problem with variable follow-up periods is that those released last will have the shortest follow-up periods and therefore, will have lower recidivism rates. If the type of offender is associated with the time of release in the study and variable follow-up periods are used, then results could be biased.

Alternative measures of recidivism have been used in many studies such as return to custody and failure of conditional release. While these are not truly recidivism measures, as they do not require that a crime be committed, they are useful measures of criminal tendencies for research on programme outcomes. It may be that keeping an offender in the community for an additional three or four months is a positive outcome. Return to custody as a measure of outcome is very simple to obtain with a correctional system where all admissions are recorded centrally. An alternative to return to custody is a measure of failure on conditional release such as parole. This outcome measure is intermediate, and may not result from new offending, but it does reflect deterioration in behaviour in the community.

In research conducted by the Correctional Service a combination of measures of outcome are frequently

used. The most basic measure is return to custody, and this provides information on how well the offender did after release. However, it is also useful to know if the return to custody occurred as a result of parole violation or as a result of a new criminal conviction, therefore we also collect this information. It is possible to refine the measure of recidivism by looking at the type of new offence, such as whether it was a new violent offence, or non-violent offence. Sometimes it is useful to know if the new offence is similar to previous offences or reflects a change in behaviour that may be indicative of positive outcomes.

Measuring recidivism as a percentage of offenders committing new offences in a fixed period of time is useful, but there are more effective measures that provide additional information. For example, survival analysis provides information on how long offenders remained in the community, the rate of failure over the full range of the follow-up period and provides statistical tests for comparing different groups. How survival analysis helps in the evaluation of a treatment programme can be seen in the following example. A programme is evaluated and the final recidivism rate is the same for both groups after two years. However, survival analysis might reveal that failures in the untreated group occurred mostly in the early part of the sentence; while for the treated group failure occurred in the latter part of the follow-up period. If one only looks at the overall rate it would appear that the intervention had no effect, but the survival analysis would reveal a very real effect, keeping some offenders out of prison for a longer period of time.

V. PROGRAMME EXAMPLES

A. Women Offenders Substance Abuse Programme

The Women Offenders Substance Abuse Programme (WOSAP) has been developed over two and half years and will be implemented in women's correctional facilities in Canada in June of 2003. The programme has a number of unique characteristics that represent attempts to design a programme consistent with evidence based programme development (Hume & Grant, 2001).

First, the programme was designed through consultation with women offenders, experts in women offender treatment, and operational staff at correctional facilities. Early consultations with international experts indicated the programming we had available did not adequately meet the needs of women offenders. Following a decision to develop a new programme, additional consultations were held to determine the programming model that was to be used and the structure of the programme (Hume & Grant, 2001). In its design and development, the programme was to be women-centred, not a derivation of a programme for men, and was to address the unique characteristics of women with substance abuse problems.

The second feature of the programme is that it takes account of the entire sentence. Rather than a programme that lasts for set period of time, the programme is designed to deliver elements throughout the entire sentence, and do this in a consistent manner. While we refer to it as a single programme it is actually four programmes.

The third feature of the programme is that it tries to combine two approaches to treatment that have in the past been seen as incompatible. To meet current standards of effective correctional programming the programme needed to have a cognitive behavioural component that would encourage skill development for addressing substance abuse problems. However, experts in women's programming advised that the problems of substance abuse for women are often entangled with relationship issues and if these are not addressed then it is likely the programme would not be successful. The challenge has been to combine these two approaches within one programme.

As noted above, the programme has four major components:

(i) Education

The education component of the programme has eight sessions designed to teach women about the negative effects of substance abuse on their lives, both long and short-term effects; to provide basic information on how to deal with triggers that cause cravings; and to motivate them to continue the process of change. It is anticipated that all women offenders will be assigned to participate in this component of the programme as almost all women offenders have a connection to the problems of substance abuse either through their own experience, or through a spouse or family member.

(ii) Intensive treatment

The intensive treatment component consists of two parallel programmes; one designed from a cognitive behavioural perspective and one based on relational theory. These programmes proceed in parallel so issues discussed in one part are also discussed in the other, ensuring consistency of message and learning. Each programme is 20 sessions in length.

(iii) Maintenance

The maintenance component is a 20 week follow-up programme with sessions offered once a week. To ensure continuity with treatment in the community the same maintenance programme is available after offenders are released. This approach ensures there is a consistent experience in both the institution and the community. One of the major challenges we face with the programme is how to deliver the maintenance session in the community when the women participants are widely dispersed across the country.

(iv) Community building

The community building component of the programme is designed to create an environment within the institution that promotes a drug and alcohol free lifestyle and provides support to those offenders who are trying to change their behaviour. This component has two characteristics; peer led discussion groups and institution-wide activities. The peer led discussion groups have programming material available, but the participants choose the topic to be discussed each week. The community-building exercises include health activities involving correctional staff, social activities, and community activities in which individuals from outside the prison come to present information of relevance to the women.

A preliminary analysis of the results from this programme was very favourable. The research indicated that the women in the programme believed the programme met their needs, the retention rate in the programme was high, and there were changes in knowledge and attitudes observed after the programme was completed (Furlong & Grant, 2006; Grant, Furlong & Hume, 2007). Results associated with release have not been completed yet.

B. Intensive Support Units

In an attempt to provide environments for offenders that will support their efforts to reduce drug and alcohol dependency, Intensive Support Units (ISU) have been established in all prisons (Grant, Varis & Lefebvre, 2004). These units are part of the regular prison environment, but they provide increased assurance that drugs are not available. Offenders wishing to live in the units must sign an agreement in which they accept increased testing for the presence of drugs and increased searching for drugs and alcohol. The staff of these units receive additional training in the problems of substance abuse and the challenges faced by offenders with an addiction. With the training, staff can provide additional support to the offenders when they experience problems.

To evaluate the effectiveness of the units, participants completed a number of surveys when they first joined the units and again when they moved to other prisons or were released. Intermediate measures of the impact of the units indicate that both staff and inmates believe the units will make a difference in their ability to stay away from drugs and alcohol, that the units will have a positive effect on their lives after release from custody, and that the units have fewer drugs available. Analyses of misconduct and search data for the units indicates that there are increased searches, but few drugs are found and misconduct by offenders in the units is lower than that of offenders in other units (Varis, 2001). Release outcome measures indicate that offenders who participated in the ISU were released earlier, remained in the community longer, and were less likely to be readmitted to prison (Grant, Varis & Lefebvre, 2005).

C. Methadone Maintenance Treatment

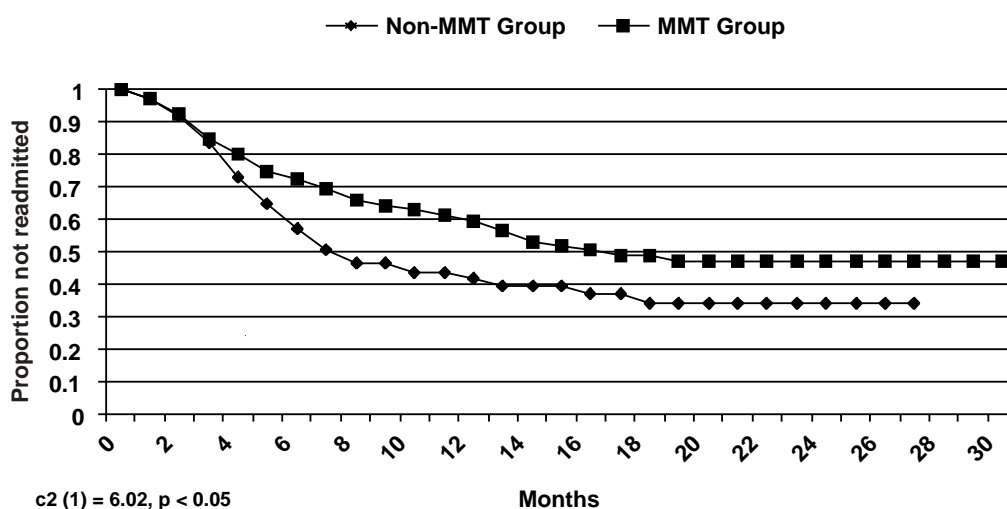
Methadone maintenance treatment has been available to offenders in the Correctional Service for a number of years. However, until recently only those offenders who had been prescribed methadone in the community could receive it in an institution. Recently, a study was conducted to compare the release outcomes of offenders who had participated in the methadone maintenance programme and a comparison group consisting of those offenders who had not participated in the methadone programme.

Previous research has indicated that methadone maintenance treatment can produce reductions in illicit opiate use (Marsch, 1998), reductions in other drug use (Fischer *et al.*, 1999), HIV risk behaviours (Darke,

Kaye & Finlay-Jones, 1998), criminal behaviour (Coid et al., 2000; Maddux & Desmond, 1997), and access to health care (Marsch, 1998). The purpose of this study was to determine if we could identify a reduction in criminal behaviour after release from prison for those offenders who participated in the MMT programme.

One of the challenges in research of this type is to determine who should be in the comparison group. The offenders who receive MMT are the most seriously addicted offenders and generally the most problematic. They have a high rate of recidivism so comparing them to the general population of offenders would certainly indicate that MMT had no effect. We were able, within our data systems, to identify a group of offenders who tested positive for opiates in random drug testing and who were identified at admission as having a substance abuse problem. This group served as a comparison for the MMT group.

Figure 2. Survival analysis for MMT study: readmission rate



The results of the study are summarized in Figure 2 in the form of a survival analysis. The survival analysis indicates that both groups had a high probability of failure in the community. While more than 50% of the MMT group was readmitted to prison within 24 months of their release, almost 65% of the comparison group were readmitted. The observed differences are statistically reliable. Similar results were identified when new offences were used as the outcome measure, but the results were not statistically reliable.

D. High Intensity Substance Abuse Programme (HISAP)¹

The HISAP is an example of a programme that was designed to meet the needs of offenders with the most serious problems, in this case, serious substance abuse problems. The programme includes 90 sessions and takes three to four months to complete. It takes the work of two facilitators to maintain the attendance of offenders in the programme as these offenders are some of the most resistant to treatment. The research on the programme indicated that most participants remained for the full programme, and that those who left the programme early were the most likely to reoffend (Grant, *et al.*, 2003).

Outcome results from the research indicated that programme participants were released earlier in their sentence than a comparison group, were more likely to have received a discretionary release (day parole or full parole), and spent more time in the community after release. They were less likely to commit a new offence after release than those in the comparison group.

V. SUMMARY AND CONCLUSION

Correctional treatment programmes have been shown to be effective in reducing recidivism. By reducing recidivism, programmes can reduce the cost of correctional operations by shortening the time that offenders

¹ HISAP is now known as the high intensity component of the National Substance Abuse Program (NSAP-High).

need to remain in prison. In addition, reducing recidivism reduces the overall number of crimes that are committed and makes communities safer.

Not all programmes will be equally effective in reducing recidivism and research is needed to determine which programmes will actually reduce recidivism. Using meta-analysis, researchers have identified the characteristics of programmes that are most likely to have a positive impact on recidivism. Ensuring that programmes have these characteristics is one means by which correctional administrators can increase the probability of finding effective programmes.

This paper presented the results from a number of studies of effective programmes that are consistent with the characteristics of effective programmes, and that were designed with the principles of risk, need and responsivity (Andrews & Bonta, 2002). These programmes illustrate both how to design effective programmes and how to conduct research that will demonstrate their effectiveness. When resources are scarce, it is necessary to find those interventions that will have an effect and use these only. Unproven interventions should be discontinued, or used on a very limited basis while they are being evaluated.

Finally, some caution needs to be exercised in transferring programming interventions from one cultural context to another. It is expected that the principles presented here will apply across a wide variety of cultures, but this has not been demonstrated empirically. As new programmes are developed, based on the principles presented, they should be evaluated and the results of these evaluations should be shared through research and management networks.

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MOBILIZATION OF COMMUNITY RESOURCES AND SUCCESSFUL REINTEGRATION OF OFFENDERS

*Mr. Kwok Leung-ming**



I. INTRODUCTION

This paper gives an account of the philosophy of the Hong Kong Correctional Services (HKCS) to facilitate the reintegration of offenders into the community as law-abiding citizens and the various initiatives taken by the HKCS to that end and to help reduce crime, including continuous improvement of rehabilitative services, involvement of the community, and mobilization of community resources.

II. REHABILITATIVE PHILOSOPHY

While penal custody is the primary sanction against people who have breached the criminal code, and serves the purposes of deterring offenders and others from committing the same crime, we should never forget that offenders come from our communities. Eventually, most of them will return to live with us. It is therefore essential that they are not caught in a vicious circle of reoffending. Correctional systems are expected to make those who pass through become better persons when they leave than when they enter, and to pose less of a threat to society. As asserted by Elliott Currie (1998), if the system neglects to successfully help offenders achieve a productive lifestyle, a steadily increasing cohort of ex-offenders with limited life chances will be on the street. Their chances of success in the legitimate world have, if anything, been severely diminished by their prison experiences. Though punishment may produce short-term reductions in the crime rate, only rehabilitation and treatment can produce long-term gains.

HKCS recognizes that the goal of rehabilitative philosophy is to change an offender's character, attitudes or behaviour patterns so as to diminish his or her criminal propensities (Hirsh 1976). In recent years, numerous international researches (Andrews *et al.* 1990; McGuire *et al.* 1995; Day & Howells 2002) reveal that rehabilitation programmes can be effective in reducing reoffending. Rehabilitation of offenders has since become higher on the agenda of the correctional administrators. Thanks to globalization and professional exchanges of best practices with overseas counterparts, HKCS has been able to learn and develop a rehabilitation policy that fits the local context.

III. PARADIGM SHIFT TOWARDS REHABILITATION

A correctional administration and its staff have to believe in offender rehabilitation before they walk the talk and commit to the cause. HKCS has undergone a major transformation in the last three decades, which can be highlighted by the following events:

- (i) we changed our name from the original "Prisons Department" to "Correctional Services Department" in 1982, signifying an important aspect of our work on offender rehabilitation in addition to custodial service;
- (ii) we formulated our "Vision, Mission and Values"¹ (VMV) statements in 1996 to strengthen our commitment to rehabilitation of offenders and updated them subsequently by benchmarking with the best practices of other advanced correctional administrations, ensuring that HKCS is geared up to meet the new challenges ahead. To bring our staff on board, we implemented a corporate cultural change project in 1999 to develop, resonate and reinforce an appropriate corporate culture across the Department in order to match with our VMV statements;

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¹ See Appendix 1 for details.

- (iii) we established a Rehabilitation Division in 1998 to co-ordinate the delivery of comprehensive rehabilitative services and have since adopted a proactive approach to encourage community participation in providing and improving rehabilitative services;
- (iv) we adopted a new service emblem in 1999. The design of the emblem centres on the motto "We care" which represents our teamwork to pursue the ultimate goal of offender rehabilitation through the combined process of safe custody and care;
- (v) we officially replaced the Chinese term of "discharged prisoners" with "rehabilitated persons" in 2000 to reduce stigmatization and to encourage greater community support and acceptance of rehabilitated offenders; and
- (vi) we restructured the Rehabilitation Division last year to prepare for a new assessment system² that classifies offenders according to reoffending risks and rehabilitative needs for better programme matching. The idea is to enhance the effectiveness and efficiency of rehabilitation services to address the needs of offenders and the diverse expectations of the community, apart from building the capacities of the Division. The restructuring is also aimed at further strengthening the organizational culture and mindset of our correctional officers towards the rehabilitation of offenders through innovative and strategic initiatives.

Apart from organization and staff, we also strive to foster cultural changes among prisoners and rehabilitated offenders. They are encouraged to equip themselves and participate in cultural activities, hobby classes and community education programmes during their detention. To demonstrate their talents and help reinforce their confidence in turning over a new leaf, we produced in the past few years a series of music CDs and video CDs collecting songs composed and performed by prisoners for free distribution to the public. Prisoners with talents for music, dancing and other performing arts are encouraged to stage performances. Serving prisoners and rehabilitated offenders share their personal experience with students and young people under the Personal Encounter with Prisoners Scheme, Green Haven Scheme and "Options in Life" student forums.³ These arrangements have encouraged prisoners and rehabilitated offenders to come forward voluntarily, telling the public about their experience of losing freedom under incarceration, the problems encountered during their reintegration, their remorse for causing harm to their families as well as to the victims, and their determination to turn over a new leaf. Apart from educating the public on crime prevention, all these measures aim to assist prisoners to recognize their own values and potential, as well as to develop their positive self-image and confidence in reformation.

IV. REHABILITATIVE SERVICES AND PROGRAMMES

Apart from carrying out the mission of detaining offenders in a decent and safe environment, we are also tasked with providing comprehensive rehabilitative services and programmes with a long-term objective of reducing crime. The purposes of these services are to prepare offenders for their eventual release by helping them to address their criminogenic issues, develop a socially acceptable behaviour, strengthen their confidence to cope with difficulties upon discharge, and enhance their potential for securing decent employment. These are mainly achieved through discipline building and various services including pre-sentence assessment, programme services, psychological services, education, vocational training, and supervision services rendered to the discharged offenders.

To facilitate effective planning and delivery of rehabilitative services and to arouse public awareness on the problems and needs of rehabilitated offenders, HKCS conducted a survey covering some 1,600 discharged offenders and serving prisoners in 2000. The survey revealed that the most immediate problems at the initial stage of their release were securing employment, improving family relationships, seeking financial assistance and looking for a dwelling place. In response to the findings of this survey, measures and initiatives were taken to address the identified needs. Internally, we organized more structured family-related activities for offenders to rebuild relationships, conduct suitable job training techniques to assist offenders in securing employment after release, and provide financial assistance to needy prisoners for

² See para. 13 for details.

³ See Appendix 2 for details.

various educational pursuits. Externally, we established a telephone hotline to provide timely guidance and crisis intervention services for discharged offenders, provide information on non-government organizations (NGOs) and trust funds which discharged offenders with pressing financial needs can approach for short-term cash assistance, identify those offenders in need of longer-term aid and refer them to the Social Welfare Department for financial support under the Comprehensive Social Security Assistance Scheme,⁴ and provide financial assistance to discharged offenders under statutory supervision to pursue education programmes and employment-related courses. Working on the foregoing measures, we further developed and improved the various rehabilitative services on an ongoing basis, which are highlighted in the following paragraphs.

A. Education and Vocational Training

Apart from making ex-offenders productive, employment can also help them take care of their families, develop valuable life skills and strengthen their self-esteem and social connectedness. Research has indicated that having a legitimate job lessens the chances of reoffending following release from prison (Sampson and Laub 1997; Harer 1994). HKCS is conscious of the importance of employment to rehabilitated offenders and has been strengthening employment service support for offenders through education and vocational training.

For offenders under 21 years of age, they receive half-day vocational training on industrial or commercial skills, and half-day education programmes. It is comparatively easier to reform young offenders since they are not yet hardened in criminal ways and could be steered in the right direction. More importantly, it could prevent huge damage and social costs that would be incurred to the community if offenders could successfully turn over a new leaf at an early stage.

All adult prisoners are required to engage in useful work unless physically unfit. This arrangement enables prisoners to develop good work habits and a sense of responsibility on top of learning the spirit of teamwork and acquiring concepts and basic skills in specific trades. After all, engaging prisoners in industrial activities fosters a stable penal environment which is conducive to effective implementation of different rehabilitative programmes. Having said that, HKCS also arranges market-oriented vocational training courses for prisoners on an ad hoc basis, such as exhibition-booth setting, cleaning and pest control, beauty care and manicure, etc. In 2007, we plan to provide 450 such training places in adult correctional institutions.

To further enhance prisoners' employability upon release, we have taken a proactive effort by setting up a vocational training centre at Lai Sun Correctional Institution in July 2006, which will eventually provide 260 full-time training places for local male prisoners. The training programmes cover a wide range of trades including computer skills training, mechanical craft, food and beverage services, kitchen assistant training, printing and desktop publishing and hairdressing, with clerical training and commercial studies, painting and decorating, air-conditioning and refrigeration, and electrical fitting and installation to be introduced at a later date. Participants who have completed the courses and passed skills certification examination will obtain accredited certificates issued by the relevant authorities.

We encourage adult prisoners to participate in self-studying courses or distance learning programmes run by the Open University of Hong Kong and other tertiary institutions to make optimal use of the resources and expertise from external accredited educational organizations. We have embarked on a new project entitled "Continuing Education for Offenders" in collaboration with the School of Continuing and Professional Education of the City University of Hong Kong, aiming at arousing participants' interest in pursuing further studies. "A Taste of University", one of the programmes under the project, was launched in September 2005 and March 2006 wherein ten two-hour lectures on a variety of subjects were given by university lecturers to offenders. The topics included sociology, psychology, business, environmental protection, computer and social skills. A reading programme to promote reading culture has since been launched in October 2006.

B. Risks and Needs Assessment and Management Protocol for Offenders

Our latest initiative to improve rehabilitative services is the adoption of a scientific and evidenced-based

⁴ The Scheme provides a safety net for those who cannot support themselves financially.

approach to offender management and rehabilitation. Supported by automation and specialized clinical measures, we introduced last year a "Risks and Needs Assessment and Management Protocol for Offenders" for evaluating the custodial and reoffending risks and rehabilitative needs of offenders. From January 2007, we will start to arrange programme matching for serving local inmates to address their reoffending risk and rehabilitative needs in phases. These integrated procedures, in addition to shaping our rehabilitation strategy in the foreseeable future, will take us to the forefront of the field together with other advanced penal administrators. Periodical programme evaluation will be carried out to ensure the effectiveness of the programmes.

V. FOSTERING REINTEGRATION THROUGH COMMUNITY INVOLVEMENT

While HKCS is committed to providing the best possible opportunity for all offenders to make a new start in life upon release, the efforts made by the government and the offenders themselves are not adequate. Their successful reintegration also depends on how ready the community is to support and accept them. The common misconceptions about offenders and, to a certain extent, the prison regimes, are mainly due to lack of information and public education. This not only creates obstacles to the smooth reintegration of rehabilitated offenders but also leads to wastage of resources devoted to their rehabilitation.

Recognizing the importance of community acceptance and support of the successful reintegration of rehabilitated offenders, HKCS established a "Committee on Community Support for Rehabilitated Offenders" in late 1999. Comprising community leaders, employers, education workers, professionals and representatives of NGOs and government departments, the Committee's terms of reference are to advise HKCS on rehabilitation programmes, and reintegration and publicity strategies. Having regard to the advice of the Committee, a series of publicity activities addressing the general public have been organized to help the community better understand, and to appeal for their support of, the needs and problems of rehabilitated offenders. These include special TV and radio programmes, roving exhibitions at district level, a TV docu-drama on rehabilitated offenders – "The Road Back,"⁵ appointment of local celebrities and public figures as Rehabilitation Ambassadors and television and radio announcements in the public interest.

To assess the effectiveness of the publicity activities, we carried out two opinion surveys, in 2002 and 2004. The findings were encouraging as the percentage of respondents who advised that they had come across at least one of the publicity activities increased from 65.7% in 2002 to 82.2% in 2004, and those who considered it worthwhile for the government to conduct publicity activities to appeal for community support for rehabilitated offenders rose from 83.6% in 2002 to 91.9% in 2004. Obviously, these figures illustrated the growing awareness and support of the general public for offender rehabilitation.

Another new initiative to enhance the public's understanding and support of our work is the establishment of the Hong Kong Correctional Services Museum. Opened in late November 2002 with monthly admission of about 5,000 visitors, the Museum serves to preserve and showcase the history of HKCS and the evolution of local corrections from a closed system that focused on punishment to the contemporary model that emphasizes rehabilitation and community partnership. In essence, the Museum helps lift the veil of correctional work, dispel the misconceptions held by the public about prisons, and enhance our public image.

To enhance the cognition of prospective employers of the rehabilitated offenders, HKCS organized in conjunction with the Centre for Criminology of the University of Hong Kong a "Symposium on Employment for Rehabilitated Offenders" in 2001, 2003 and 2004. Through discussions and experience sharing, we managed to cultivate a deeper understanding among employers of various trades in this regard and appealed to them to provide equal job opportunities for rehabilitated offenders. Subsequent to these promotional

⁵ The HKCS, in collaboration with Radio Television Hong Kong, produced three 10-episode TV docu-drama series "The Road Back" in 2000, 2002 and 2004 and all of them were well received. The first series was awarded the Silver Award for Best Television Programmes and the New Television Programme Award in 2000. The second series in 2002 was awarded the Gold Award in Entertainment Programme and Silver in the Best Television Programmes Award, while the third series in 2004 was awarded the Gold Remi Award at The Houston International Film Festival and the Bronze Plaque in the 53rd Columbus International Film & Video Festival. The fourth series was telecast from May to July 2006.

activities, we have received more enquiries from employers concerning employment of rehabilitated offenders. So far, we have a database of over 320 employers who have offered more than 670 job vacancies in 100 different trades to rehabilitated offenders. Most importantly, some 280 rehabilitated offenders have successfully secured a job. Enthusiastic business organizations have also conducted a “One Company One Job” campaign⁶ since 2004 in local districts to promote fair job opportunities for rehabilitated offenders.

VI. EXPANSION OF COMMUNITY INVOLVEMENT

Community involvement and participation in various aspects of offenders’ correctional and rehabilitative process narrows the gap between the public at large and the offenders. It helps change the negative attitude of society towards offenders. To help diversify and enrich our service delivery, we need regular and active participation of non-government organizations and religious bodies. As a result of the Department’s incessant publicity efforts, supportive connections and partnerships conducive to offenders’ reintegration have been established. At present, there are more than 60 religious bodies and non-government organizations partnering with us to provide services to help prisoners reintegrate into the community. These organizations, through enlisting social workers, volunteers and rehabilitated offenders, offer counselling, recreational, and religious services to persons in custody. They also provide social service, employment and accommodation assistance for their clients. With a view to strengthening co-operation amongst NGOs and providing all NGO partners with an opportunity to exchange views on matters relating to rehabilitation services, HKCS conducts forums with NGO representatives annually. Besides, a web-based messaging platform has been set up to provide members of NGOs with an interactive forum for sharing. Another remarkable example of partnership between HKCS and NGOs is the implementation of a “Continuing Care Project” since early 2004 wherein seven NGOs provide follow-up services for supervisees who are assessed as being still in need of, and are willing to receive, counselling services after completing the statutory supervision. As at the end of December 2006, a total of 314 cases have successfully been referred to respective NGOs for the service.

To further broaden the scope of public involvement, we have decided to invite dedicated individuals to work with the Department to pursue the rehabilitation cause. A Rehabilitation Volunteer Group, comprising mostly university students and serving teachers, was formed in 2004. Volunteers of the Group conduct interest groups on language, computer and other cultural pursuits for offenders in various correctional institutions and on occasions assist in publicity campaigns to promote the acceptance of rehabilitated offenders. With more than 220 volunteers, the Group has hitherto conducted over 370 classes and served some 4,000 inmates.

To ensure co-ordinated channels for disseminating our messages, we need to establish a network at different local districts to deliver the message far and wide that rehabilitation can help prevent crime and reduce reoffending, a message signifying social responsibility on the issue. The Department accordingly co-operates with all of Hong Kong’s 18 District Fight Crime Committees⁷ by inviting them to organize publicity activities relating to offenders’ rehabilitation. Senior correctional officers are appointed as Regional Liaison Officers to facilitate the co-ordination of these activities and to provide necessary support. With this network of channels functioning, we organize year-round activities in all districts and sustain a broad and pervasive permeation of the rehabilitation message to the public.

Responding to our call for support and assistance to rehabilitated offenders, the involvement of and sponsorship from renowned community organizations such as the Lions Clubs, Rotary Clubs, Zonta Clubs, and local charitable organizations in various programmes for prisoners and rehabilitated offenders have been

⁶ The campaign is about promoting the members of those business organizations to employ at least one rehabilitated offender in each of their companies.

⁷ The District Fight Crime Committees, which are district bodies appointed by the Government to advise on means to combat crime, consist of both members of the public and government officials. They help monitor the crime situation at district level; co-ordinate community resources to assist in fighting crime; and make recommendations to the Central Fight Crime Committee with regard to fight crime measures and community involvement. Chaired by the Chief Secretary for Administration of the Hong Kong SAR Government, the Central Fight Crime Committee draws up plans to reduce crime; co-ordinates efforts in fighting crime; monitors the results; and determines ways in which the public can be stimulated to contribute to the reduction of crime.

increasing in recent years. Between 1999 and 2006, we have received donations of over \$8 million Hong Kong dollars (equivalent to over US\$1 million) towards rehabilitation and welfare of offenders. Coupled with other non-monetary support, such community care, this conveys a positive message to rehabilitated offenders and reinforces their motivation to turn over a new leaf.

VII. CONCLUSION: LOOKING AHEAD

Reoffending adversely affects public security, traumatizes victims, and increases government spending on the criminal justice system, not to mention the problems associated with prison over-crowding resulting from the perpetuation of this vicious circle. In Hong Kong, the provision of secure and safe custodial services is critical and conducive to a stable and optimal environment for rehabilitative work. HKCS strives to enhance its custody services to sustain the solid foundation of our rehabilitation programmes. We firmly believe that the main objective of detention is to prepare offenders for reintegration into the community as better citizens, not as recidivists. Rehabilitative work, being the collective responsibility of the whole community, requires joint participation across different social sectors rather than the sole effort of correctional jurisdictions. Whether rehabilitated offenders can successfully reintegrate into the community will depend on the wide acceptance, recognition and support from members of the community in addition to offenders' determination to turn over a new leaf. Over the past years, we have adopted a proactive approach to appeal for public acceptance of rehabilitated offenders. By promoting community involvement, we managed to reduce public myths of prisons, increase transparency of our services, improve public understanding of correctional work and establish close partnerships with community organizations. We are pleased to note that members of the public increasingly share the view that the community as whole would benefit from the successful reintegration of rehabilitated offenders.

In the midst of an ever-changing environment, HKCS, like our overseas counterparts, encounters numerous challenges in the local context. These include, among others, providing appropriate and updated facilities along with our improving education and vocational training, incorporating rehabilitation programmes in the compact daily routine of penal institutions, nurturing a rehabilitation culture for staff and community, and balancing the diverse views of the public on the conservative and liberal continuum in terms of various philosophies of criminal justice. After all, there are indeterminate factors that will affect the effectiveness of our rehabilitation services, such as the sentence lengths, age profile and responsivity of offenders towards different programmes. That said, we will enlist stakeholders to strengthen community acceptance and support for offenders' rehabilitation, establish a wider community network for mobilizing public involvement, and look for ways and ideas for continuous service improvement. We are confident that our efforts are instrumental in helping to reduce crime and ensuring Hong Kong remains safe and becomes Asia's world city.

To conclude, our publicity slogan, "Support rehabilitated offenders for a more inclusive society", in essence, prescribes our commitment to enlist community involvement for the reintegration of offenders.

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APPENDIX 1

Vision, Mission and Values of Correctional Services Department

Vision

Internationally acclaimed Correctional Service

Mission

As an integral part of the Hong Kong criminal justice system, we detain persons committed to our custody in a decent and healthy environment, and provide comprehensive rehabilitative services in a secure, safe, humane and cost-effective manner, so as to enhance the physical and psychological health of prisoners, protect the public and help reduce crime.

Values

Integrity

- We value honesty, humility, uprightness and personal responsibility.

Professionalism

- We take pride in our profession and are committed to continuous improvement in efficiency, competence and quality of service.

Humanity

- We recognize that all persons have the right to correct and fair treatment with dignity, whether they are members of the public, members of staff or persons in our custody.

Discipline

- We respect the rule of law, orderliness and harmony.

Economy

- We optimize the use of resources and emphasize sustainability.

APPENDIX 2

Personal Encounter with Prisoners Scheme

CSD runs the Personal Encounter with Prisoners Scheme as part of the community's fight crime campaign. Youths and students visit one of the several designated institutions to meet with reformed prisoners in experience sharing sessions. The purpose is to help prevent delinquency through the deepening of participants' understanding of the untoward consequences of committing a crime. A total of 3,399 young people and students visited the institutions under the Scheme in 2006.

Green Haven Scheme

CSD started the Green Haven Scheme in January 2001 to promote the anti-drug message and the importance of environmental protection among young people. Participants meet with young inmates of the Drug Addiction Treatment Centre to gain insight into the detrimental effects of drug abuse. They also take part in a tree planting ceremony to indicate their support for rehabilitated offenders and environmental protection, and vow to stay away from drugs. During this year, 33 visits were arranged for 904 participants.

“Options in Life” Student Forum

To demonstrate the willingness of rehabilitated offenders to making a contribution to society, CSD conducted from late 2003 to 2005 a round of district-based student forums in all 18 districts to provide opportunities for secondary students and rehabilitated offenders to interact and discuss the untoward consequences of crime. In 2006, in line with the Department's community involvement strategy, we invited 12 non-government organizations to organize similar forums so as to continue this public education initiative of deterring youngsters from committing crimes and abusing drugs. Resource kits for conducting the activity were also distributed via the NGOs to interested schools and youth agencies.

CONTEMPORARY RECIDIVISM AND ITS CONTROL IN CHINA

*Yu Tongzhi**

I. INTRODUCTION

Recidivism is a complex social problem which has caused worldwide concern. The recidivism rate reflects the public security situation of a country or a district, and directly reveals the effectiveness of the criminal justice system, especially the corrections system. Nowadays, due to its serious social perniciousness, reducing recidivism has become the emphasis of punishment and prevention in each country's system of criminal justice. However, promoting public safety and controlling recidivism requires complicated engineering of social systems, which must co-ordinate the strengths of the whole society and make use of various means and methods in executing a comprehensive plan.

II. CONCEPT OF RECIDIVISM IN CHINA

Generally, recidivism is defined as the criminal actions of released prisoners who return to prison for a new crime committed within a certain period after release. The Criminal Law of the People's Republic of China, Article 65 stipulates: "If a criminal commits another crime punishable by fixed-term imprisonment or a heavier penalty within five years after serving his sentence of not less than fixed-term imprisonment or receiving a pardon, he is a recidivist and shall be given a heavier punishment. However, this shall not apply to cases of negligent crime. If a criminal convicted of endangering national security commits the same crime again at any time after serving his sentence or receiving a pardon he shall be dealt with as a recidivist."

According to the law, there are two types of recidivism: general recidivism and recidivism of crimes of endangering national security.

A. General Recidivism

General recidivism is when a criminal commits another crime punishable by fixed-term imprisonment or a heavier penalty within five years of serving his sentence of not less than fixed-term imprisonment or receiving a pardon. Its constituent elements are as follows:

1. The first crime and the subsequent crime are intentional crimes;
2. The punishments of the first crime and the subsequent crime are fixed-term imprisonment or a heavier penalty;
3. The subsequent crime is committed within five years of serving the first sentence or receiving a pardon.

B. Recidivism of Crimes of Endangering National Security

Recidivism of crimes of endangering national security occurs when a criminal convicted of endangering national security commits the same crime again at any time after serving his sentence or receiving a pardon. Unlike general recidivism, it doesn't require either the first or subsequent crime to be intentional crimes, nor specifies the type of punishment to be imposed or the length of time between the occurrences of the crimes. However, both must be crimes of endangering national security. By legislating for this type of special recidivism, it is clear that Chinese criminal law will punish crimes of endangering national security more severely.

According to our criminal law, recidivism is defined as above. In practice, however, the scope of the definition is more extensive. Generally speaking, as a judicial concept in China, it means committing crime frequently, and doesn't strictly require certain kinds of crime, types of punishment, or lengths of time between criminal actions etc.

* Judge, Beijing High People's Court, China.

III. THE CURRENT SITUATION OF RECIDIVISM IN CHINA

Compared to western countries, the rate of recidivism in China is very low. However, the current situation of recidivism doesn't make people optimistic. On the contrary, especially in this period of social and economic transition, the character of recidivists and the trends of recidivist crime have caused many people to be seriously worried.

A. Quantity Characteristics

The Ministry of Justice organized a continuous study in 27 provinces, municipalities and autonomous regions throughout China lasting for five years (from 1986), to investigate and study the behaviour of prisoners released from 1982 to 1986. In five years, a total of 137,000 released adult prisoners were investigated, and the recidivism rate of these people three years after release from prison was 5.19%. In the same period, however, the recidivism rate of western countries was up to 50% or so. This demonstrates that the recidivism rate of China at that time was very low.

At the beginning of the 1990s, China began to pursue a market-oriented economy; with this transition in society and economy, manpower and financial and material resources increased on an unprecedented scale. These changes induced released prisoners to recommit crime, but the powers of restriction and prevention were weakened, so public security did not change for the better, and the crime problem became more and more serious. The Chinese Ministry of Justice investigated more than 27,000 criminals from across the nation taken into custody in 1996. Among them 13.27% had been sentenced at least twice. However, this figure was only 6.34% in 1984 and 8.55% in 1990. These statistics show clearly that the recidivism rate of our country in the middle and later years of the 1990s rose to twice that of ten years previously.

Next, what about the recidivism rate in China in recent years? I do not have the nationwide data, but I do have some information of specific provinces. In 2002, Zhejiang Province Prison Administration Bureau calculated that 13.27% of the total number of prisoners of that province had been sentenced at least twice in the past four years. The details of these four years are as follows: it was 13.2% in 1999, 13.64% in 2000, 14.23% in 2001, and 14.4% in 2002. This information proves that the rate of recidivism in China today has increased to some extent compared to several years ago, and is also indicative of the trend of annual increases in the problem.

B. Quality Characteristics

Not only has the rate of recidivism increased, the gravity of recidivist crime has also intensified in recent years. According to statistics from the Chinese Ministry of Public Security, homicide cases at the beginning of the 1980s (1980-1983) increased on average 2.6% every year, but rose unexpectedly by 15.32% from 1984 to 1990, with a particular increase in serious and major cases. In 1985 there were only 80,000 such cases, thereafter increasing sharply to 450,000 cases in 1990, 540,000 cases in 1993, and 700,000 cases in 1995. Important and major cases as a proportion of the total number of crimes was only 9% in 1985; but rose to 21% in 1990; 33% in 1993; and 42% in 1995. A great deal of these serious crimes was committed by released prisoners. An investigation of the autonomous region of Guangxi shows that 19.7% of recidivism cases caused death, severe injury or slight injury, and more than quarter of the cases involved amounts of money greater than 10,000 RMB. It proves that the social harmfulness of recidivism is noticeable.

C. Recidivist's Characteristics

1. Age

A sizable proportion of recidivists are young or middle-aged, and they have become younger in recent years. Among recidivists, the 20-40 years old age group accounts for more than 85% of the total number of offenders. Compared to first-time offenders, recidivists are generally older. An investigation shows that the 18-25 years old age group accounts for 53.5% of all first-time offenders, and the 26-35 years old age group accounts for 30%; while the 18-25 years old age group accounts for 33.3% of all recidivists; the 26-35 years old accounts for 45%. Most first-time offenders are 18-25 years old, and most recidivists are 26-35 years old.

2. Educational Level

Recidivists' educational level is generally on the low side. According to the investigation conducted in Guangxi, 94.7% of all recidivists are educated to middle or junior high school level only.

3. Occupation

Among recidivists, the number of unemployed and peasant class persons is huge, accounting for 86.7% of the total amount.

4. Sex

99.1% of recidivists are male.

5. Living Environment

An investigation of the Ministry of Justice shows that in China most released prisoners live in the countryside or in small towns, and many of them have no jobs. Compared to first-time offenders, recidivists' occupational status and employment histories are generally humble. Because of unemployment and social discrimination, the majority of offenders return to crime after release from prison.

6. Recidivism Timeframe

A majority (57.1%) of recidivists recommit crime within three years of release from prison. This fact demonstrates that the first three years after release is a key period in establishing an effective return to society.

D. Case Characteristics

Regarding case characteristics, the types of recidivist crime are relatively concentrated. The majority of cases involve infringing against property, particularly stealing and robbery. The investigation from the Prison Administration Bureau of the Autonomous Region of Guangxi shows that in almost six years, of recidivists of the whole province, 39.7% were reincarcerated for stealing, and another 23.9% were reincarcerated for robbing. The number of cases involving these two types of crime is higher than those of other crimes in China.

At present, the average number of reoffences is increasing; nearly 40% of persons reoffend three or more times, and there has been an emerging tendency for 'professional' crime. Moreover, the phenomenon of repeat offenders facing two or more charges is becoming more and more frequent. An investigation shows that in 8.4% of recidivism cases the offender was simultaneously charged with two or more offences. Those facing three or more charges account for 1.1% of the total number of cases; the highest number of charges faced by a repeat offender was six.

In addition, recidivism in China also appears to have become more sophisticated and technical in recent years. Organized crime committed by released prisoners is rising. More and more criminals make use of modern communications and means of transportation to implement crimes, and plan elaborately and tactically in advance of criminal acts.

With reference to revivalism, like many developing countries, China faces difficult situations and difficult problems, so it seems to be very necessary to strengthen research projects and co-operation with these countries in this respect.

**IV. THE CURRENT MEASURES AND POLICES TO CONTROL
RECIDIVISM IN CHINA**

A. System of Punishment

1. Principal Punishments

The principal punishments in Chinese criminal law are as follows: public surveillance; criminal detention; fixed-term imprisonment; life imprisonment; and the death penalty. The principal punishments are the major ways of punishing criminals, of which the term of public surveillance shall not be less than three months and not more than two years; the term of criminal detention shall not be less than 15 days and not more than six months; the term of fixed-term imprisonment shall not be less than six months and not more than 15 years.

The death penalty is the heaviest penalty and can only be applied to criminals who have committed extremely serious crimes. If the immediate execution of a criminal punishable by death is not deemed necessary, a two-year suspension of execution may be pronounced simultaneously with the imposition of the

death sentence. For anyone who is sentenced to death with a suspension of execution and who commits no intentional crime during the period of suspension, the punishment shall be commuted to life imprisonment upon the expiration of that two-year period; if the criminal has truly performed major meritorious service, his punishment shall be commuted to fixed-term imprisonment of not less than 15 years and not more than 20 years upon the expiration of that two-year period. In judicial practice in China, the overwhelming majority of criminals who are punishable by death with a suspension of execution are spared the death penalty.

2. Supplementary Punishments

The supplementary punishments are as follows: fines, deprivation of political rights, and confiscation of property. Apart from this, deportation is a supplementary punishment, which may be imposed independently or complementarily upon a foreigner who commits a crime. Supplementary punishments may be imposed independently. The above punishments are major judicial methods of controlling crime and recidivism in China. When a criminal commits crime, a punishment shall be imposed upon him or her based on the facts, nature and circumstances of the crime, the degree of harm done to society and the relevant provisions of criminal law. By means of the punishments, we hope to realize the prevention and/or reduction of crime and recidivism.

B. Penalty Policy

The Criminal Law of the People's Republic of China, Article 65 stipulates that recidivists "shall be given a heavier punishment". So recidivism is an official reason for heavier punishment in accordance with the provisions of Chinese criminal law.

To crack down on serious crimes and recidivism is China's traditional penal policy. China has launched several successive large-scale movements against serious crimes since 1982. Considering the harsh nature of criminal acts, a 'strike-hard' policy against serious crimes is still in place. In recent years, the focal point of the 'strike-hard' policy has been organized crime and gangster activities which are rampant at present.

On the whole, China maintains a high-tension approach to crime because it is accepted as an effective way to prevent and control crime (and recidivism). In the past nine years (from 1998 to 2006), 6,201,191 criminals were pronounced guilty by the Chinese court system and 22.23% of them (1,378,525 people) were sentenced to imprisonment for more than five years. It is evident that quite a lot of criminals were given serious penalties and need to receive correctional treatment for a long time.

In recent years, the Chinese penalty policy has begun adjusting to some extent; while placing an emphasis on sternly combating serious crime, we have begun to pay attention to implementing a light and more lenient criminal policy for less serious offences. Some criminals, whose social harmfulness and subjective evil is slight, are given non-custodial penalties such as fines, public surveillance, suspension of sentence and parole, etc. China attempts to balance severity and leniency in its criminal policy. This is a great adjustment of the Chinese penalty philosophy, and is an important social policy which China is presently advocating and pursuing vigorously.

C. Policy of Correction

China firmly believes that people, including most criminals, can be rehabilitated. It is the basic target of China's policy of correction that criminals should become law-abiding citizens who can lead independent lives.

Directed by this thought, China's criminal punishment policy is focused on corrections rather than straightforward punishment. During the process of correction, the focus is on the implementation of the principles of humanism and education, and great attention is paid to the criminals' conscious correction through labour, morality, culture, technology and so forth. By these means, criminals can become law-abiding citizens, giving up the intention to commit crime to fulfil their greed. China adopts the measure of combining special State penal organs with civic society organizations. The main task of correction is undertaken by the penal executive organs in prisons. At the same time, other departments and social strata contribute their efforts to support and co-ordinate criminal correction throughout the whole process, which extends to matters such as living arrangements after release and employment of the released prisoners. The experiences of China, I think, show that an effective way to prevent and control recidivism is by paying great attention to the education and correction of criminals.

D. Policy of Social Education and Employment

The Policy of Social Education and Employment mainly refers to the education, employment, assistance and management of released criminals. When the released criminals return to society and cannot establish a residence and employment without assistance and regulation from society, they will tend to reoffend. Therefore, China has always paid great attention to the task of assisting and educating released prisoners, and has taken multigradation, multichannel and multiform measures to arrange post-release life, and furthermore incorporates this work into the government public security system. In many places, special factories and enterprises were established as the employment bases for released prisoners. These enterprises provide employment for quite a long period. At the same time, based on the units and districts in which those people live, deposed by the government, we can mobilize civic organizations at primary level such as residents' committees, village committees, etc, to take part in the work of assisting, supervising, educating and managing released prisoners. In this way, we can comprehend and gain firsthand information about their living conditions and employment, and settle their practical problems and difficulties actively. Through such protective and precautionary measures, we effectively control and reduce recidivism to some extent.

V. CHALLENGES AND PROBLEMS IN CONTROLLING RECIDIVISM

A. Increase of Social Elements Which Can Induce Recidivism

Today, China is in the process of economic and social transformation. In the course of transition from the old structure to the new, there is likely to be some innovation required in the legislation, institutions and regulations which provide opportunities for criminals. In the presence of imperfect legislation and institutions, the negative aspects of a market economy will be more likely to appear and directly influence the number, method, form, character and object of criminal acts. Particularly in recent years, with the wave of urbanization and flourishing development which has pushed innumerable peasants and vagrants into cities, the change in living circumstances in cities has induced or obliged many people to select the path of crime.

B. Tradition and Practice of Severe Punishment

In traditional Chinese legal culture, the idea of severe punishment for crimes has always been important. Whenever crimes were rising and social security was deteriorating, the direct policy would be severe punishment. For a long period, we were more likely to believe in striking hard against crimes and in the effectiveness of penal deterrence. As a result, there were frequent large scale movements to severely punish criminal acts. With the implementation of this policy, many criminals were sentenced to long term imprisonment. Maltreatment in prisons was exposed as much as possible.

C. The Decrease of the Function of Correction in Prison

Firstly, the circumstances of criminals are becoming more and more complex at present, which increases the difficulty of correction. Secondly, the quality of policies in prison cannot satisfy the development of corrections and meet fully the requirements of the task. Thirdly, the traditional method of correction cannot meet the challenge of new pattern crimes emerging nowadays. Fourthly, the change in social circumstances has meant that prison officers cannot focus their whole energies on the work of criminal correction. Last but not least, the market economy and the opened society require a more socialized execution of criminal penalties, but this fact is contrary to the reality that prison is still closed to the outside world. The resocialization of criminals is more difficult than before, and criminals are more likely to reoffend after release from prison. To sum up, the function of corrections in prison has slowed to a certain extent.

D. Ineffective Execution of Social Education and Employment Policy

China's economy has recently become extremely competitive, and the employment situation is rather harsh. Most released prisoners have a grave drawback in the areas of quality and technology demanded by the employment market. Furthermore, taking their special personal experiences into account, they find it is very difficult to obtain employment. At the same time, the government also cannot solve this problem soundly because many State-owned or group-owned companies have transformed into private companies. As a result, in addition to the stigmatizing of released prisoners, the pressure on them to manage their own living is rising. Some of them will take up their old criminal habits, especially larceny and plunder. Simultaneously, because of the enforcement of the market economy, there are vast and fast flows of people through society. As a result, social organizations find it is very difficult to supervise, regulate and educate released prisoners effectively because even these organizations cannot track where those persons are.

Particularly, the aim of effective supervision and regulation cannot be achieved because so many peasants and vagrants have migrated to cities.

VI. NEW CHOICE: COMMUNITY REHABILITATION

Community Rehabilitation is a type of penalty without imprisonment. The Special Judicial Administrative Department, with the aid of other administrative departments, non-governmental community groups and social volunteers, helps to rehabilitate the criminals' psychology and vices. Eventually, criminals can return to society smoothly. This is China's exploration for a more humane penal system. In it, more attention will be paid to the function of education and rehabilitation, and respect for and preservation of the rights of criminals will be fully demonstrated. This is an important component of China's judicial reform. As of August 2006, there are 18 provinces, 85 big cities, 375 county districts, and 3,142 streets (villages or towns) promoting community rehabilitation. Nationwide, there are about 7,778 full-time judicial assistants of community rehabilitation, 4,415 full-time social workers, and 60,004 social volunteers currently participating in this scheme. Under the leadership of the Judicial Administrative Department and with the co-ordination of police departments, civil administration, fiscal departments and so on, this kind of model has come into being successfully.

Those subject to community rehabilitation in China comprise five kinds of criminals: those put under public surveillance, those whose sentences have been suspended, those sentenced to parole, those permitted to temporarily serve their sentences outside prison, and those only deprived of political rights. Different plans are made for each person made subject to a Community Rehabilitation order. In doing so, the criminals' relatives, social volunteers, experts and so on together provide the criminals in the community with psychological consultation, training courses, and duly solve the problems and difficulties of employment, life, psychology, education, etc. The above measures help released prisoners successfully integrate with society.

This system affords more opportunity for non-violent, non-threatening and truly remorseful criminals to repay their debt to society with a non-custodial penalty such as probation and parole, etc. Non-custodial sentences avoid the negative physiological and psychological effects of prison life and allow fuller participation in educational and rehabilitative programmes. According to statistics of the Ministry of Justice, until August of 2006, this new rehabilitative system has accepted 65,616 persons and has succeeded with 15,092 of them. Excepting some special cases in Beijing and Guizhou province, the recidivism rate is zero. Obviously, the effects of community rehabilitation are very noticeable.

VII. CONCLUSION

Promoting public safety and controlling recidivism is a complex and systematic project. From the results of the Chinese system, I believe deeply that the following process should be adopted: first, the most important work should be in establishing better societal circumstances to achieve harmonious relationships between society, economy, politics and culture, etc. Better societal circumstances are a key factor in controlling and reducing the crime rate. Second, enforcing all aspects of the judicial and corrections systems, and fulfilling in full the functions of retribution, deterrence, correction and rehabilitation are a comprehensive way to prevent and reduce crime and recidivism. Third, encouraging and including more citizens in the education, assistance, supervision, and rehabilitation of offenders is also a good method of controlling recidivism and promoting public safety. In the new century, criminal justice should be a process contributed to by all citizens. In our new criminal system, government, non-government organizations, volunteers, and community workers should co-operate closely and harmoniously to realize our mutual dream.

CORRECTIONAL INSTITUTIONS SEARCHING FOR AN EFFECTIVE INTERVENTION IN PROMOTING PUBLIC SAFETY AND CONTROLLING DRUGS DEPENDENT RECIDIVISM¹

*Diah Ayu Noorsinta Hidayati**

I. INTRODUCTION

Indonesia is an archipelago country with an area of 1,919,404 km² and a population of 245,452,739 people, spread over 981 islands from a total of 17,500. Geographically, Indonesia is located in the South-East Asian region close to Malaysia, Papua New Guinea, and Timor Leste. Because of its archipelago form, demographics and geographical position, Indonesia has a strategic place in the trafficking and smuggling of international illegal drugs. Therefore, it is not surprising that in the last few years Indonesia has experienced a huge problem with international drug trafficking. Nowadays, Indonesia is not only used as a transit country, but has also become a real potential market for drug traffickers.

According to data released by the National Narcotics Board, in the year 2005 cases of drug misuse in Indonesia were calculated at around 3 – 4 million for the entire population. This number has increased in past years. Based on the data of drugs crime in Indonesia for the period 2001 – 2005 it is apparent that in the last five years the number of cases has increased, although the law has been strictly enforced.

Table 1: Number of Drugs Seizures Cases²

NO.	CASES	YEAR					TOTAL	AVERAGE PER YEAR
		2001	2002	2003	2004	2005		
1	Narcotics	1,907	2,040	3,929	3,874	8,171	19,921	3,984
2	Psychotropic	1,648	1,632	2,590	3,887	6,733	16,490	3,298
3	Addictive Substances	62	79	621	648	1,348	2,758	552
		3,617	3,751	7,140	8,409	16,252	39,169	7,834

Source: Dit. IV/Drugs, February 2006

A remarkable increase in the suppression of drug dealing has also occurred if you consider the number of drug perpetrators arrested by the police in the period 2001 – 2005. If it is compared as a whole to the number of perpetrators arrested in 2004 (11,323), the 2005 figure (22,780 people) represents a 101.2% increase. This indicates that although Law No.5/1997 on Psychotropic Substances and Law No.22/1997 on Narcotics have been strictly implemented by law enforcement agencies, the economical value of drugs is far more profitable. Moreover, the number of addicted drug abusers makes the matters more complicated.

Table 2: Number of Drugs Offender Cases³

NO.	NATIONALITY	YEAR					TOTAL	AVERAGE PER YEAR
		2001	2002	2003	2004	2005		
1	Indonesian	4,874	5,228	9,638	11,242	22,695	53,677	10,735
2	Foreigner	50	82	79	81	85	377	75
		4,924	5,310	9,717	11,323	22,780	54,054	10,811

Source: Dit. IV/Drugs, February 2006

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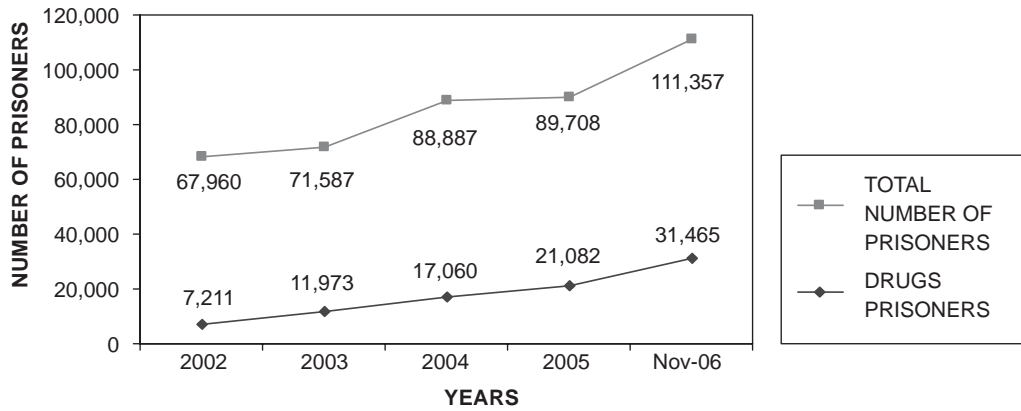
¹ This paper is based on facts and correct data. However, the analysis is based on the author's judgment.

² National Narcotics Board, Data of Drugs Offender Cases in 2001 – 2005. Jakarta: 1.

³ Ibid.

Along with an increasing number of drug crime perpetrators, numbers of drug-related prisoners also increased significantly from 2002 until November 2006.

Graphic 1: Number of Drugs Prisoners in Indonesia⁴



Based on statistics of prisoners in Indonesia provided by the Directorate General of Corrections of the Ministry of Law and Human Rights in November 2006, the number of prisoners in Indonesia was 111,357, among which 31,465 were drug-related prisoners. Compared with the number of prisoners in 2005, the total number of prisoners increased by about 19.4%, but drug-related prisoners increased by 33%. Unfortunately, the increase in the number of prisoners was not followed by the expansion of capacities and facilities of prisons and detention centres. This created a problem of overcrowding in prisons and detention centres in Indonesia. In the meantime, the overall existing capacity is 74,000. It means that the overcrowding rate is 34% of the existent capacity.

Compared with the current capacity of prisons and detention centres, the number of corrections officers, which is only 24,337, is not sufficient to handle all prisoners' problems and grievances. Drug-related prisoners require special attention in security matters because of drugs smuggling into the institutions. Besides, we can assume that not all corrections officers have sufficient knowledge and skills for treating and rehabilitating drug-related prisoners, especially drug-dependent prisoners. Therefore, it is not surprising if drug abuse occurs in prisons. In relation to the transmission of HIV/AIDS, the World Health Organization (WHO) emphasizes drug abuse in prisons. The WHO notes that ... *"there are prisoners who become infected with HIV while in custody because of the usage of unsafe needle syringes for drug injection, sharing needles or unsafe sexual activity."*⁵

The overcrowding, the limitation of facilities, and the limitation both in quantity and quality of human resources in correctional institutions make it more difficult to maintain security and to prevent drug abuse in prisons and detention centres. As occurs outside prisons and detention centres, drugs are often injected (Injecting Drug Use) in correctional institutions. Sharing of needles and syringes accelerates the transmission of HIV/AIDS. Moreover, overcrowding aggravates HIV/AIDS transmission in prison.

Therefore, it is important to develop special treatment and rehabilitation programmes for drug-dependent prisoners. Educational programmes and referral system programmes are also necessary. These three programmes are currently being implemented simultaneously in Indonesian prisons and detention centres. The long-term purpose of these programmes is to reduce drug-dependent recidivism and to develop a safer public environment. Drug-dependent prisoners who recover from their drugs dependency have a healthier and a more normal lifestyle after release.

⁴ Directorate Registration and Statistics, Directorate General of Correction, Number of Detainees and Prisoners in Indonesia, November 2006.

⁵ *Evidence for Action on HIV/AIDS and Injecting Drug Use*, Policy Brief: Reduction of HIV Transmission in Prison. WHO, UNAIDS & UNODC, 2005: 1.

II. THE STRUCTURE OF THE DIRECTORATE GENERAL OF CORRECTION

The Directorate General of Correction is one of six directorate generals in the Ministry of Law and Human Rights of the Republic of Indonesia. The Directorate General of Corrections is one of the organizations which has Technical Operating Units in all regions. The number of Correction Technical Operating Units is 525 (including prisons, detention centres, and branches of detention centres, parole and probation institutions, and the State of Confiscated Goods Institutions) and they are distributed at district or local level (Kecamatan/Kabupaten).

Table 3: Number of Correction Technical Operational Units

NO.	CTOU	TOTAL
1	Prison	207
2	Detention Centre	132
3	Branch of Detention Centre	58
4	Parole and Probation Inst.	67
5	State Confiscated Materials Inst.	61
TOTAL		525

The Directorate General of Correction consists of one Secretariat Directorate General and six technical directorates. It has the vision and mission to recover the unity of life, living and way of life of prisoners as individuals, members of society and God's creatures, through treatment, education, management of seized materials, crime prevention, and promotion and protection of human rights.

In achieving its vision and mission, the Directorate General of Correction specifies purposes that the six technical directorates must meet. These six technical directorates are:

1. The Directorate of Security and Orderliness
2. The Directorate of Registration and Statistics
3. The Directorate of Grounding and Production
4. The Directorate of Correctional Guidance
5. The Directorate of Treatment
6. The Directorate of Narcotics Affairs.

These six technical directorates are responsible for formulating policy related to the fundamental duties and functions of each directorate according to the vision and mission of the Directorate General of Correction, which will be implemented at the Correction Technical Operating Units.

III. INDONESIA'S CORRECTIONAL SYSTEM

As the final institution in the Criminal Justice System continuum, during the last 40 years, Indonesian prisons have been transformed from organizations of punishment and deterrence into institutions of social reintegration. This paradigm shift occurred with the introduction of the Treatment of Offenders method, better known by the term 'correction'. Prison is part of the correctional system. The correctional system of Indonesia consists of four institutions: prison; detention centres (remand prison); the parole and probation board; and *rumah penyimpanan barang sitaan negara* (the State Confiscated Goods Institution).

The vision of the correctional system is to restore the unity of relationships, life and ways of living between the offenders, the public and the environment, under the unity of a relationship with God as according to the Five Principles of the Nation (Pancasila), while at the same time holding on to the principles of protection to produce well-rounded individuals. The mission of the correctional system is to improve the implementation of offenders' treatment including guidance and counselling programmes for the Correctional Treatment Members (prisoners), as well as the administration of State confiscated materials, in order to strengthen law enforcement and human rights in Indonesia.

Therefore, to achieve its vision and mission the correctional system aims to produce law-abiding citizens

who realize their mistakes; improve their behaviour so they will not repeat their criminality; are accepted by society; actively participate in their own development; and are able to live as good and responsible citizens. In order to attain this goal, correctional institutions, especially prisons, are responsible for implementing various treatment and rehabilitation efforts for prisoners. The treatment and rehabilitation programme for prisoners engages all aspects of their person based on an interactive process supported by appropriate construction programmes.

Correctional institutions as social reintegration institutions have a responsibility to deliver service to two parties: prisoners and the public. The form of service given to prisoners is treatment and rehabilitation, which aim to ensure that prisoners can lead independent and law-abiding lives after release. For the public, the service given by correctional institutions is to offer protection and security from wrongdoers.

Public protection should be guaranteed not only during an offender's period of incarceration but also after he or she is released and returned to society. It is important to develop comprehensive treatment programmes and activities, which not only address offenders' morality, but also their cognitive, physical, and skills abilities. The final purpose of treatment programmes shall be to change the behaviour and cognitive patterns of prisoners so they will harm neither the public nor themselves.

In Indonesia, most of the planning and implementation of various treatment programmes in prisons and detention centres is based on policies developed by the Directorate General of Correction. The Directorate General of Correction has the authority to formulate policies to overcome various problems related to drug-dependent prisoners and drug abuse in prisons. These policies must be implemented in prisons through comprehensive programmes, so that there will be changes in prisoners' behaviour and way of thinking in general. Particularly for drug-dependent prisoners, rehabilitation programmes are required to bring about their awareness not to use illegal drugs, which, if prisoners continue to use, will eventually lead to their re-incarceration.

IV. CORRECTIONAL PROCESS IN INDONESIA

A. Reception of the Offender

Correction can be a therapeutic process in which the offenders realize that there is a lack of harmony in their relationship with their community. This should be apparent to them at the beginning of their treatment. After that, the offenders have to undergo a continuous treatment programme that involves different aspects of the community. In short, correction is the process of changing an offender's negative way of living to a more positive one.

Ideally, in order to make sure that the treatment process is implemented properly, the institution should perform a risk, need and response assessment of individual offenders. This process should find out the reasons for the offender's entry into the correctional institution, their weaknesses, etc. Based on the information collected, the institution can plan and implement a suitable treatment programme. In the acceptance process, the institution must also ascertain the attitude and conditions of the community to which the offender will return after release. Such information is collected from their family, former employers, coworkers, the victim of their crime, the police, prosecution office, court, etc. By knowing these things, the treatment of the relationship between the offenders and the community can produce positive results.

Unfortunately, because of the overcrowded condition of prisons and detention centres, and the limited number of correctional officers, this stage is rarely included in the need assessment process. When new prisoners enter prison or a detention centre, they are currently interviewed only for registration or administrative matters. There is no further assessment process, except for drug-dependent prisoners. They are interviewed about their drug-use history and receive a basic medical check-up. Based on the result of the interview and health test, medical officers will advise them to participate in treatment or rehabilitation programmes, but participation in the treatment programme is voluntary.

B. The Classification of Prisoners

Treatment starts in the correctional institution and the offender is gradually introduced to life in a freer environment. This aims to develop their sense of social responsibility and to avoid the negative impacts of imprisonment which include becoming institutionalized and stigmatized, which in the end will result in recidivism.

That is why, in the Indonesian correctional system, the classification of offenders is based on how long the offender is placed in the correctional process, as stated in Government Rule No. 31, 1999, regarding treatment and guidance for the offenders.

1. Initiation Stage

All offenders who have just entered correctional institutions should be observed carefully and should be gradually introduced to the new environment for a period of one month. During this period, the authority should collect information concerning the prisoner, including the reasons for their commission of crime. It is also important to know about the situation of the community to which the offender belongs and his or her attitudes.

With all the information collected, suitable treatment programmes can be planned and executed. Such treatment programmes include the personality and self-reliance development programme. The personality treatment focuses on mental and character development so that the offenders can be responsible for themselves, their families, and the community. The self-reliance development focuses on talent and skills so that offenders can become active community members. During this stage, prisoners are placed in a maximum-security setting.

2. The First Instalment Stage

By this stage, all offenders have undergone one third of their sentence, and have made some progress in terms of the opinion of the correctional observer team. The offenders should show regret, discipline, and obedience to the rules of the institution. Prisoners are given more freedom and responsibility and medium control is applied to this group. Occasionally they are given a chance to work outside the institution. In the meantime, the institution also improves the offenders' behaviour and etiquette so that the community will regain its trust in the offenders and change their attitude towards them.

At this stage, drug-dependent prisoners are advised to participate in therapy and rehabilitation programmes. There are two types of programmes implemented in treating and rehabilitating drug-dependent prisoners; the drugs abstinence treatment and rehabilitation programme and methadone substitution therapy.

In the meantime, some correctional institutions have provided health programmes focusing on HIV/AIDS prisoners. The prisoners receive counselling and testing which continues on to care, support and treatment (CST) programmes where they can easily access Anti-Retroviral Drugs (ARV).

3. The Second Instalment Stage

In this stage, the offenders have undergone half of their sentence, and according to the correctional observer team's opinion, they have made substantive progress in their physical and mental conditions, as well as in their ability. The scope of the treatment in this stage encompasses not only the institution but also the community. The offenders take part in various kinds of activities, such as praying, sports, educational courses, working in government or private offices, working by themselves, visiting their family, etc. However, they are still under supervision by prison staff.

At this stage, drug-dependent prisoners and HIV/AIDS prisoners may continue their treatment and rehabilitation programmes. Some drug-dependent prisoners who had been involved in drugs abstinence programmes can become trainers for new participants. Drug-dependent prisoners are also obliged to continue their involvement in methadone maintenance treatment. The obligation to continue the treatment is also emphasized for HIV/AIDS prisoners who received ARV. Hence, they can be supporters and peer educators for the other HIV/AIDS prisoners.

What is important at this stage is that the offenders should be mature enough to do the things required of them without harming the people around them. They also need support from their community. This stage applies minimum control.

4. The Third Stage

In order to enter this stage, the offenders must have undergone two-thirds of their sentence and they need to have spent at least nine months in the institution. If the treatment process goes smoothly, they may

be paroled. The correctional observer team can recommend pre-release treatment.

At this stage, the main treatment activities are administered in the community. Control and guidance is far more relaxed than in the previous stages so that in the end, the offenders can live in the community harmoniously and independently.

Based on the developed referral system, drug-dependent prisoners and HIV/AIDS prisoners can continue their treatment in the community, particularly drug-dependent prisoners who had been involved in Methadone Maintenance Treatment and the HIV/AIDS prisoners who had been treated with ARV.

C. Treatment Strategies for Drug-Dependent Prisoners

The strategy employed in the treatment of offenders in the Correctional system is through treatment programmes. The programme is adjusted according to the stages of their sentence, from initial incarceration to release.

In the matter of drug dependency treatment and HIV/AIDS prevention in Prisons and Detention Centres in Indonesia, The Directorate General of Corrections, through The Directorate of Narcotics Affairs, developed the National Strategy of Drug Abuse and HIV/AIDS Prevention in Prisons and Detention Centres in Indonesia 2005 – 2009. This national strategy has three main pillars:

1. Enforcement and guidance of the law
2. Rehabilitation and social services
3. Prevention and treatment.

Those three main pillars are supported by co-ordination and co-operation with multi-sector stakeholders and research, development and observation. The pillars are implemented comprehensively based on three approaches of drug abuse and HIV/AIDS prevention: demand reduction, supply reduction and harm reduction. These three approaches and pillars are related to each other and must be executed concurrently so that prevention strategies in prisons and detention centres in Indonesia can be achieved effectively and efficiently.

In order to eradicate drugs smuggling into prisons and detention centres, all efforts in the enforcement and guidance of the legal pillar, such as the routine search of cells and investigation of visitors, are implemented intensively.

In order to reduce the demand for drugs from prisoners, prisons and detention centres also provide drug abstinence treatment and rehabilitation programmes, such as therapeutic communities and NA/AA, to rehabilitate and deliver social services for drug-dependent prisoners, IDUs or HIV infected prisoners.

In order to prevent or reduce the harm impact of drug abuse, prisons and detention centres are implementing prevention and also, care, support and treatment (CST) programmes based on the twelve harm reduction programmes of WHO, which are classified into three main programmes:

1. Education Programmes
2. Health Service Programme
3. Referral Programme.

1. Education Programme

The programme is an initial prevention programme for new drugs users in prisons and detention centres. This education programme consists of two sub-programmes:

1. Communication, Information and Education (CIE); and
2. Infection Prevention Programmes.

Information dissemination and education about HIV/AIDS and drugs are submitted with a changed communicative method to two parties: correctional officers and prisoners. The purpose is to make them understand basic information about HIV/AIDS and drugs. Therefore, they can engage in preventive, curative and rehabilitative efforts in overcoming HIV/AIDS and drug abuse by providing condoms for prisoners who want to have sexual intercourse with other prisoners and application of a disinfectant dilution (bleaching) to clean used syringe needles, which can prevent HIV transmission.

The implementation of CIE is expected to be able to change the behaviour of prisoners. Prisoners begin to have awareness of their high-risk behaviour in drug usage, and adjust their behaviour by refusing to use syringes and needles, not sharing needles, and following the substitution therapy programme or even the drug abstinence programme.

2. Health Services Programme

The programme aims to increase health services quality for prisoners in general as well as drugs cases and HIV/AIDS prisoners. The Health Service Programme consists of some sub-programmes:

1. Counselling and Testing (CT)
2. Care, Support and Treatment (CST)
3. Basic Health Services
4. Substitution Programmes (Methadone Maintenance Treatment)
5. Risk Reducing Counselling.

(i) Counselling and Testing (CT), Care, Support and Treatment (CST) and Basic Health Services

Because of the terrible quality of health services for prisoners in prisons and detention centres, the increasing numbers of HIV/AIDS prisoners, and the increasing mortality numbers of prisoners caused by HIV/AIDS, a qualified clinical service for basic health needs and also for HIV/AIDS prisoners is an urgent requirement. This is particularly true in the case of treatment and therapy of prisoners who have entered the third and fourth stages of AIDS.

The accomplishment of good quality clinical services in prisons and detention centres begins with counselling and a HIV test. It has a strategic importance as this phase can increase the likelihood of early intervention in the treatment of HIV. Early intervention in the treatment of HIV prisoners can reduce the burden on the health system and its budget. Besides, early intervention in the treatment of HIV is in line with the concept of 'construction/treatment/rehabilitation', where prisoners can positively contribute to their own care after release.

Hereinafter, the counselling and HIV test shall be followed by the execution of Care, Support and Treatment (CST) for prisoners who have been proved to be infected by HIV. CST services for prisoners, which is administered by a medical doctor or a paramedic in a health facility unit of prisons and detention centres, must provide the same treatment as that available in civil society. For prisoners who are not infected by HIV/AIDS, but are infected by other diseases, good quality treatment and clinical services should also be provided for them until recovery.

(ii) Risk Reduction Counselling and Methadone Maintenance Treatment (MMT)

One of the applicable harm reduction programmes in Indonesia is Methadone Maintenance Therapy (MMT). Based on the experience of other states it is mentioned that methadone substitution therapy on a long-term basis is an effective way of preventing the transmission of HIV through shared needles.

Before prisoners become involved in this MMT programme, they usually undergo risk reduction counselling beforehand. In this counselling session they are informed of everything about MMT. After volunteering to enter this programme (by filling the consent form), they can obtain methadone every day until they feel they do not require it anymore.

The substitution programme is an easier programme to implement and has been proven fully advantageous for prisoners who are drug dependent. In the year 1992 more than ten states implemented this programme. They reported a reduction in the frequency of illegal drug usage in prisons. The literature also indicates that methadone lessens the frequency of injection. It was also reported that there were few IDU prisoners who did not follow this programme.

Sharing needles has also reportedly decreased, indicated by the significant reduction of HIV transmission. Assorted drug dependency treatment methods have been implemented in prison including therapeutic community methods and group counselling.

(iii) Referral Programme

The referral programme is a key programme which determines the success of whole harm reduction

programmes implemented in prison and detention centres. This is based on the idea that in overcoming drugs and HIV/AIDS problems prisons and detention centres cannot operate independently. Therefore, prisons and detention centres must co-operate with public health services units, either local hospitals and/or Puskesmas, when they do not have enough resources to implement harm reduction programmes. Prisoners who have serious health problems which can no longer be handled by doctors or paramedics in correctional institutions should be referred to the public system.

Besides that, it is also important for prisons and detention centres to strengthen the referral network for prisoners who will be released or have already been released. The purpose is to continue the services of CST or MMT, received during imprisonment, at public health units outside prisons. Therefore, ex-prisoners with HIV can still easily access ARV, so their quality of life will remain stable. For ex-prisoners who were accessing methadone in prison, they can continue their treatment, so that they will not inject drugs anymore.

As a whole, the implementation of these three main programmes has the long-term aim of reducing recidivism. By improving prisoners' understanding and knowledge of HIV/AIDS and drugs, they are expected to adjust their lives and behaviour and to avoid conflict with the law in pursuit of their addictions.

D. Co-ordination and Collaboration with Stakeholders in the Treatment of Drug-Dependent Prisoners

1. Government Institutions

Some institutions that have worked together in the implementation of correctional treatments are The Ministry of Health, The Ministry of Social Affairs, The National Narcotics Board (NNB) and the National AIDS Commission (NEC), which have interest in the treatment of drug-dependent prisoners.

(i) The Ministry of Health

The co-operation involves medical treatments for prisoners and offenders, the assignment of doctors and paramedics, as well as medication for ill prisoners. It also covers research on prisoners involved with drugs in various correctional institutions in Indonesia. The results are used by the Directorate General of Corrections to formulate policies for the treatment of offenders in drug cases.

(ii) The Ministry of Social Affairs

The Ministry of Social Affairs has established a co-operative relationship with the Ministry of Law and Human Rights in order to rehabilitate drug-dependent prisoners in which The Ministry of Social Affairs supplies some modules on the Therapeutic Community Method based on a fixed standard.

(iii) The National Narcotics Board

This organization provides assistance in handling offenders who are involved in drug cases, as either users or dealers. It realized that handling drug problems requires solid teamwork among many parties, including correctional institutions. This is because illegal practices related to drugs have spread widely in many places and reached many people, including prisoners in correctional institutions, and lately, the number of prisoners who happen to be users or dealers has been increasing significantly.

In order to overcome drug smuggling inside prisons and detention centres, The Directorate General of Correction and the NNB developed task forces in central and provincial districts and even in prisons and detention centres. They conduct ransacking activities regularly in prisons and detention centres. In the meantime, both organizations are in the middle of developing a drug database system in correctional institutions. This data can be used as a basic rationalization in making comprehensive programmes for handling the drug smuggling problem in prisons and detention centres.

(iv) National AIDS Commission

Based on evidence of an increasing number of HIV/AIDS prisoners, the Directorate General of Correction developed a collaborative relationship with the National AIDS Commission to overcome this problem. Many programmes were developed for the fiscal years of 2006 - 2010, including the development of a comprehensive database system in all prisons and detention centres. Training of correctional institutions human resources, development of referral systems, and equipping the basic health facilities in correctional

institutions are also the main programmes for those years. The programmes aim to develop independency of correctional institutions in handling HIV/AIDS related problems. In order to realize the aim, the National AIDS Commission and Directorate General of Correction develop HIV/AIDS task forces at central, provincial and district level.

2. Social Organizations/Non-Government Organizations

Social organizations have played a significant role in the treatment of offenders. Their concern for the future of inmates has lessened the burden on correctional institutions in administering treatment. Various social organizations have participated in providing some treatments for drug-dependent prisoners and HIV/AIDS prisoners. The drug abstinence programmes are mostly provided by social organizations, such as CRIMINON INDONESIA, YAKITA, etc. They also conduct some drug abstinence training for prisoners and correctional officers. Many of them are also involved in HIV/AIDS prevention efforts using the harm reduction approach, such as UNAIDS, UNODC, FHI/ASA, IHPCP, Burnet Indonesia, etc. They, with other institutions, also assist the Directorate General of Correction and the correctional institutions in the development of the referral system.

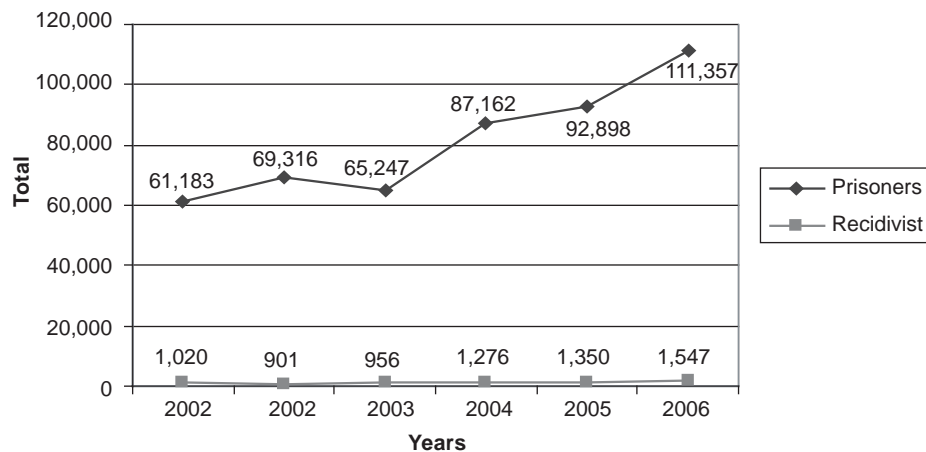
3. The Third Party

From 2002 – 2006 a co-operative relationship between correctional institutions and provincial hospitals in overcoming the problem of drug-dependent prisoners was developed. In 2002, Kerobokan Prison of Bali Province co-ordinated with Sanglah Hospital (Bali) in implementing Methadone Substitution Treatment. In 2006, to accelerate Methadone Substitution Treatment, some correctional institutions developed similar co-operative relationships with provincial hospitals which provided methadone clinics. Those were Cipinang Narcotics Prison, Bekasi Prison, and Salemba Detention Centre with Jakarta Drug Dependency Hospital; Banceuy Prison (west Java) with Hasan Sadikin Hospital; and Yogyakarta Prison with Ghrasia Hospital.

The Directorate General of Correction also tries to maintain relationships with these hospitals, and many more, as reference hospitals for ex-prisoners in accessing ARV and methadone. This measure is taken to determine the sustainability of programmes after the prisoners are released.

E. Recidivism in Indonesia

Table 4: Rates of Recidivism in 2001 – 2006⁶



Recidivism in the Indonesian context is understood as the rate of prisoners who have been released but who re-enter (the same) correctional institution because of their misconduct. During the last six years the total number of prisoners has increased rapidly. However, the number of recidivists has not increased accordingly. In 2002, the number of recidivists had decreased, though it increased the following year. The slow reporting of data from prisons and detention centres all over Indonesia caused this fluctuation. The reports from all prisons, detention centres and provincial offices to the Directorate General of Corrections were not online, but used a manual system (sent via mail). Therefore, required data often came late to the Directorate.

⁶ Directorate of Registration and Statistics, Directorate General of Correction, Statistic Data of Recidivism 2001 - 2006.

However, since 2003, with the availability of fax machines at all prisons and detention centres in Indonesia, the Directorate General of Correction can receive all data about prisoners, including that of recidivists, faster. For that reason, we can see a significant increase in the total number of prisoners and in recidivists since 2003. Numbers of recidivists in 2004 had increased by 75% from year before. This was followed by successive annual increases of 95% and 87.27%. However, this is the only data regarding recidivism in the country. It is very difficult to know the number of drug-related recidivists.

The obstacles in measuring recidivism are recognized because many recidivists will not be sent to the same correctional institution at the second time of incarceration. Therefore, the offender who commits a crime after being released from other institutions will not be classified as a recidivist at the registration or administration stage. Based on this fact, it can be stated that the current statistics on recidivism in Indonesia show only the tip of the iceberg, as only small number of recidivists are recognized.

Recidivism may occur because of several other factors, including inadequate needs assessment when the prisoner is received. Needs assessment is an important part of the correctional process as subsequent treatment is based on this information.

The next possible cause of recidivism in Indonesia may be the voluntary nature of its treatment programmes. This is not a good solution for drug-dependent prisoners. Many of them know that recovery from drug dependency is a hard thing to attain and it is easy to access drugs in prisons. Therefore, they would prefer to continue their drug use rather than begin treatment.

Moreover, the effectiveness of treatment and rehabilitation programmes for drug-dependent prisoners has never been evaluated. Therefore, it is difficult to say whether treatment and rehabilitation programmes for drug-dependent prisoners work or not. Despite not knowing the exact number of drug-dependent recidivists, the increase in the total number of recidivists in Indonesian prisons and detention centres indicates an increase. We regret to state that generally the treatment and rehabilitation programmes for drug-dependent prisoners may not be effective enough to overcome the problem. Unfortunately, even though the number of recidivists is increasing, the Directorate General of Correction has not developed special treatment programmes for recidivists. In order to reduce recidivism, a special treatment programme for recidivists is a necessity.

V. CONCLUSION

1. The Indonesian correctional system's vision is to recover the life, existence and earnings (social integration) of the offender as responsible individuals, members of society and God's creation, while at the same time holding on to the principles of protection, to produce independent individuals.
2. In order to achieve this vision, corrections institutions develop treatment programmes which are implemented at each stage of the correctional process.
3. The most important part of the correctional process is the needs assessment process at the prisoner reception stage. Executing this process correctly can influence the success of treatment programmes. Unfortunately, the needs assessment process is rarely implemented, especially in overcrowded prisons and detention centres. Therefore, it is important that the Directorate General of Correction monitors the implementation of needs assessment processes at the reception stage.
4. The recidivism rate should be used as an indicator in measuring the effectiveness of treatment and rehabilitation programmes. Based on the increasing rate of drug-related recidivism, we do not know whether or not the current treatment programmes are effective in reducing recidivism. To be precise, it is important to develop evaluation and monitoring instruments for treatment programmes, especially drug treatment programmes.
5. The treatment programmes are followed voluntarily and there is no special treatment for drug-dependent recidivists. Therefore it is important to develop such treatment and to make it compulsory for all drug-dependent prisoners.

PROMOTING PUBLIC SAFETY AND CONTROLLING RECIDIVISM USING EFFECTIVE INTERVENTIONS WITH OFFENDERS -AN EXAMINATION OF BEST PRACTICES-

*Young-Hoon Ha**

I. INTRODUCTION

Generally, for released offenders, it is not an easy task to successfully readjust to society after serving a prison sentence. Released prisoners often think they have repaid their debt to society by serving their prison sentence. Despite the sentence having been served however, society does not welcome released prisoners. Instead it distrusts them and maintains a distance from them. This situation, in which our society is not ready to accept released prisoners as new citizens even though the released want to be good citizens, Barnes and Teeters explain as “societal lag”.

According to a statistic, more than 50% of all offenders have a previous criminal record. This means that one of the most effective ways to prevent crime is to control offenders and prevent re-offending. As Barnes and Teeters said, we should accept that society as a whole is also responsible for the recidivism of offenders.

Generally, recidivism means a continuance of crime by the same person. However, the precise meaning of recidivism is different depending on the stage of criminal procedure. In Korea, at the police and prosecution stage recidivism means that the same person has been apprehended for crime twice or more; the courts consider recidivism has occurred when the same person has been convicted twice or more; and the correctional system considers recidivism to be the imprisonment of the same person twice or more in the five years since his or her release. In this paper, when I mention police I employ the police’s interpretation of recidivism, and when I mention correction I employ the correctional meaning of recidivism.

II. THE RECIDIVISM RATE IN KOREA

According to statistics from the National Police Agency, the recidivism rate in 2005 in six categories, murder, robbery, arson, theft, rape, and violence is 58.3%. This means that about six out of ten people who committed those crimes are recidivist in the same or different crimes. The recidivism has rate continuously increased since 1990 and it reached almost 70% in 2003. It has decreased in 2004 and 2005, but it is too early to say the rate is continuously decreasing.

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Table 1: The Recidivism Rate for Six Major Crimes (2001~2005)

Year	Rate	Total	Murder	Robbery	Rape	Arson	Theft	Violence
2001	C	586,929	1,171	5,547	5,584	1,220	59,472	513,935
2001	R	380,970	819	3,790	3,865	876	32,453	339,267
2001	%	64.9	69.9	68.3	69.2	71.8	54.6	66.0
2002	C	513,367	1,051	5,453	5,136	1,135	63,644	436,915
2002	R	337,246	742	3,836	3,659	823	34,051	294,135
2002	%	65.7	70.6	70.3	71.2	72.5	53.5	67.3
2003	C	512,212	1,085	6,970	5,425	1,417	61,651	435,664
2003	R	337,540	764	4,873	3,664	1,048	32,980	294,211
2003	%	69.9	70.4	69.9	67.5	74.0	53.5	67.5
2004	C	536,644	1,200	6,466	6,418	1,546	68,398	452,553
2004	R	329,818	758	4,077	3,787	1,160	34,541	285,495
2004	%	61.5	63.2	63.1	58.4	75.0	50.5	63.1
2005	C	522,459	1,178	5,084	6,667	1,616	72,149	435,765
2005	R	304,522	739	3,313	3,733	1,137	36,010	259,590
2005	%	58.3	62.7	65.2	56.0	70.4	49.9	59.6

C = Caught
R = Recidivist

III. ISSUES IN KOREAN RECIDIVISM

A. Environmental Issues of Offenders

The first obstacle facing released offenders who want to start a new life is the stigma of being an ex-convict. The stigma exists everywhere in their community: friends, workplace, even in the home, and follows the released wherever they go and obstructs a new way of life. Furthermore, most released prisoners don't know how to follow the rapid changes in society following a long period in prison. This leads to frustration and often contributes to them giving up in their struggle for a new life.

In the two or three month period just after release, ex-prisoners can easily become vulnerable, socially and psychologically. Therefore, people refer to this period as the crime incubation period. If there is not enough support and care for released persons during this time it's very difficult to expect offenders to start a new life. Unfortunately it is not easy to meet those support and care needs at this moment.

A particular problem is that many released offenders don't have functional families and are exposed to the temptation of the criminal world. Even though people agree with the concept 'welcome them for a new life,' still they distrust and try to keep away from the released. Being unable to find a way to live as a member of the community creates negative results in the fight against recidivism.

B. Issues in the Correctional Stage

It is true that there is still doubt whether a real rehabilitation is possible or not, even though most countries have adopted policies which express the value of treatment and rehabilitation through education and training in prison. Martinson, (1974) said "nothing works" after he researched the effect of prison treatment programmes but Adams and Palmer (1976) said there are positive effects to treatment programmes for prisoners. So it is not an easy question to answer with certainty one way or another.

The Korea Correctional Bureau surveys the re-entry rate to prison every three years to see how prison treatment programmes work. According to the results of the survey from 1 January 1999 to 31 Dec 2001, there were 92,828 released prisoners and 23,096 of them returned to prison within three years of their release. This means that 24.9% of released prisoners (one in four) returned to prison within three years.

There are two main reasons for this return rate. Firstly, treatment programmes in prisons given to prisoners during the prison term didn't work as expected. Across the country there are 47 correctional institutions and there are many treatment programmes for offenders, varying a little depending on the institution. But those programmes don't work as expected because of overcrowding, lack of personnel and programme experts, and the accommodation policy for sentenced prisoners which designates prisons according to the offender's incarceration number.

Another important reason is that vocational training in prison is not related to life outside of prison. Almost all correctional institutions have vocational training programmes and the Correctional Bureau has a department controlling all prison industries and vocational training programmes but the work skills and certificates are usually too old to be of use after release. Most prison industry is based on simple labouring. Programmes given in prison are not modern enough to keep up with the changes occurring outside of prison so they are of little use when offenders are released.

C. Issues of Aftercare

Even though offenders repent and prepare to be good citizens during their prison terms they still need a period of time to adjust to the community and this period is crucial for deciding whether they can successfully reintegrate or not. If they fail to adjust during this period there is little hope that they will avoid a criminal future.

It is true that once even one crime is committed many offenders can't get out of the vicious circle of crime. It means that efforts of the criminal justice system to prevent recidivism are not working at all. In particular, correctional treatment programmes in correctional institutions and aftercare programmes for released offenders are ineffective. To solve this dilemma many countries try to refocus on community corrections.

The rehabilitation centre system was developed on the basis of this philosophy. Rehabilitation centres help released prisoners by giving physical and psychological support for their reintegration to the community. In Korea, rehabilitation centres began as civil volunteer work and developed as governmental work. Now the National Rehabilitation Agency under the Ministry of Justice is in charge of the rehabilitation programme. The agency helps released offenders by supporting them with food and shelter, travelling expenses, vocational training and job placement.

Job placement is the most important area with which offenders need help; there are restricted types of jobs available for the released, mostly physical labour. Many offenders quit such jobs because they think it is too hard and the payment is too low. For employers who hire released offenders there is no advantage, instead only the risk of criminal activity by their new employee. This means that released prisoners are rarely employed.

Another issue in rehabilitation work is money. To help the offenders the Agency needs more money than is available in its budget. The budget for rehabilitation is a low government priority.

Table 2: Budget of the National Rehabilitation Agency (in Millions of Won)

Year	00	01	02	03	04
Total	6,216	6,808	6,858	6,346	6,836
Governmental subsidy	3,709	4,447	4,657	5,003	5,642
Self business	2,507	2,361	2,201	1,343	1,194

In Table 2, we can see that the budget of the National Rehabilitation Agency has increased since 2000, but the amount is still very low (in 2004 less than US\$700,000). To guarantee successful rehabilitation work sufficient funds are essential but the actual budget allotted is much too low. For example, in 2002, the budget given to the Agency allowed only 1.6% of all released offenders to get help. This shows that the government is unconcerned about the matter of rehabilitation for released offenders.

Table 3: The Number of Offenders Helped by the Agency

Year	Number of Crimes	Perpetrators Caught	Clearance Rate (%)	Number of Caught	Number of Helped	Ratio of Help
1999	1,732,522	1,651,896	95.3	2,081,797	42,522	2.00
2000	1,867,882	1,664,441	89.1	2,126,258	41,651	1.96
2001	1,985,980	1,763,346	88.8	2,234,283	35,882	1.6
2002	1,977,665	1,826,852	92.4	2,267,557	35,989	1.6

According to Table 3, the number of crimes has gradually increased but the number of offenders who were helped by the National Rehabilitation Agency has decreased. This decrease comes as a result of the lack of funding and lack of understanding of rehabilitation work.

IV. CRIME PREVENTION EFFORTS IN KOREA

A. Police Stage

The most significant crime prevention activity at the police stage is an observation system for persons liable commit to crime. The object of this observation system is to prevent recidivism by released offenders and to use the collected data for investigations. This system can be described as a kind of probation system; however, it is not legally regulated but is executed by an official order from the National Police Agency.

According to the National Police Agency, released offenders are categorized as a person liable to commit crime in two cases. The first case is when he or she is likely to commit crime after a conviction for robbery, rape, theft, violence, kidnapping, gambling, fraud, counterfeiting, smuggling, and drug related crime. The second case concerns organized gangsters, and when there is a high liability of recidivism according to the personal character of the offenders.

Police watch these people after they are released from prison. When the head of a police station is notified of the release of offenders from prison, he or she has to check the offender's address and decide whether or not to designate the offender as a person liable to commit crime within two months of release. If an offender is so designated the police check the person once a month or once every three months, depending on the likelihood of reoffending.

Once an offender been placed on the list the police create a personal file and research details such as family members, residence, job and neighbours to record therein. This observation system was originally the duty of investigative police staff in police stations but in practice, because of the lack of staff, officers in police boxes sometimes conduct this observation duty.

B. Correctional Stage

1. Re-entry Rate Survey

To see how correctional treatment programmes work for prisoners, in 1997 the Korean Corrections Bureau began to survey the re-entry rate to prisons. When it started, the project was undertaken every three years, but since 2002 it has been completed annually. The re-entry rate refers to the ratio of released prisoners returning to prison within three years, for any reason.

2. Survey Items

Data collected through the Corrections Bureau's statistics and survey items include the person's age, sex and previous convictions, as well as the number of times he or she has been imprisoned, the length of his or her prison term and the reason for release. The Corrections Bureau chose to register this because it is relatively easy to measure and to compare with other countries.

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Table 4: Re-entry Ratio by Year

Year Contents	'94~'96	'97~'98	'99~'01	2002
Surveyed Year	2002	2004	2005	2006
Re-entry Ratio	31.6%	24.7%	24.9%	24.3

According to Table 4, the re-entry rate is about 25%. Hopefully it will continue to show a decrease, however small. The rate of recidivism needs to be watched continuously for a long period of time.

Table 5: Re-entry rate by Reason for Release

Year	Contents	Total	Reasons for Release				
			Expiration	Parole	Expiration of Preventive Custody	Temporary Release from Preventive Custody	Pardon
2002	Number of Released	30,869	20,393	10,090	24	331	31
	Number of Re-entered	7,498	5,998	1,334	11	155	0
	Ratio	24.3%	29.4%	13.2%	45.8%	46.8%	0.0%
'99~'01	Number of Released	92,828	61,702	28,477	153	1,234	1,262
	Number of Re-entered	23,096	18,070	4,266	97	595	68
	Ratio	24.9%	29.3%	15.0%	63.4%	48.2%	5.4%
'97~'98	Number of Released	55,120	44,067	8,448	152	1,095	1,358
	Number of Re-entered	13,633	12,009	1,086	59	379	100
	Ratio	24.7%	27.3%	12.9%	38.8%	34.6%	7.4%

When considering the reason for release, the re-entry rate shows great variation. Offenders released from preventive custody and on temporary release from preventive custody show the highest re-entry rate. The reason for the high rate is because offenders imprisoned under the social security law have usually been incarcerated multiple times. Even though the law was abolished in 2005, offenders who were imprisoned under that law are still imprisoned. On the other hand, offenders released on parole and offenders who were pardoned show a very low re-entry rate. To be released on parole or be pardoned, a prisoner needs to have demonstrated good behaviour and to give an indication that he or she has been rehabilitated.

Table 6: Re-entry rate by gender

Year	Total Number of Released	Number of Released		Total Number of Re-entered	Number of Re-entered		Re-entry Rate	
		Male	Female		Male	Female	Male	Female
2002	30,869	28,893	1,976	7,498	7,258	240	25.1%	12.1%
'99~'01	92,828	86,377	6,451	23,096	22,409	687	25.9%	10.6%
'97~'98	55,120	51,464	3,656	13,633	13,305	328	25.9%	9.0%

The re-entry rate for male released offenders is twice as high as that of females. Another interesting thing to note is that the re-entry rate for male offenders has decreased while that of female offenders has increased. We can therefore assume that correctional treatment programmes for female offenders are a greater concern than those for male offenders, but unfortunately it is not borne out in practice.

Table 7: Re-entry Rate by the Number of Times of Imprisonment

Year	Contents	Total	Number of Terms of Imprisonment				
			1	2	3	4	5+
2002	Number of Released	30,869	14,847	7,835	3,526	1,839	2,822
	Number of Re-entered	7,498	1,676	2,155	1,358	815	1,494
	Ratio	24.3%	11.3%	27.5%	38.5%	44.3%	52.9%
'99~'01	Number of Released	92,828	48,325	22,293	9,228	4,890	8,092
	Number of Re-entered	23,096	6,229	6,715	3,569	2,312	4,271
	Ratio	24.9%	12.9%	30.1%	38.7%	47.3%	52.8%
'97~'98	Number of Released	55,120	27,390	12,211	5,660	3,592	6,267
	Number of Re-entered	13,633	3,755	3,553	2,168	1,446	2,711
	Ratio	24.7%	13.7%	29.1%	38.3%	40.3%	43.3%

Table 7 shows that as the number of times a person is imprisoned increases, the rate of re-entry also increases. It is much more difficult to rehabilitate an offender who has been imprisoned two or three times.

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Table 8: Re-entry Rate by Age

Year	Contents	Total	Age					
			under20	20~29	30~39	40~49	50~59	60 +
2002	Number of Released	30,869	378	9,369	9,724	8,083	2,493	822
	Number of Re-entered	7,498	138	2,560	2,627	1,690	392	91
	Ratio	24.3%	36.5%	27.3%	27.0%	20.9%	15.7%	11.1%
'99~'01	Number of Released	92,828	2,056	28,423	30,596	22,062	7,665	2,026
	Number of Re-entered	23,096	819	8,513	8,011	4,388	1,117	248
	Ratio	24.9%	39.8%	30.0%	26.2%	19.9%	14.6%	12.2%
'97~'98	Number of Released	55,120	1,424	18,384	18,629	11,378	4,147	1,158
	Number of Re-entered	13,633	520	5,468	4,700	2,205	621	119
	Ratio	24.7%	36.5%	29.7%	25.2%	19.4%	15.0%	10.3%

In Table 8 we can see that older offenders have a lower re-entry rate. This emphasizes the importance of rehabilitation programmes for young prisoners. In other words, if we can succeed in preventing young prisoners from recommitting crime, we can greatly reduce the rate of recidivism.

Table 9: Re-entry Rate by Crime

Year	Contents	Total	Murder	Robbery	Sexual Violence	Theft	Fraud	Drugs	Negligence
2002	Number of Released	30,869	716	1,810	1,641	5,555	7,663	3,280	2,763
	Number of Re-entered	7,498	65	532	395	2,365	1,078	1,348	294
	Ratio	24.3%	9.1%	29.4%	24.1%	42.6%	14.1%	41.1%	10.6%
'99~'01	Number of Released	92,828	2,488	5,851	4,543	17,511	23,397	9,083	8,869
	Number of Re-entered	23,096	240	1,782	1,125	7,257	2,881	4,265	972
	Ratio	24.9%	9.6%	30.5%	24.8%	41.4%	12.3%	47.0%	11.0%
'97~'98	Number of Released	55,120	1,296	3,214	2,377	10,164	5,326	2,842	4,386
	Number of Re-entered	13,633	99	834	518	4,126	476	1,397	615
	Ratio	24.7%	7.6%	25.9%	21.8%	40.6%	8.9%	49.2%	14.0%

According to Table 9, theft and drug crime shows the highest re-entry rate. The reason for this rate is that theft and drug crime usually has a nature of addiction to it.

Table 10: Re-entry Rate by Prison Term

Year	Contents	Total	Prison Term					
			6 months ~ 1 Year	5 Years ~7 Years	7 years ~ 10years	10 years ~15 years	15 years ~ 20 years	20 years
2002	Number of Released	30,869	10,614	849	514	246	53	27
	Number of Re-entered	7,498	1,875	191	172	68	8	3
	Ratio	24.3%	17.7%	22.5%	33.5%	27.6%	15.1%	11.1%
'99~'01	Number of Released	92,828	31,026	1,971	1,754	985	259	229
	Number of Re-entered	23,096	5,249	455	664	297	50	18
	Ratio	24.9%	16.9%	23.1%	37.9%	30.2%	19.3%	7.9%
'97~'98	Number of Released	55,120	22,202	4,399	558	345	56	2
	Number of Re-entered	13,633	5,287	1,021	94	43	4	0
	Ratio	24.7%	23.8%	20.5%	16.8%	12.5%	7.1%	0.0%

According to Table 10, offenders released after a prison term of between seven to ten years have the highest re-entry rate. As prison terms increase beyond ten years, the re-entry rate drops.

(i) Analysis of the Re-entry Rate

The re-entry rate is not an absolute authority on recidivism because it can change depending on many variables. According to the results of this research, special correctional programmes for preventive custody offenders and female offenders need to be developed.

The high rate of re-entry for offenders under 20 years old means that juveniles tend to fall into the criminal world more easily than adults and should be the focus of preventive and rehabilitative criminal policy.

The number of crimes committed and the re-entry rate correspond strongly. This shows that as an offender is imprisoned repeatedly, he adjusts well to prison society. To overcome this dilemma, adjustment programmes in prison, support for the released, and community understanding for the released are essential.

With this survey, the Corrections Bureau can check the effectiveness of correctional treatment programmes and formulate new policies and programmes accordingly.

C. Probation Stage

1. John School System

The John School programme is a kind of alternative treatment, instead of punishment, for those who pay for sexual acts. John School started in the U.S.A in 1995 and took its name from the most common name registered by those undergoing treatment.

Korea introduced this system in 2005 and is now expanding its application. In this programme participants listen to the stories of victims of the sex industry and learn how to develop a healthy sex life. According to statistics collected by the Probation Agency, 2,235 people finished this programme during the period of 1 August 2005 - 31 December 2005. They showed a 1.6% recidivism rate compared to 7.5% for other offenders under probation.

2. Curfew Supervising Voice Verification System

The Curfew Supervising Voice Verification System is an alternative treatment programme to imprisonment. Offenders who committed crimes such as paying for sex, housebreaking, robbery, theft, and juvenile sexual offences are eligible for this programme. If a judge imposes this CVS programme on an offender he or she is under curfew from 10pm to 6am. The program period varies from three months to one year depending on the nature of crime.

When judge impose CVS, a voice template is built into a computer and the computer calls the offender randomly. Each time the offender answers the phone he or she is asked to repeat a series of different words. The computer matches the spoken words to the template and provides a report to the probation officer who decides if the offender was compliant or not.

If the offender fails to answer a call he or she has to appear in the probation office and report the reason. If the offender fails to answer to the call three times the CVS programme is revoked and the offender is imprisoned.

The CVS programme is imposed by court order so there are no concerns about human rights' violations. According to statistics collected by the Probation Office, the recidivism rate of offenders under this programme is 2.7% compared to the rate of 7.4% for offenders under probation only. This programme is mainly imposed on juvenile offenders but courts are currently trying to utilize this programme for adult offenders too.

V. CONCLUSION

People say that crime has existed from the beginning of human history and it will last as long as mankind. We all know that this is true and that there is no panacea for crime prevention. But as we saw earlier, more than 50% of offenders have previous convictions. This means that the majority of offenders are recidivists. More than half of crime is perpetrated by career criminals. This is why we have to focus on the prevention of recidivism. Maybe we can't find the best way but we can at least find a better way, if we study and adopt appropriate crime prevention policies and learn from each other.

PROMOTING PUBLIC SAFETY AND CONTROLLING RECIDIVISM USING EFFECTIVE INTERVENTIONS AMONGST ILLICIT DRUG OFFENDERS: AN EXAMINATION OF BEST PRACTICES.

*Raja Shahrom bin Raja Abdullah**

I. INTRODUCTION

Malaysia has been developing steadily for almost 50 years and has become a nation that is able to sustain a high level of economic growth, political stability and most importantly, a sense of social safety and security. Nevertheless, crimes against women and children, drug trafficking, housebreaking and vehicular and other thefts paint a frightening portrait of the changing dimensions and scope of crime facing the community. In such an environment, the Royal Malaysia Police (RMP) has to recognize that its countermeasures may not keep pace with rapidly changing society and the criminal activities within it. Therefore, the RMP strives to continually enhance co-operation with all government agencies, non-governmental organizations, community leaders, and communities in the fight against crime. As the prime organization responsible for upholding the law in the country, the RMP needs to develop the flexibility and skills necessary to respond rapidly and appropriately to differing and frequently changing needs and expectations. Obviously, the question of creative and innovative ways of solving problems of crime requires changes in thinking, action, approach, system, procedure, rules and regulations. Therefore the RMP support promoting public safety through controlling recidivism by using effective interventions with offenders. Nevertheless, it needs thorough examination to avoid the public becoming victims of any failure in the implementation of the system.

II. OBJECTIVES AND AGENCIESS

The drug problem remains one of the most serious in Malaysia. The Malaysian Government views the illicit drugs problem with grave concern. To give fresh impetus to the combating of drugs, the National Drug Council was replaced by The Cabinet Committee on Drugs chaired by the Hon. Prime Minister who is also the Minister of Internal Security. It has been actively monitoring the development of the drug situation and the efforts made by the various agencies to combat the problem. Therefore, the purpose of this paper is to share Malaysia's experiences pertaining to the policies and efforts of the Government agencies and the RMP to curb recidivism among illicit drugs offenders. Since 1983, Malaysia has declared drug abuse to be the nation's 'number one enemy'. Drug abuse not only reduces the potential human resources of the country but has also contributed to an increase in crime, as such creating fear of crime amongst communities. Evidence has shown that drug abusing offenders also involved themselves in criminal activities such as vehicle thefts, housebreaking, robbery, minor offences, and rape and murder cases. Unofficial records have shown that about 30% to 40% of those people arrested for all categories of crime offences in the country were abusers if illicit drugs. Reducing the relapse of drug abusers, especially amongst the younger generation, will reduce crime. Therefore, using the justice system to intervene effectively to control recidivism and curb the use of illicit drugs amongst young people has always been high on the national agenda. Malaysia has spent billions of dollars to build rehabilitation centers for drug abusers all over the country in an effort to control recidivism with the intention of promoting public safety.

A. Drug Laws and Government Agencies

Drug abuse is not a new issue. Public opinion of the activity changes depending on the perspective of the times. At one time, drugs were a trading commodity. But since the Geneva Convention (No. 1) in 1925, the Geneva Convention (No. 2) in 1931 and the New York Narcotics Declaration in 1961, the Government of Malaysia has been rethinking the issue and has considered the impact of drug abuse on societies. Under the Malaysian judicial system, use of illicit drugs is an offence under the Dangerous Drugs Act 1952. To avoid recidivism amongst drug dependents, Section 15 of the said Act mentions that, "any person who:

- (a) administers to himself or suffers any other person, contrary to the provisions of section 14, to administer to him any dangerous drug specified in Parts III and IV of the first schedule; or
- (b) is found in any premises kept or used for any of the purposes specified in section 13 in order that any

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such dangerous drug may be administered to or smoked or otherwise consumed by him,

shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding five thousand Malaysian Ringgit (RM5,000) or to imprisonment for a term not exceeding two years."

Provisions under Section 6 of The Drug Dependents (Treatment and Rehabilitation) Act 1983 have given power to a Magistrate to:

- (a) "order such person to undergo treatment at a Rehabilitation Centre specified in the order for a period of two years and thereafter to undergo supervision by an officer at the place specified in the order for a period of two years; or
- (b) order such person to undergo supervision by an officer at the place specified in the order for a period of not less than two and not more than three years."

Given the police and executive's powers in the Acts, the Narcotics Investigation Department (NID) of the Royal Malaysia Police is the main agency for the enforcement of drug laws. The Royal Malaysian Customs is another department involved in enforcing the drug laws and the task is carried out by its Narcotics Division. To a lesser extent, The Pharmaceutical Services Department of the Ministry of Health also enforces the drug laws, in particular the Poisons Act 1952 which controls the sale, import and export of poisons, precursors and essential chemicals. The National Anti-Drug Agency under the Internal Security Ministry as the focal point, is responsible for the formulation of policies relating to drugs, especially preventive education and treatment and rehabilitation of drug dependents.

1. Narcotics Investigation Department, Royal Malaysia Police (RMP)

Drug law enforcement is the responsibility of every officer of the Royal Malaysian Police, irrespective of rank or the division to which he or she is attached. This is in line with the provision of Section 3(3), Police Act 1967 which emphasizes that it is the responsibility of a police officer to apprehend and prosecute any offenders.

However, the task of combating the drug menace became increasingly challenging. Thus, on 2 January 1996, the Narcotics Investigation Department of the Royal Malaysia Police was formed to replace the Anti Dadah Branch (NID) of the CID. By virtue of the formation of the NID, it became the main drugs law enforcement department in Malaysia.

The main mission of the NID of the RMP is to reduce demand and suppress the supply of drugs in Malaysia. As such, special emphasis and attention to the drug menace is given by planning and integrating law enforcement programmes and activities with various government inter-departments, also with the drug enforcement agencies at the regional and international level. The terms of reference of the NID are as follows:

- i) to gather intelligence related to drug trafficking;
- ii) to investigate, apprehend and prosecute drug traffickers and syndicate members;
- iii) to freeze, seize and forfeit properties of suspected drug traffickers;
- iv) to co-ordinate and supervise movements and activities of former addicts and drug offenders;
- v) to stop the trafficking of drugs, including chemicals used to process drugs;
- vi) to maintain records, details and statistics regarding addiction, smuggling and trafficking;
- vii) exchange of intelligence with local and foreign agencies to provide local and overseas training.

2. National Anti-Drugs Agency

The National Anti Drugs Agency under the Ministry of Internal Security was set up in 1996 to monitor and control the drug situation in Malaysia. Its functions and powers have now been formalized under the National Anti Drugs Agency Act 2004.

The objective of the National Anti Drugs Agency is to ensure that national efforts in combating the drug menace are carried out in a planned, integrated and co-ordinated manner to create a drug-free society. The National Anti Drugs Agency operates at the Federal, State and District levels. The terms of reference of the National Anti Drugs Agency are as follows:

- i) to implement preventive programmes;
- ii) to implement drug treatment and rehabilitation programmes;

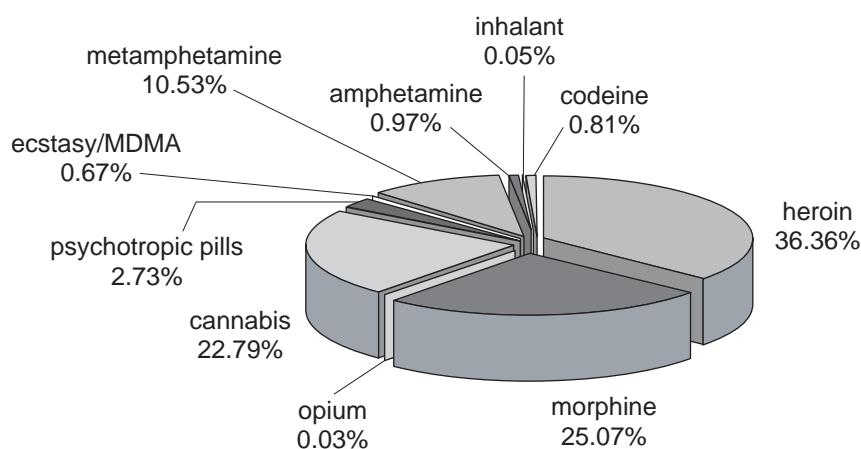
- iii) to upgrade the system for data collection and to carry out evaluation on the effectiveness of all national anti drug programmes;
- iv) to enhance regional and international co-operative efforts to combat drug problems; and
- v) to serve as a Secretariat to the Cabinet Committee on Drugs and its Action Committees.

III. OVERVIEW OF THE DRUG ABUSE SITUATION

From 1988 to October 2006, 298,391 drug addicts were identified throughout the country. The total number of addicts detected from January to October 2006 was 19,369 persons. 8,628 (44.55%) were new cases and 10,741 (55.45%) were relapse cases.

A. Types of Drugs Used

Of the 19,369 addicts identified from January to October 2006, 7,042 were heroin users, 4,856 used morphine, 4,414 used cannabis, 528 used psychotropic pills, 2,040 used syabu or methamphetamine hydrochloride, 130 used ecstasy/MDMA, 187 used amphetamines, 157 used codeine, nine used inhalants, and six used opium.



B. Trends and Types of Drug Users

Method of use	2005	Percentage (%)
Chasing/sniff	24,939	76.01
Smoke	5,064	15.44
Swallow	1,529	4.66
Inject	854	2.60
Drink	412	1.26
Inhale	10	0.03
TOTAL	32,808	100%

Source: National Drug Information System

1. Injecting Drug Users (IDU) Infected By Aids and HIV

As of June 2006, the number of HIV cases reported was 6,120 and the number of AIDS cases reported was 1,211. 78.5% of HIV/AIDS patients are injecting drug users. The accumulated total at 30 June was 73,427 persons.

2. Drug Seizures

Seizures of psychotropic pills showed an increase compared to 2005. Seizures of all types of drugs by the various authorities in 2006 are as follows:

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TYPE OF DRUGS	SEIZURES IN JAN - OCT. 2005	SEIZURES IN 2006 JAN - OCT. 2006
Heroin	193.34 kgs	213.19 kgs
Raw opium	-	1.13 kgs
Prepared opium	0.29 kgs	2.82 kgs
Cannabis	2,238.76 kgs	998.46 kgs
Psychotropic pills	54,454 kgs	346,194 kgs
Ecstasy pills	2.80 kgs	93.94 kgs
Syabu	138.47 kgs	35.48 kgs

Source: National Drug Information System, National Anti-drugs Agency

C. Arrests of Drug Offenders

The number of arrests of drug offenders in 2006 showed a decrease compared to 2005 when 37,631 persons were arrested under the Dangerous Drugs Act (DDA) 1952 and the Dangerous Drugs (Special Preventive Measures) Act 1985. For the previous year the number was 39,425. In 2006 the number of persons arrested under Section 39B, which carries the mandatory death penalty, was 1,316. That same year, the number of offenders under Section 39A (possession of illicit drugs) was 2,473. The number of offenders under the various other sections of the DDA in 2006 was 31,822.

IV. INTERVENTION TO CURB RECIDIVISM AMONG ILLICIT DRUG OFFENDERS

A. Legislative Review

In a recent development the Government of Malaysia has undertaken a review of drug laws and legislation covering prevention, treatment and rehabilitation. This reflects the seriousness of the national effort to curb drug trafficking and recidivism relating to drug abuse amongst the young. Existing laws are under continuous scrutiny to identify weaknesses and consequently to enhance their effectiveness. Malaysia's drug laws are to be found in five major statutes. They are:

- i) Dangerous Drugs Act 1952
- ii) Poisons Act 1952
- iii) Drug Dependents (Treatment and Rehabilitation) Act 1983
- iv) Dangerous Drugs (Special Preventive Measures) Act 1985
- v) Dangerous Drugs (Forfeiture of Property) Act 1988.

1. Dangerous Drugs Act 1952

The Dangerous Drugs Act 1952 is the key piece of legislation in relation to drug control in Malaysia. This Act is very extensive, covering aspects of offences, procedures and evidence. It provides, *inter alia*, a mandatory death sentence for drug trafficking offences. This legislation has been amended several times in order to keep abreast with the upsurge in drug trafficking activity and abuse of illicit drugs.

2. Poisons Act 1952

The Poisons Act 1952 is aimed at controlling the import and sale of poisons. The term 'poisons' refers to any substance specified in the Poisons List and includes any mixture, preparation, solution or natural substance containing substances other than an exempted preparation or an article or preparation included for the time being in the Second Schedule of the Act. The types of poisons that fall under the control of this Act include substances used for industry, medicine and agriculture. Some poisons have been classified as psychotropic substances and can only be obtained through prescription by medical practitioners, veterinarians or dentists. Licensed pharmacists can sell or supply psychotropic substances. Doctors cannot supply these psychotropic substances for the treatment of their patients.

3. Drug Dependents (Treatment and Rehabilitation) Act 1983

The Drug Dependents (Treatment and Rehabilitation) Act 1983 is a comprehensive piece of legislation covering all aspects of treatment and rehabilitation. This Act came into force on 15 April 1983. The Drug

Dependants (Treatment and Rehabilitation) Act 1983 provides for both compulsory treatment and rehabilitation of any person who has been certified as dependent as well as for voluntary treatment and rehabilitation. The period of treatment and rehabilitation at rehabilitation centres is for two years. This institutional treatment and rehabilitation is followed by aftercare for another two years.

4. Dangerous Drugs (Special Preventive Measures) Act 1985

This preventive detention law that came into force on 15 June 1985 replaced the Emergency (Public Order and Prevention of Crime) Ordinance 1969. It is aimed at enhancing the effectiveness of countermeasures taken by the relevant authorities against those who are involved in drug trafficking. It empowers the government to detain anyone suspected of being a trafficker without having to bring the suspect to any court of law. As ‘sunset’ legislation, it was given an initial life of five years, from 15 June 1990 to 15 June 1995. This legislation was further extended, till 15 June 2005. Until December 2002, 25,908 persons had been detained under this Act.

5. Dangerous Drugs (Forfeiture of Property) Act 1988

Drug trafficking remains rampant despite provision for a mandatory death sentence on those convicted of drug trafficking. Despite the penalty, many are still willing to take the risk because drug trafficking remains lucrative. In cognizance of this, the Government has introduced the Dangerous Drugs (Forfeiture of Property) Act 1988, which came into force on 10 June 1988. It empowers the relevant authorities to trace, freeze and forfeit assets of convicted drug traffickers.

B. The National Anti-Drug Agency Bill 2004

New legislation has been passed by Parliament. The new legislation provides for the establishment of the Agency. It confers powers upon officers of the National Anti Drugs Agency to execute preventive measures, treatment, rehabilitation, enforcement, investigation, special preventive measures and to forfeit property under the relevant Acts.

C. Cabinet Committee on the Eradication of Drugs and its Sub-Committees

The new Cabinet Committee on the Eradication of Drugs has been formed, chaired by the Hon. Prime Minister. Under the Cabinet Committee there is an Action Committee and Sub-Committees. The aim of these committees is to oversee and review the implementation of the National Drug Control Strategy and to ensure effective implementation. There are three sub-committees that act as the working group. They suggest new policies for implementation or review existing policies and make recommendations and reports to the Action Committee. The Action Committee decides on the recommendations and reports to the Cabinet Committee accordingly. If policy changes are required, it makes recommendations to the Cabinet Committee on the Eradication of Drugs for a final decision. The three Cabinet Sub-Committees currently focus on the core areas, i.e.:

- i) Prevention Education and Publicity
- ii) Law
- iii) Treatment and Rehabilitation.

V. OVERVIEW OF THE NATIONAL DRUG CONTROL STRATEGY

The National Drug Control Strategy is focused on eliminating the demand for and the supply of drugs through the following strategies:

- i) Prevention
- ii) Enforcement
- iii) Treatment and Rehabilitation
- iv) International Co-operation (supporting strategy).

A. Demand Reduction Programmes

Primary prevention programmes involve prevention education in schools and dissemination of information to the public. The programmes are aimed at insulating members of society, especially youths, from falling prey to the drug scourge. The activities carried out in 2004 and ongoing in 2005 fall into three broad categories:

- i) Advocacy and Information programmes
- ii) School based programmes

- iii) Community involvement programmes
- iv) Parents based drug prevention programmes
- v) Workplace based drug prevention programmes.

B. Overview of Drug Treatment and Rehabilitation - One-Stop Centre Concept

The philosophy of this initiative is that '...addicts are not criminals but persons who are in need of treatment and rehabilitation, love, care and guidance rather than punishment and rejection.' Malaysia is one of the few countries in the region that has developed a compulsory rehabilitation programme for drug dependents. Every dependent can be ordered to undergo treatment and rehabilitation for his/her addiction for a specific period of time as provided for under the laws and regulations relating to treatment and rehabilitation. The objective of the treatment and rehabilitation programme is to enable drug dependants to overcome their physical and psychological addiction to drugs and to thereafter live a drug-free lifestyle. It is a strategy to avoid recidivism among illicit drug abusers. The National Drugs Agency implements two methods of treatment and rehabilitation:

- i) Rehabilitation in an Institution - a controlled environment whereby the addict will undergo treatment and rehabilitation for two years.
- ii) Rehabilitation in the Community - aftercare supervision for ex-addicts following release from the Institution. They continue to receive treatment, rehabilitation and supervision for two to three years in the community.

The objectives of the treatment and rehabilitation are as follows:

- i) to treat and rehabilitate the drug addicts;
- ii) to make the drug addicts free from physical and psychological dependency on drugs;
- iii) to reintegrate former drug dependents into society as functional, productive and drug free individuals.

A suspected addict can be detained for a period of 14 days for urine testing and medical examination to ascertain his or her status. If certified to be an addict, a magistrate, guided by advice contained in the Social Report, can either commit him or her to an institutional rehabilitation programme or place him or her under the supervision of a Rehabilitation Officer. Currently there are about 5,000 addicts who are undergoing treatment and rehabilitation at the 29 government managed centres. There are also about 66 privately managed drug treatment and rehabilitation centres. The Government has established 18 Anti-Drug Service Centres. The role and functions of these centres are as follows:

- i) to plan and implement drug preventive programmes at the district level;
- ii) to provide facilities for drug treatment and rehabilitation for volunteering drug addicts;
- iii) to provide counselling and advisory services to those who require such services;
- iv) to manage and determine the rehabilitation programme that would best suit the addicts who are referred to the centre by the police or by addicts who volunteer for treatment and rehabilitation;
- v) to provide follow-up services to those addicts who have been placed under the Supervision Programme and for those who have finished their programme at the Government Treatment and Rehabilitation Centres.

C. Multi-Disciplinary Approach

The psycho-social model practiced in institutional rehabilitation is multi-disciplinary in approach, where the emphasis is on behavioural change through emotional and psychological rehabilitation. The rehabilitation team consists of social counsellors, medical officers, religious teachers, education and military personnel, vocational instructors, and security officers.

D. Emphasis on Discipline

The discipline component of the rehabilitation programme consists of drills and physical exercises. Physical rehabilitation is based on the 'tough and rugged' concept which includes physical training and drills aimed at instilling discipline. The regime is intended to 'beef-up' the often fragile physical make-up of an addict and improve his or her personal discipline, which is imperative in changing the lifestyle of an addict. Since the introduction of the discipline component, the administration of the rehabilitation programme in the ONE-STOP CENTRES has become more manageable. There is notable decrease in problems such as failure to attend counselling sessions or religious and academic classes, malingering, improper behaviour, etc. Generally there is better control in the administration of these centres.

E. Overview of Intervention Activities with Non-Government Organizations, Private Sector and Mass Media

Activities with non-governmental organizations are carried out in drug prevention activities, aftercare and in the social reintegration of addicts into society. Some of the organizations are: PEMADAM, involved with prevention; PENGASIH, assisting HIV/AIDS infected addicts; and PENDAMAI and Malaysian Care, assisting addicts. Other community based organizations like the Neighbourhood Committees, Village Development and Security Committees, women's organizations and youth organizations also participate in drug prevention activities.

Private sector involvement is through their support of national level anti-drug campaigns and particularly in supporting drug prevention programmes in the workplace. Private sector participation has also been encouraged in the production of posters, leaflets and billboards promoting the anti-drug message. Media involvement in Malaysia has been through the participation of the Ministry of Information providing coverage for national and international conferences and events, campaign launches, television and radio talk shows. Controlling recidivism through collaboration has always been supported by the NGOs, hand-in-hand with Government agencies. Examples of NGOs actively involved in such efforts are listed below.

- i) MERCY Malaysia, together with the National Anti-Drug Agency (Agensi Anti Dadah Kebangsaan - AADK), in Kuala Lumpur are organizing a series of Mobile Clinics as part of MERCY Malaysia's Drug Rehabilitation and Assistance Programme. The mobile clinics provide basic medical examinations for those trying to reform. By providing this basic medical aid, MERCY Malaysia hopes to increase their standard of healthcare thus helping to improve the reformers' path to recovery. Since it was launched in April 2006 a total of 341 patients have been treated, with symptoms including coughing, skin diseases, hypotension and abdominal discomfort. This collaboration is to complement the National Anti-Drug Agency's efforts to ease the pain of reformers recovering from their addictions.
- ii) SPENGASIH Malaysia Association reaches out to all communities through awareness campaigns. It provides services ranging from prevention efforts to help for those who have fallen into drug addiction. PENGASIH offers opportunities for much needed knowledge, skills and support to reforming addicts during their treatment and rehabilitation. At the same time PENGASIH also strengthens the programme by giving treatment to the families of recovering users as well. Families need to know how to manage recovering users when they return home. They must know the right way to monitor recovery, amongst other things. Family support has a major impact on the rehabilitation of former users.

Continuous recovery from addiction is the main goal of all former drug users. It is not an easy path to take, filled with a haphazard assortment of challenges and difficulties. Only those who are steadfast enough will continue with the recovery path. They are usually well equipped with the right knowledge, skills support and genuine sincerity. Nevertheless aftercare and supervision is very important to ensure the success of the programmes. Counselling and guidance for the individual, group and their family are given. Community plays an important role in rehabilitation programmes and serves as a guide, motivation and help for the ex-addict to integrate themselves in the community.

VI. CONCLUSION

The Government continues to improve its machinery, especially the Narcotics Investigation Department of the Royal Malaysia Police and the National Anti-Drugs Agency, to combat the drug problem in Malaysia, which is still considered a security issue. Illicit drug abuse is related to the increase in crime in Malaysia. Malaysia believes by reducing the recidivism of drug abusers it will also reduce crime in the community. Therefore, solving the recidivism of drug abusers requires a multi-disciplinary approach in partnership with all sectors of society. It is only with concerted efforts that we can achieve the objective of having a global drug free society.

Governments of all nations need to educate their people about controlling the recidivism of drug offenders in order to get full public support for their policies. Without full public support, offenders face the difficulties associated with being unaccepted by society. To achieve even better and faster results, local communities and all government agencies must co-operate and assist the reduction efforts with moral

support, material support, logistical support, and financial support. Only then we will experience the successful reduction of recidivism of drug offenders and the promotion of safe communities. This goal requires a body of reliable knowledge of what works, in what contexts, by what mechanisms and at what cost. Indeed, we believe interventions targeting the factors that contribute to behavioural problems are effective in reducing recidivism among drug abusers. Nevertheless, assessment is a cornerstone of drug abuse reduction. This must be built up through systematic evaluation and a sound conceptual framework. Nevertheless, in any efforts to control recidivism through several interventions, public safety must be given the first priority. Therefore the opportunity for criminal behaviour must be prevented through multiple interventions.

IMPROVING THE REINTEGRATION OF OFFENDERS INTO THE COMMUNITY: THE CURRENT SITUATION OF THAI CORRECTIONS

*Somphop Rujjanavet**

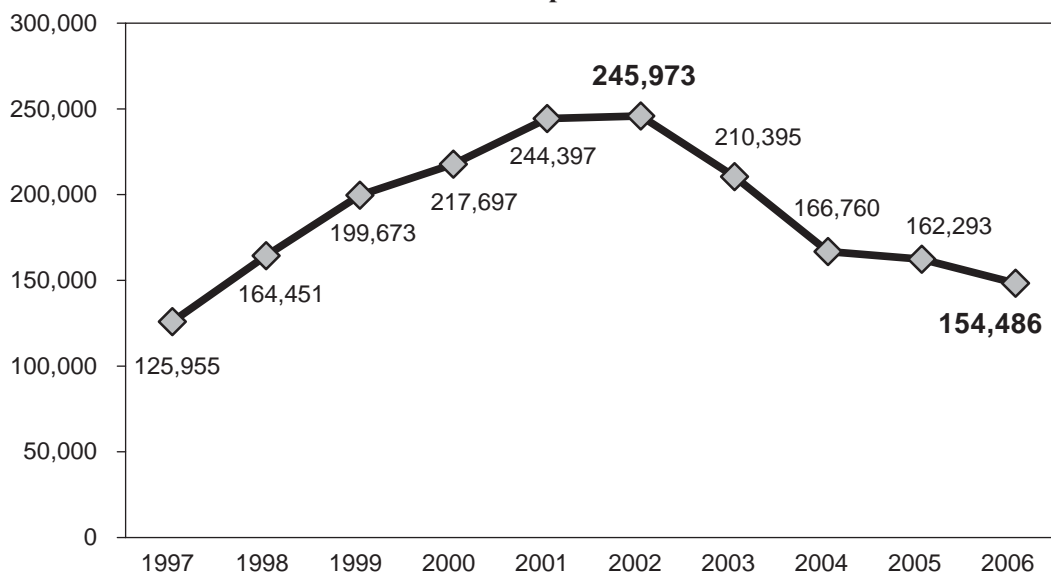
I. INTRODUCTION

Placing offenders in custody alone is not sufficient to solve the problem of crime. Imprisonment only temporarily removes criminals from the community. Most prisoners are freed and many of them relapse into the cycle of crime afterwards. The ultimate goal of corrections is offenders' successful reintegration into the community. Unsuccessful reintegration and recidivism have been alarming problems confronting the Department of Corrections. Previously, there were hardly any pre-release programmes, preparation or support provided for prisoners. After the key purpose of the system was shifted from punishment to that of rehabilitation, the Department of Corrections has been committed to the principle of through care and has implemented various rehabilitation initiatives to generate safe and successful re-entry into the community.

II. PRISON POPULATION & NUMBER OF RECIDIVISTS

A. Prison Population

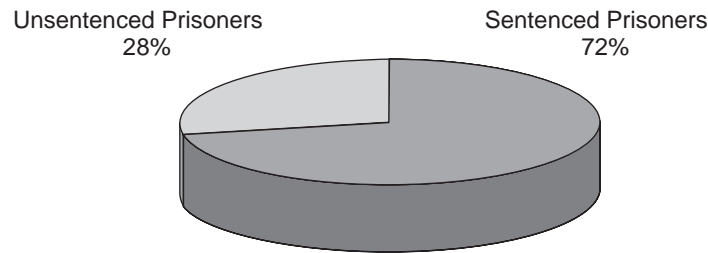
Chart 1: Prison Population 1997 - 2006



Regarding the overall statistics of the last decade, from 1997 – 2002 Thailand experienced a dramatic growth in the total number of prison inmates, rising from 125,955 in 1997 to 245,973 (the highest figure on record) in 2002. Since then, after the moment of crisis, the rate has seen an annual gradual decline. As of January 2007 about 154,486 inmates are incarcerated in 139 correctional institutions throughout the country.

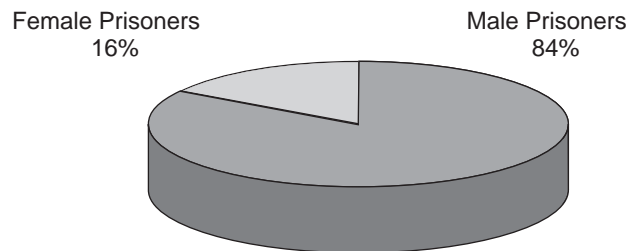
* Director of Academic Group of Correctional Study, Department of Corrections, Ministry of Justice, Thailand.

**Chart 2: Number of sentenced and remand prisoners in Thailand
(as of 12 January 2007)**



In Thailand, an unsented inmate or remandee means a person who is awaiting investigation or awaiting trial or pending appeal. As of 12 January 2007, of all 154,486 prisoners in Thailand, the average number of remand and sentenced inmates was 41,960 (28%) and 111,114 (72%) respectively. Compared to the figures for July 2005, this reflects a growing number of remand inmates, which at that time stood at 25% (41,194) of all 162,293 inmates.

**Chart 3: Number of male and female prisoners in Thailand
(as of 12 January 2007)**



At present, the number of female prisoners in Thailand is approximately 23,816 (approximately 15.5% of the total number) while the number of male prisoners stands at 130,670. In contrast to the statistics of the last 12 months, the numbers show a slight decline of about 1%. Next year it is expected that it should stay constant, in the range of 15 – 16%.

The Department encountered an overcrowding crisis in 2002 when the total number of prisoners reached 245,973. This number has been gradually decreasing, and it could be said that by comparison, the current total number of prisoners (154,486) is not considered to constitute an overcrowding situation. Furthermore, the overall extended capacity of all correctional facilities allows a possible 205,436 inmates to be accommodated. As a result of the reduction in the number of prisoners, the Department can shift the organizational policies to focus mainly on the sustained improvement of prisoner standards of living, based on respect for humanity.

However, the growing difficulty that the Department of Corrections is encountering is the unequal dispersion of prisoners which in turn creates mass imprisonment in only some areas. A good example of this is the number of prisoners in Bangkok which is more overcrowded than other regions due to a large number of remand prisoners who cannot be moved to other facilities outside Bangkok until they are convicted in court. Apart from this situation in Bangkok, correctional institutions having an overcrowding problem must move prisoners to other facilities which have the standard of space designated as sufficient by the Thai Department of Corrections.

B. Number of Recidivists**Table: 1 Number of Convicted Prisoners Classified by Instances of Imprisonment
(as of October 2006)**

Instances of Imprisonment	Male	Female	Total	Percentage
First-time Offender	79,966	15,368	95,334	86.02
Second-time Offender	9,628	1,428	11,056	9.98
Third-time Offender	2,359	230	2,589	2.34
Fourth-time Offender	987	94	1,081	0.98
Fifth-time Offender or more	740	27	767	0.69
Total Number of Multiple Instance Offenders	13,714	1,779	15,493	13.98
Total	93,680	17,147	110,827	100

As of October 2006, the number of convicted prisoners in Thai correctional institutions who were imprisoned for the first time was 95,334 (86.02%) of all 110,827 convicted inmates. The number of offenders with multiple instances of imprisonment was 15,493 or about 13.98% of all convicted inmates.

**Table 2: Number of Re-Offending Convicted Prisoners
October 2005 – September 2006**

Type of Offence	Male	Female	Total	Percentage
Offence against Property	547	18	565	35.60
Offence against Life	23	-	23	1.45
Offence against Bodily Harm	69	1	70	4.41
Offence against Sex	32	-	32	2.02
Offence against Social Security	8	-	8	0.50

Note: 1. The number of released prisoners from October 2003 – September 2004 was 78,360

2. The number of released prisoners from October 2004 – September 2005 was 24,961

From October 2003 – September 2005, the total number of released prisoners was 103,321. The number of reoffending convicted prisoners from October 2005 – September 2006 was 1,587 or about 1.53% of all released prisoners during two fiscal years. In addition, drug offenders still represent the majority of all released prisoners in Thailand who reoffended and were reimprisoned. The number stood at 791 (49.84%).

III. POLICY FRAMEWORK

It is widely recognized that mechanisms to enhance the chances of an offender's reintegration into society are an essential part of any strategy to reduce recidivism. The word reintegration appears to assume that the offender was well integrated in society prior to his or her imprisonment. The idea of reintegration is well recognized by the Department of Corrections as it widely appears in many of its formal documents. An example of this is the Department's vision statement "to become an outstanding agency in ASEAN countries on the treatment of offenders and to return productive citizens into society". In addition, several strategies specified in the Department's five-year strategic plans (2004 - 2008), such as the promotion of public and private sector involvement and the improvement of treatment of offenders as well as the collective strength to overcome substance abuse, are all put into action to prepare both the community and prisoners to achieve the common goal: smooth reintegration of offenders.

Since 2002, emphasis has been placed on the development of effective rehabilitation programmes to address the special needs of different types of prisoners, such as sex offenders and violent offenders. In so doing, the Prisoner Rehabilitation Programme Development Centre has been established with responsibility for developing model rehabilitation programmes and providing resources and training for prison staff in charge of instructing rehabilitation programmes. Many schemes, including the Annual Rehabilitation Programme Contest have been launched to encourage more innovations in the area. More importantly, a key performance indicator has been set so that every facility must select at least one model rehabilitation programme to be applied to its setting.

IV. KEY FOCUS AREAS

Before designing any strategies on prisoner reintegration, it is a good idea to first identify factors that are linked to relapse and desistance. The Department of Corrections has focused on four elements in developing appropriate programmes and service for prisoners. First, released prisoners have similar essential needs, for example, accommodation, employment and good family relationships, as do other people. Second, apart from essential needs, a number of prisoners also have criminogenic needs that require specific treatment programmes. Third, even if prisoners are adequately prepared for release, reintegration can never be successful unless there is community acceptance of offenders returning to the community. Fourth, the continuity of service delivery has to be taken into account to ensure that released inmates do not fall through the gaps of service provision. Based on these elements, rehabilitation programmes and services are therefore implemented with the key focus placed on the areas of inmates' essential needs, criminogenic needs, community acceptance and continuity of support.

V. FOSTERING REINTEGRATION

A. The Period in Prison

Offenders are sent to prison not only temporarily as a punishment for their wrongdoing, but also to receive the rehabilitation necessary to address their needs and problem behaviour before being released in the community. In the Thai Corrections System, prison is something more than just bricks and bars, rather the facility has been converted into prisoners' homes where various meaningful activities to target offenders' criminogenic needs take place.

1. Home of Intellect

Being marginalized and disadvantaged in terms of education is a factor connected to offending. During incarceration, inmates can attend educational programmes, provided in three categories, appropriate for their interest and skills.

- **Formal Education**
Starting from illiterate level to primary level, which is compulsory education in Thailand, prisoners can choose to continue their secondary level schooling through the adult curriculum in prisons. They can even study in undergraduate programmes provided by Sukhothai Thammathirat Open University.
- **Vocational Education**
With close co-operation from the Department of Vocational Education and the Department of Non-Formal Education, various types of vocational education programmes are provided for prisoners in every prison facility. Most programmes emphasize enhancing work skills for life after release and short-term training. The prisoners who pass the exams receive a Vocational Certificate or an Advanced Vocational Certificate for their study and practice.
- **Non-formal Education**
Apart from formal and vocational education, prisoners are also allowed to study according to their own interest. Many prisons hold special study programmes such as short-term computer courses, computer or engine repair courses, boy scouts and girl guides training, and the "Art for All" programme.

Moreover, their time can be spent productively by learning and researching in *Prom Panya Library*, which was initiated by HRH Princess Maha Chakri Sirindhon, who graciously considered that prisoners

should have the learning opportunity afforded by a standard library that contains numerous and various books, with a librarian to give advice and essential assistance. The *Prom Panya Library* project was first established in 2003 at Thanyaburi District Prison and then in other prisons across the country. The project has been supported by Matichon Newspaper, which is the main organization drawing public interest to contribute new books to *Prom Panya Library*. By 2008, there will be 103 libraries all over the country. At present, the Crown Princess has presided over the opening ceremony of the *Prom Panya Library* at four correctional facilities. In addition, they are allowed to self-study using a range of learning materials, such as computers and CD-ROMs supplied in the Knowledge Centre, which is being established in every prison.

2. Home of Rehabilitation

There are three kinds of rehabilitation programmes in practice. Firstly, the Fundamental Programme, an education programme similar to that provided by the Home of Intellect Strategy, is operated with the intention to provide inmates with sufficient education and skills. Secondly, Rehabilitation Programmes for specific types of offender are also conducted to adjust prisoners' attitudes and behaviours by employing various therapeutic modalities, such as musical, art and family therapy. Lastly, Welfare Programmes, including treatment programmes for the elderly and initiatives for prisoners with physical and mental health issues are implemented to maintain offenders' safe and sound custody.

3. Home of Sport and Recreations

Several kinds of sport and recreations are offered in prisons for at least two reasons. As imprisonment can cause considerable stress and tension, playing sports can keep inmates mentally and physically fit. Additionally, inmates can learn favourable interpersonal skills and sportsmanship through sport and recreational activities.

4. Home of Dharma

Recognizing that religion is an important factor in improving inmates' mental status, every correctional facility provides opportunity to all inmates to practice their religious activities without discrimination. Since most of inmates in Thailand are Buddhists, there are several Buddhist activities arranged in the facilities; the "Prison as Home of Dharma for Inmates" programme is one among them. For five days and four nights, inmates have time to perform religious activities, to pray, and meditate supervised by professional preachers. The programme aims to keep the inmates calm and to help them regain consciousness.

Several factors are necessary for the success of the aforementioned programmes. First of all, inmates are provided with careful and thorough preparation for their re-entry, thanks to a wide variety of education programmes, ranging from computer to business administration, which are offered from elementary to undergraduate level. For that reason, inmates should find something they are interested in to keep themselves occupied and equipped with knowledge and skills necessary for their future work. Another key to success is the support, love and understanding that inmates receive from their families, who are occasionally invited to participate in family activities held inside prison. Furthermore, despite facing a financial constraint and overcrowding, the initiatives are deemed to be successful because of the tremendous support received from outside agencies.

B. Staged Release to the Community

Aimed to bridge the period of transition of offenders between prison to the community, three schemes have been put into operation.

1. Vivat Polamuang Rajatan School Project

The project is a four-month intensive treatment programme specially provided to classified prisoners who can receive special parole after finishing the school programme. The curriculum has been applied from the military's Vivat Polamuamg School which provides intensive treatment programmes for drug addicts. Short-term vocational training, behavioural change and disciplinary training have been added to the programme in order to help them to resettle during their conditional release. At the end of the programme, prisoners passing the evaluation would receive special parole and return to the community as decent citizens. Since 2003, there have been about 2,700 inmates graduating from the school.

2. Pre-release Program

Every prison facility runs Pre-release Programs twice a year for inmates whose remaining term is less than six months. It aims at fostering successful reintegration and reducing the chance of reoffending. The emphasis has been on inmates' basic and cognitive skills shortfalls to build up their immunity to crime. Thus, offenders are provided with education and job training as well as behavioural skills, such as living and parenting skills.

3. Pre-release Centre

Currently, there are 10 Pre-release Centres being operated in correctional institutions countrywide. Convicted prisoners whose remaining sentence term is not more than five years and who have agricultural backgrounds will be voluntarily classified and transferred to Pre-release Centres located in the prison region. At this service hub, an array of support and services, formerly fragmented, are integrated in one place, facilitating ease of prisoners' access to services that match their personal needs.

In relation to early release, two parole systems have been implemented in the Thai Correctional System; Regular and Special Parole. The former is to be granted to inmates who have served at least one third of their whole sentence and those who have served not less than ten years of a life sentence. The latter is a special scheme introduced for a certain type of prisoner, such as inmates with disabilities, the elderly and those who complete intensive treatment programmes from Vivat Polamuang Rajathan School. Both systems allow well-behaved inmates who have high chance of reintegration to restart their new lives in the community, under some forms of supervision or monitoring, more quickly. Not only can a condition imposed with parole ensure public safety, it also helps ex-prisoners in maintaining acceptable behaviour until they successfully settle in the mainstream community. However, only a little research has been conducted on the success of the parole system.

C. Removing Hurdles

Several efforts have been made to minimize the effect of the stigma confronting most prisoners and to enhance the acceptance of ex-prisoners by employers. At the moment, these attempts have been put forward only unofficially by means of promoting employers' positive attitudes towards released prisoners and encouraging them to give these wrongdoers another chance. Some MOUs have been signed between the Department and other agencies regarding the provision of post-release service for ex-offenders; for example, there is such an agreement between Pattaya Remand Prison and Nong-pla-lai Sub-District Local Administration.

This memorandum will enhance co-operation between prison and local government agencies to support prisoner reintegration into the community. In addition, prison labour contracts will be signed between the local government offices and the prison to employ prisoners for public works such as drain cleaning, repairing local roads and small construction projects in the areas where prisons are located. Prisoners will receive some remuneration for this work when they are released. Moreover, members of the community will be assigned as volunteer social workers to provide aftercare service such as home visits, counselling and employment to released inmates, ex-inmates and their families.

Furthermore, the Department of Corrections always urges prisons to seek job placements for their inmates by establishing networks with local labour markets and other relevant agencies. However, the most important key for ex-prisoners to secure a job is perhaps their own knowledge and skills. Hence, it is important that prison vocational courses must be tailored to meet market needs and that inmates' skills and talent gained in prison are acknowledged by outside people.

D. Preparing the Community

For the success of reintegration, preparing the community is as important as preparing inmates. All of the hard work and rehabilitation in prison will be in vain if ex-prisoners are rejected by their respective communities on re-entry. In Thai jurisdiction, several initiatives have been incorporated to promote community acceptance.

1. Inmate Teacher Project

On special occasions, such as the Annual Prison Product Exhibition, skillful inmates are brought outside

to teach in career training classes provided free of charge for interested people. More than just a showcase for inmates to demonstrate their skills, the project renders their confidence in earning a living after release and also improves public attitudes towards prisoners.

2. Community Service Scheme

Appropriate prisoners are sent outward on a daily basis to work for the local community. Participating in this scheme, inmates learn how to work as a team and that they should do something for other people to make up for their wrongdoing. The scheme directly contributes to public forgiveness for inmates and growing community acceptance.

This year the Department of Corrections implemented a new project titled "Enhancement of Traffic Service and Accident Prevention during New Year Break". Between 27 December 2006 and 5 January 2007 with the collaboration of three agencies, namely the Department of Corrections, the Highway Police Constabulary and the Vocational Education Council of the Ministry of Education. The project aims to reduce loss of life and property from traffic accidents and to prevent other crimes. This is also a chance for prisoners to serve the community and for the community to accept the offenders. Around 400 well-behaved convicted prisoners from 18 correctional facilities were sent to eight Highway Police Service Stops spread across the northeastern and central region of Thailand and the Bangkok area. These prisoners assisted with traffic services, engine repair, first-aid units and foot massage parlours.

3. Restorative Justice Approach

A pilot initiative has been launched to apply the Restorative Justice Approach to a prison setting. It aims at encouraging offenders to feel remorse, to accept responsibility for their actions and to seek ways to restore the harm done to victims and the community. The ultimate goal of this programme is satisfaction and understanding of all stakeholders, with which it is hoped to finally achieve an improved community acceptance of ex-prisoners.

E. Continuity and Inter-Agency Collaboration

The collaboration of relevant agencies is essential in ensuring the continuity of service, which is key to boosting offenders' chance of resettlement. Also, co-operation of every sector of the community is vital since offender reintegration demands a great deal of resources and is a complex task that is unlikely to be accomplished by a single agency. Considering the importance of collaboration, the Department of Corrections always seeks opportunities to establish partnerships with both government and non-government agencies.

1. Skill Support and Safe Reintegration Project- SSSR

This project is a good example of how successful inter-agency collaboration can produce effective prisoner intervention. The project is carried out in five locations to target inmates who attend Vivat Polamuang Rajathan School. The project provides skill-based services, such as job training, and also addresses other survival needs by granting inmates loans that can be used to start their own small businesses.

In launching this project, partnerships were formally built by 11 Memorandums of Understanding signed between Department of Corrections and other public and private agencies that provide post-release service, such as employment and personal financial management organizations. These service providers work closely together to set up a service plan for inmates. As a result, it can be ensured that inmates can start making use of services in prison and, once released, are referred to an appropriate post-release service according to the plan.

The active involvement of every sector of the community is highlighted and makes the project so outstanding that it received The President's Award from the International Corrections and Prisons Association (ICPA). The award ceremony took place during the 7th ICPA Conference in Edinburgh, Scotland, in November 2005.

VI. CONCLUSION

The diversity of offenders' needs and risks makes the transition from custody to community a complex task. In response to this complexity, the Department of Corrections is aware that innovations have to be continually injected into its through care service delivery. Its latest innovation is an initiative based on HM King Bhumibol's Philosophy of Sufficient Economy, which provides for his people guidance on appropriate conduct aimed at sufficiency, self-containment and a self-supporting lifestyle. The project focuses on providing inmates with advice on how to adapt the theory to several aspects of life, so that they will be able to protect themselves from harm and to handle challenges arising from today's changes in the outer community.

Another recently developed project is a rehabilitation programme for inmates whose alcohol use is linked to their offending behaviour. Underpinning the project is the idea that if the alcohol issues of this group of inmates are not suitably addressed, alcohol, despite not being an illicit drug, will continue to pose serious harm to the community. At the beginning of this fiscal year, the pilot project will be starting in two prisons and will be adopted in other facilities subsequently.

A variety of prisoner interventions discussed throughout this paper should accurately reflect a genuine commitment of Department of Corrections to provide meaningful rehabilitation programmes, aiming to facilitate smooth and successful reintegration. In this regard, the Department believes that when both inmates and their community are sufficiently prepared, the outcome will be worthwhile as ex-prisoners' chances of reoffending will be minimized and public safety will be enhanced. As a service provider, the Department of Corrections will be especially proud that its clients eventually manage to establish themselves as decent citizens in the community.

REPORTS OF THE SEMINAR

GROUP 1

THE USE OF EFFECTIVE INTERVENTIONS IN REDUCING RECIDIVISM AND PROMOTING PUBLIC SAFETY AT THE PROSECUTION AND SENTENCING STAGE

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I. INTRODUCTION

The group started its deliberations on the main theme indicated above on January 25, 2007 and elected the members of the board as listed above. The group then decided to accept the proposed agenda provided by UNAFEI, with an additional sub-topic proposed during the discussions, so that the final agenda under consideration was as follows:

- (a) Problems and challenges facing current legal systems that aim to reduce recidivism and protect society from recidivists;
- (b) Identification of other effective intervention models, including diversion mechanisms and specialized court programmes (e.g. drug court programmes);
- (c) Agencies that provide and ensure such interventions;
- (d) Problems and challenges of collaboration among related agencies;
- (e) Monitoring and evaluation of selected interventions;
- (f) The adoptability of such models in respective countries; and
- (g) Recidivism and restorative justice.

II. SUMMARY OF DISCUSSIONS

A. Starting Point of the Discussions: How to Define ‘Recidivism’?

The participants considered it appropriate to deal with the delineation of the term ‘recidivism’ as a starting point of the group deliberations. As one participant (from China) pointed out, a conceptual clarification of recidivism was needed before assessing the effectiveness of interventions against reoffending at the prosecution and sentencing stage for the promotion of public safety. The same participant identified the following factors for consideration in this regard: type of crime, type of punishment to be imposed, and the length of time between crime occurrences.

Three working definitions were proposed for further consideration. The first one was as follows: “*recidivism: act of a person repeating an undesirable behaviour after having experienced negative consequences of that behaviour or having been treated or trained to extinguish that behaviour*”. This definition was criticized by the group members, who emphasized that it was structured in general terms and it was not compatible with criminal justice aspects. The second definition was an attempt to narrow down the conceptual framework of the first definition and encompass a criminological component in it: “*recidivism: act of a person who reoffends after he or she has undergone at least one stage of the criminal justice process.*” One participant suggested that recidivism only applies to the intentional commission of an

offence after the court trial. A third definition brought before the attention of the group was an attempt to accommodate the argument raised by one participant that the element of compliance with the law that is violated by recidivists should be reflected as appropriate. This definition was as follows: “*recidivism: the continued, habitual or compulsive commission of law violations after first having been convicted on prior offences.*” However, this attempt to conceptualize recidivism was criticized by other participants who argued that further analysis might be necessary in relation to the terms “*habitual*” and “*compulsive*” commission of law violations.

Despite the abovementioned efforts to reach an accepted definition of reoffending, the group was fully aware of the fact that so far there seems to be no agreement among researchers over how reoffending should be conceptualized and measured. It was acknowledged that, in addition to the debate over what qualifies as reoffending, there is divergence of views over how recidivist events should be counted and when follow-up periods for measuring recidivism should begin and end. The group took into account all these considerations to illustrate that answering the reoffending question is by no means straightforward.

B. Problems and Challenges Facing Current Legal Systems that Aim to Reduce Recidivism and Protect Society from Recidivists

The discussion then focused on the examination of the general aims and objectives of national sentencing policies and particularly on whether such policies are conducive to reducing recidivism and promoting public safety. In general terms, it was noted that sentencing policies followed at the national level serve the purposes of deterrence (general and special), promotion of public safety, rehabilitation, treatment and/or retribution. These objectives, however, are not treated in a homogeneous manner in different jurisdictions, as the purpose of the sanction may differ depending on national priorities or the specific legislation that applies in a given case. The group recommended, in this connection, that, despite this divergence in national attitudes, rehabilitation should always be considered in conjunction with other objectives of sanctioning policies to ensure that the interests of both the offender and the community are well served.

In exploring sufficient means to reduce recidivism, the participants agreed that priority should primarily be accorded not to whether the objectives of the sentences are prescribed in the national laws, but to the way that these objectives are translated into practice in the daily criminal casework. Therefore it was suggested that a more integrated approach be followed to ensure better co-ordination among national agencies, as well as consistency of action and more effective case management in this area.

The participants further discussed the type of offences mostly committed by recidivist offenders in their respective countries. In this context, reference was made to such crimes as property offences (theft, burglary, fraud), robbery, forgery, assault, abduction, as well as drug and sex-related offences. It was generally agreed that in most national legal systems sanctions were in place to punish such criminal behaviour. However, it was stressed that the imprisonment measures *per se* cannot be always fully effective because of lack of adequate rehabilitative impact on the offenders (see also below under II.C.3). Problems in implementation of national sentencing policies resulting in ineffective treatment of offenders were also reported.

The need to combine traditional sanctions with non-custodial measures for the treatment of offenders was stressed by one participant, who also listed a number of advantages in following such an approach, including the – quite possible – reduction of the risk of recidivism by increasing the offender’s links with the community and the savings in government resources and costs. In the same vein, the group agreed that the United Nations can play an important role in promoting the use and application of the United Nations Standard Minimum Rules for Non-Custodial Measures (the *Tokyo Rules*),¹ including their wider distribution to officials across sectors at the national level .

The group members also discussed factors that contribute to the increase of recidivism rates, including the inconsistent application of criminal sanctions, as well as more general social factors such as education, employment, drug and alcohol misuse, mental and physical health, attitudes and self-control, institutionalization and life skills, housing, financial support and family networks. In this context, they took

¹ Adopted by General Assembly resolution 45/110.

into account research findings and particularly the outcome of a major meta-analysis completed in 1996 in Canada which identified factors that are associated with reductions in recidivism.²

In the same vein, some participants argued that the prolonged detention of offenders due to lengthy prosecution and investigation proceedings and delays in the adjudication of cases by courts does not contribute to their rehabilitation and may well lead to recidivism. In this connection, one participant reported that no threshold was defined in his country's legislation to authorize the early release of prisoners upon completion of a certain imprisonment period and therefore cases of disproportionate incarceration to the severity of crimes were reported. The same participant highlighted the problem of treating drug dealers as drug users, thus enabling the imposition of more lenient measures to them, including early release that may lead to the commission of new crimes. On the other hand, cases of exclusion of drug users from special treatment programmes causing their increased vulnerability to recidivism were also reported. One participant noted that in his country there was sometimes interference by other agencies in the process of police investigation, which may obstruct the aim of reducing recidivism.

A number of participants made reference to specific problems encountered in their respective legal systems in implementing policies that aim to reduce or control recidivism, including, *inter alia*, the lack of appropriate legislation to govern investigation and prosecution proceedings, delays at the investigation and prosecution stage, capacity deficiencies and lack of resources. Some participants argued that such delays and deficiencies, accompanied by lack of legal rules governing provisional measures (e.g. pre-trial detention), hinder the efforts to control recidivism among offenders effectively. Furthermore, the prolonged period between prosecution and adjudication of the case does not only violate the right of the offender to a speedy trial, but it could also have detrimental effects on that offender, who may in the meantime have smoothly integrated into the society.

Other problems identified by the group included:

- The lack of diversely skilled and well trained personnel who would be able to meet the demanding need to implement intervention strategies with a view to reducing recidivism;
- The lack of appropriate equipment and proper facilities. It was explained in this regard that the lack of the necessary infrastructure and capacity is currently among the major obstacles in developing effective crime prevention and reduction plans in many countries, mostly developing ones or countries with economies in transition;
- The lack of systematic action and the absence of task-oriented and effective social work with both recidivist offenders and victims;
- The lack of knowledge and information about the whole range of criminal justice activities that involve imprisonment and alternatives to it, as well as the absence of awareness-raising initiatives to enhance such knowledge.³ In this connection, it was stressed that the establishment of best practices in promoting public safety and controlling recidivism requires a body of reliable knowledge of what works, in which context, by which mechanisms and at which cost.

² The factors investigated in the study were divided into static risk factors (adult criminal history, pre-adult antisocial behaviour, family criminality, family rearing practices, family structure, age, gender, intellectual functioning, race and socio-economic status) and dynamic risk factors (anti-social personality, companions, criminogenic needs, interpersonal conflict, personal distress, social achievement and substance abuse).

The study demonstrated that the three factors which were most correlated with recidivism were criminogenic needs, criminal history and social achievement. Other important factors were age, gender and race, and family background. These specific factors are therefore the ones that should be assessed when determining who requires the most intervention. Other factors such as socio-economic status, intellectual functioning and personal distress were not among the most predicting factors. The results of the study also indicated that dynamic factors are slightly more effective at predicting recidivism than static factors. However, both types of factors are very similar in their predictive effect.

³ The group took into account the findings of empirical research which show that people, in general, underestimate the factual severity of sanctions, overestimate the effectiveness of criminal sanctions and have overly pessimistic view of the development of crime. Consideration was also given to the finding that those who know less of the facts of the crime and crime control also have the highest fears and most punitive demands.

C. Identification of Other Effective Intervention Models, Including Diversion Mechanisms and Specialized Court Programmes

1. Concept and Scope of Diversion in the Criminal Justice Field

The group further shed light on alternative intervention models that go beyond the conventional criminal justice process of prosecution, sentencing and imprisonment with a view to examining their effectiveness in controlling recidivism. In this context, diversion mechanisms and specialized court programmes (e.g. drug court programmes) were identified as issues of particular importance that had to be examined thoroughly and, as one of the advisers of the group noted, not necessarily separately, as they might be interrelated.

The understanding among the group members was that diversion mechanisms are geared towards re-routing to treatment and rehabilitation programmes offenders who would otherwise be convicted and penalized through the traditional criminal justice process. The group agreed that the diversion schemes should be prescribed by law, run at any point of the process, from police arrest to court sentence (diversion before investigation/diversion from trial/diversion from sentencing), and used as alternatives to imprisonment.

A number of participants underscored that diversion is not applicable to all crimes and therefore it would be important to take into account in the relevant discussions the nature and type of offences concerned. Such an approach would also be useful for measuring recidivism in a more adequate and reliable manner focusing on offending behaviour in targeted areas (for example, the effect of sex offender treatment programmes on sex reoffending behaviour). Another group member argued that diversion mechanisms alone may not be enough to address issues of recidivism and that appropriate monitoring and provision of advice to the offenders should be available to that effect.

The group also took into account the usefulness of approaches focusing on prolific offenders that are far more criminally active than others and contribute disproportionately to the overall crime rate.⁴ It was argued in this regard that prioritizing resources on the most active offenders could bring about better outcomes in terms of reduced crime rates and reoffending, as well as improve public confidence in the criminal justice system.

2. Diversion Mechanisms at the Pre-Trial Stage

Specifically with regard to the pre-trial stage, the participants recognized that the key question in national criminal justice systems is how the discretion in deciding against whom action should be taken, whom to ignore and whom to specially treat should be structured. At the policing level, law enforcement officers need to have clear instructions on when they can themselves issue warnings and take no further action, and when they should refer alleged offenders to prosecuting authorities. Similarly, prosecutors need clear guidelines on how to exercise their discretionary powers. The group was of the view that in both instances, the opinion of the victim of the alleged offences needs to be taken into consideration, although victims should not be allowed a veto over State action in the criminal justice sphere.

In China, many minor cases are settled by police. Usually, the diversion mechanism should include the following factors: first, the types of offences should be traffic offences, minor injury, negligent injury and so on (according to Chinese criminal law, these offences should not result in sentences of more than three years); second, offenders who compensate for the loss of the victim and come to reconciliation with the victim; third, the victim agrees not to prosecute the offender. When these requirements are met, the police can directly dismiss the case at the pre-trial stage.

⁴ The participants assessed concrete information and research findings presented during the plenary sessions which demonstrate that, of a total offending population of around one million, only approximately 100,000 offenders (10% of all active offenders) were responsible for half of all the crimes committed in England and Wales (U.K. Home Office, 2001). Moreover, the most active 5,000 of this group of prolific offenders were estimated to be responsible for one in ten offences (U.K. Home Office, 2002). In this connection, consideration was given to the first positive results of a recently launched programme in United Kingdom (Prolific and Priority Offenders Programme) which was designed to give the most active or problematic offenders a choice between the cessation of offending with the acceptance of support delivered by relevant agencies or to carry on offending resulting in prompt arrest and punishment.

One participant noted that a way to reduce recidivism is to use the prosecutorial powers to waive prosecution as a means of diverting a case out of the formal flow of criminal justice, or to conditionally suspend prosecution. The suspension of prosecution would require legislation, as in many cases there is no statutory basis for such a measure. In practice, the prosecutor could impose conditions for a suspended prosecution that would be similar to the conditions attached to a suspended sentence. The suspension may also be combined with other treatment measures. It was further argued that, because of different political, social, economic and cultural conditions and developments, particularly in developing countries, it would take time to apply such measures in their entirety and to the greatest extent possible. However, processes aimed at amending existing policies and practices need to be launched and gradually carried out, taking into account the needs and characteristics of each society.

One group member reported on diversionary practices currently in place in his country. The most significant of such practices include conferencing for young offenders with a view to educating them, informal and formal cautioning adopted by the police for juveniles and community based rehabilitation programmes for drug users. In addition, house confinement and banishment have been two traditional methods still widely used with offenders. The same participant noted, however, that difficulties have been encountered in the supervision of house confinement, whereas banishment has worsened the drug problem at the local level. The same participant raised concerns and doubts whether diversion could, in general, be effective in drug-related cases.

One Japanese participant explained the diversion mechanisms used by the prosecutorial authorities in Japan. The public prosecutor issues guidelines to the police authorizing them to decide the termination of the proceedings for certain petty cases. Also, the public prosecutor may suspend prosecution even when the suspicion of an offence is proved, if such prosecution is deemed to be unnecessary in light of the character, age or circumstances of the suspect, the seriousness and nature of the offence and the situation after the offence. Factors such as compensation to the victim and motivation are taken into serious consideration, among others, in practice. Thus, the prosecution authorities may suspend prosecution, where, for instance, mediation with the victim is settled, and it is widely utilized in order to divert offenders from the formal court procedure; however, the participant is of the view that if they could suspend prosecution conditional upon rehabilitative treatments, it would be more sufficient. The participant further explained that in practice, suspension of prosecution is widely used in order to avoid unnecessary stigmatization of suspects and brought to the attention of the group statistics demonstrating trends in prosecution rates and suspended prosecution rates over the last ten years. For example, in 2005, the prosecution rate was 44.8% and the suspended prosecution rate was 53.4%. For overall cases, the prosecution rate has been on a downward trend, while the suspended prosecution rate has been on an upward trend.

3. Diversion Mechanisms at the Sentencing Stage

With regard to the use of diversion mechanisms as alternatives to sentences of imprisonment, the group took into account that the Tokyo Rules list a wide range of dispositions other than imprisonment that can be imposed at the sentencing stage and which, if clearly defined and properly implemented, may also function as measures that can facilitate the rehabilitation of offenders. Building upon the ad hoc presentations delivered during the plenary sessions, in which a comparative overview of the use of different sentencing alternatives was offered, the participants exchanged views and opinions on policies and measures to implement, separately or jointly, community sanctions ranging from conditional or suspended sentences, probation or supervision and community service, to treatment orders and electronic monitoring.

While discussing this agenda item, the group members were asked to provide a brief overview of the basic sanctions stipulated in their respective legal systems as a response to the commission of criminal offences or reoffending.⁵ Imprisonment was reported to be the main criminal sanction for a broad range of offences and its length is subject to the seriousness of the crime or to recidivist incidents. The group indicated that imprisonment should be combined and complemented with other measures geared towards the rehabilitation of the offender and his/her reintegration into society (see also above under II.B).

⁵ One participant (Ethiopia) underscored that the national judicial authorities are empowered to impose aggravated punishment on recidivist offenders as far as the public prosecutor proves the guilt of these offenders and further explained that this approach is essentially both a proactive and reactive way to ensure public safety.

In this regard, one participant (Ethiopia) referred to the existence in his country of rehabilitation centres that provide basic education, vocational training and social services to offenders and may engage them in labour aiming at their rehabilitation. One Japanese participant stated that although Japanese courts deliberate on whether imprisonment is necessary for the defendant in light of preventing recidivism, as well as retribution, the Japanese legal system does not provide for many options to the court at the sentencing stage. In many cases, an increased punishment is imposed as the consequence of increased responsibility due to the defendant's repeated offences.

Another Japanese participant expressed similar concerns and, after explaining the different level of sanctions applicable in the Japanese legal system, proposed that the judge should be given more options in deciding the most appropriate sanction considering such measures as probation, supervision, imposition of fines, etc. The same participant stressed that in cases of minor offences, resort to community sanctions and fines would be the most appropriate option, whereas a combination of community sanctions and imprisonment could be productive with regard to mid-level offences.

4. Prison Overcrowding and its Impact on Controlling Recidivism

The group members devoted part of their discussions to the problem of prison overcrowding, despite its little relevance to diversion mechanisms, on the understanding that this problem seriously affects the rehabilitation of prisoners, thus undermining efforts to control recidivism. Furthermore, the participants considered it appropriate to deal with this issue, although it falls within the agenda of Working Group 2, for a certain reason: the problem of prison over-population is exacerbated by the sometimes excessive use of pre-trial detention and/or the resort to imprisonment as the only available sanction to be imposed at the sentencing stage.

Building on this consideration, the group acknowledged the need to ensure the physical presence of the defendant in the related criminal proceedings, but confirmed that the decision to detain an accused awaiting trial is essentially a matter of weighing up the suspect's right to liberty, on the one hand, and the interests of the administration of justice, on the other. Taking into account Rule 6.1 of the Tokyo Rules,⁶ the group was of the view that pre-trial detention should be used with cautious deliberation. If an alternative measure to pre-trial detention is chosen, it should be the one that will achieve the desired effect with the minimum interference with the liberty of the suspect or accused person, whose innocence should be presumed at this stage. The group members indicated that possible alternatives include the release of the person and the order to appear in court on a specified day; not to interfere with the course of justice; to remain at a specific place; to report on a regular basis to a court, police or other authority; to surrender passports or other identification papers; to accept supervision by an agency appointed by the court; to submit to electronic monitoring; and to provide financial or other forms of security as to attendance at trial.

The group further underscored that the advantages and disadvantages of various alternatives to pre-trial detention are often examined on the assumption that the authority deciding on whether detention is required is able to choose freely between various options. In reality, the competent State authorities should be in a position to create a framework for such options to function. Some alternatives require merely a formal legal power that would enable them to be imposed while other alternative measures also need the setting up of proper mechanisms and infrastructure for their implementation.

In general terms, the group members stressed that, in order to achieve the best possible results, there needs to be in place a coherent strategy that constantly emphasizes the overall objective of using alternatives to imprisonment with a view to reducing the prison population. Moreover, it would be important to pursue the adoption of alternative models, given that correction costs have an impact on the amount of public funds available for other basic services and public needs. In this connection, one participant (Ethiopia) referred to a study conducted in his country which demonstrated that the costs of imprisonment, especially of those offenders that have received jail sentences ranging from one to six months, were too high and, as an example, the expenditure for one single prisoner exceeded the salary of an average low level civil servant.

⁶ "Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim."

The same participant pointed out that prison congestion, which is the outcome of lack of alternative to imprisonment models, has adverse effects on the treatment and living conditions of prisoners and therefore high priority should be accorded to policies addressing alternatives to imprisonment.

5. Diversion Mechanisms for Special Categories of Offenders

(i) Offenders with Mental Disorders

One Japanese participant informed the group of the Japanese experience of introducing medical care and community supervision for offenders with mental disorders (insane or quasi-insane persons who have committed serious offences) as possible treatment following non-prosecution, acquittal or a suspended sentence. While some of these offenders pose a serious threat to public safety by repeating crimes, they are not criminally responsible for their actions, or are criminally responsible to a limited extent, thus resulting in non-prosecution, acquittals or mitigations of sentence. Before the new scheme was introduced, these persons were often hospitalized after non-prosecution, acquittal or suspension of sentence, but there was no formal arrangement between criminal justice agencies and medical agencies. As a result, some offenders committed further offences because of a lack of consistent inpatient or outpatient psychiatric treatment. Under the new scheme, the prosecutor, the court, the designated test hospital, the designated inpatient or outpatient hospital, the mental health agencies and the probation office co-operate to provide those offenders with proper treatment, thus enabling the relevant authorities to take flexible measures aiming at preventing these persons from committing acts against public safety.

In general terms, the participants recognized that, despite the little or lack of criminal responsibility of mentally ill offenders, their recidivist acts could greatly infringe public safety and therefore such offenders should be dealt with in a manner which also ensures that further commission of dangerous acts is prevented. It was further acknowledged that diversion of the mentally ill raises wider issues than determining criminal responsibility. Mental illness should be taken into account when deciding how to deal with this special category of offenders. The police and the prosecuting authorities should make special efforts to divert such persons from the criminal justice system.⁷ On the other hand, mentally ill offenders who remain within the criminal justice system should be given special consideration to determine whether they would not be better placed outside prison. It was argued that a community sentence with a treatment element for the offender's mental illness should be considered in appropriate cases.

(ii) Drug Offenders

The participants paid particular attention to diversion policies and programmes regarding drug offenders.⁸ There was an agreement that diversion has a major role to play as an alternative to imprisonment in the drug sphere. The main argument raised in this regard was that many offenders who violate drug laws and/or other laws commit their crimes because they are addicted to drugs themselves. It would therefore be more effective for these offenders to be treated for their addiction, rather than processed through the conventional criminal justice system and eventually punished.

The participants acknowledged that diversion of drug users may take different forms, but, in basic terms, it can follow the same pattern as for other offences in that the police and prosecutors use their discretion not to arrest suspects or prosecute them. This may be subject to the condition that drug offenders enter a drug education programme or take part in more formal treatment programmes.

One participant (Malaysia) stressed that his country was one of the few States in the region that has developed a compulsory rehabilitation programme for drug dependents. Every dependent can be ordered to undergo treatment and rehabilitation for his or her addiction for a specific period of time, as provided for

⁷ The courts have a particularly important role to play in this regard. The United Nations Principles for the Protection of Persons with Mental Illness (adopted by General Assembly resolution 46/119) encourage the creation of a legislative framework that allows the courts to intervene where the sentenced prisoners or remand detainees are suspected of having a mental illness. Such legislation "may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility," (Principle 20.3) instead of being held in prison.

⁸ The term "drug offenders" in this report is meant to include drug abusers and dependants and not drug dealers, manufacturers and traffickers, who are different types of offenders and should be dealt with in the context of organized crime.

under the laws and regulations relating to treatment and rehabilitation. The objective of the treatment and rehabilitation programme is to avoid recidivism among illicit drug abusers and to enable drug dependents to overcome the physical and psychological addiction to drugs and thereafter live a drug-free life. The same participant further specified that two methods of treatment and rehabilitation of drug dependents are implemented at the national level: rehabilitation within an institution, a controlled environment whereby the addict undergoes treatment and rehabilitation for two years; and rehabilitation in the community, two-year aftercare supervision of ex-addicts following their release from an institution.

The group further noted that in a number of jurisdictions diversion is formalized through drug treatment courts. The participants underlined the particular nature of these courts, which, although they are part of the criminal justice system, operate following a diversion strategy. In this connection, the group members examined the key feature of the drug courts to handle cases involving substance-abusing offenders through comprehensive supervision, drug testing, treatment services and immediate sanctions and incentives. They noted that the establishment and operation of drug courts reflect a transformation of the way courts traditionally dealt with criminal casework related to drug-abusing offenders. Thus, while the traditional process is adversarial and emphasizes the backward-looking adjudication of claims, rights and responsibilities of the few participants involved, the transformed process in drug courts is collaborative and put emphasis on the forward-looking adjudication of the problem with the involvement of a wide range of stakeholders (judge, prosecutor, defence counsel, substance abuse treatment specialists, probation officers, law enforcement and correctional personnel, educational and vocational experts, community leaders and educational and community anti-drug organizations).

One participant also informed the group about classification models for drug courts and the various approaches followed by them: pre-plea, pre-trial, and post-plea approaches, depending on the point at which the drug court admits the participant. Emphasis was given to the need to establish clear eligibility criteria for the participation of offenders in court-directed drug treatment and rehabilitation programmes.

The group noted that success factors for the effective operation of drug courts include, *inter alia*, the effective judicial leadership of the multidisciplinary drug treatment programme team; the strong collaboration of judges and team members; the existence of an operational manual to ensure consistency of approach and ongoing programme efficiency; the establishment of clear eligibility criteria and a screening process for participation of offenders in a drug treatment programme; the fully informed and documented consent of each participant offender; the speedy referral of participating offenders to treatment and rehabilitation; the existence of mechanisms to ensure ongoing evaluation of the programme; sufficient and sustained funding to support the process; and potential changes in substantive and procedural national laws.

The group members further stressed the importance of providing clear and timely information about drug court directed treatment and rehabilitation programmes to the community, so that its members are well informed about their real benefits compared with punishment by imprisonment or other means. In this connection, effective use could be made of the initial results of studies conducted in previous years suggesting that drug court programmes seem to be more successful than imprisonment in preventing recidivism of drug offenders. This is particularly important in cases where the community has misperceptions about these programmes being too soft on participating offenders. It is also essential to provide comprehensive information to government leaders, officials and bodies with a view to overcoming any initial reluctance to offer financial or other support.

D. Agencies that Provide and Ensure Interventions

The discussions of the group were further expanded to identify authorities and/or agencies operating at the national level which can be engaged in diversion mechanisms and possible interventions with offenders. It was agreed that such authorities or agencies involved in the prosecution and sentencing stage include the law enforcement, prosecutorial and judicial authorities, the prisons or correction and rehabilitation centres and the probation officers, as well as non-governmental organizations dealing with criminal justice issues and various community institutions.

One participant was of the view that non-governmental organizations that offer treatment to drug abusers could be helpful, but there should be a mechanism to carry out follow-up evaluations regarding the

effectiveness of their programmes. The same participant identified as related national authorities and agencies the Ministry of Justice, the police and the National Narcotics Control Bureau.

One participant (from Ethiopia) noted that religious institutions may play a role in the treatment of offenders, although that is dependent on the political, social and cultural context of each society. The group agreed that targeted interventions of agencies such as hospitals, through the Ministries of Health, forensic chemistry units, community and half-way houses could also be conducive to establishing comprehensive treatment approaches for offenders within, or in parallel with, the criminal justice processes already in place.

One Japanese participant informed the group that there are two non-governmental organizations in the country involved in outreach interventions with drug users in custody. These organizations work in collaboration with doctors, professionals in healthcare, lawyers, and probation officers with a view to providing education to prisoners through correspondence or particular sessions in prison. Lectures at schools and communities, and workshops for professionals, are among the activities of these organizations. Assistance in getting bail and pre-release support are also offered by one of these NGOs. Over the last six years, around 150 defendants took advantage of such supporting schemes. The same participant also expressed her opinion that, in general terms, the lack of legal framework and well established requirements for action render such interventions of non-governmental organizations sporadic, piecemeal and fragmented.

E. Problems and Challenges of Collaboration Among Related Agencies

All participants were of the view that one of the main difficulties and challenges encountered in their respective countries relates to the lack of effective collaboration and co-ordination among the abovementioned authorities and agencies which leads to piecemeal and fragmented interventions with limited chances to adopt and pursue a holistic approach to dealing with offenders and recidivist incidents. Most of them reported that the need for collaboration has become even more acute due to individual interventions of various stakeholders which may not be linked to a comprehensive plan of action for the treatment of offenders.

The group agreed that initiatives geared towards institutionalization of inter-agency co-operation, especially through forming inter-agency units with a common vision, goal and function, can provide solutions to overcome barriers to collaboration. The need for putting in place the necessary legal or administrative framework and ensuring the political will and commitment to initiating or streamlining joint efforts and action was also emphasized. One Japanese participant noted that the means for establishing such a framework may vary, as other countries need legislation to that effect, while others may resort to administrative schemes or arrangements. One participant specifically underlined the lack of co-operation and co-ordination amongst agencies involved in the investigation of crimes. He also noted that the same problems of lack of co-operation and communication between different actors are encountered in the field of treatment programmes for offenders as well.

Other participants highlighted the absence of an integrated information system database on recidivist incidents and rates. They further noted that this deficiency makes it difficult to carry out an in-depth evaluation and assessment of the extent and impact of the problem. In general terms, the availability of comprehensive, timely and reliable data and information is one of the essential requirements for the formulation of appropriate policies and guidelines to tackle the challenges posed by recidivism.

Some participants proposed as a means of boosting co-ordination and concerted action the designation of focal points in each authority or agency involved, as well as the establishment of a communication network between them through regular meetings, posting of liaison officers, information-sharing etc. One participant suggested that national crime information centres be established with the task to collect, store and disseminate information related to crime and justice.

F. Monitoring and Evaluation of Selected Interventions

The group further considered efficient ways and means to monitor selected interventions with offenders and evaluate whether such interventions can be conducive to reducing recidivism. All participants accorded high priority to the need for having in place a solid knowledge base and sufficient information about the offenders and the whole range of interventions used with them. It was pointed out in this regard that the availability of reliable data will enable and improve information-sharing among related agencies, thus

strengthening their co-operation and co-ordination, avoiding duplication, and ensuring the continuity element of the intervention schemes. As a result, a much more accurate picture of the real work being carried out can be produced, providing at the same time fertile ground for more streamlined future efforts geared towards enhancing the effectiveness of the overall programmes and interventions.

The group members also underlined that the systematic collection of information is a key prerequisite for conducting research, which would be important in developing an evidence-based approach and determining what works in the area of counter-recidivism strategies. In addition, it was agreed that research is an extremely useful tool for management planning, as it allows for better allocation and use of available resources and assists in eliminating programmes and interventions that do not have an impact on offenders. For this reason, the need for research staff who can carry out research projects and maintain knowledge of new and developing trends was emphasized. Moreover, it was noted that where research staff are not available efforts are needed to build relationships with universities and academia to encourage research that is consistent with local, cultural and social norms.

The participants acknowledged that, in order to conduct research in an efficient manner, it is necessary to know what is being evaluated and, thus, be in a position to describe the programme or intervention and further apply it consistently so that all participants receive the same service. On the other hand, it would not be possible to effectively evaluate programmes that are constantly under review or change, because in this case no reliable and comprehensive information on which programme is operationally successful can be made available.

Additional proposals made during the discussions included the introduction of case management systems in criminal cases, the establishment of a system of consolidated performance assessments for the authorities and/or agencies dealing with offenders, and the setting of benchmarks that have to be met by a specified date. The translation of such proposals into practice would enable schemes to be monitored for efficiency and effectiveness, as well as the identification of poor performers, so that appropriate action can be taken.

Other group members suggested that partnerships should be built to allow for effective supervision and monitoring of relevant intervention schemes. Reference was made to the involvement and role of the community in this regard. Thus, one participant (from Ethiopia) reported that there had been sporadic attempts in his country to involve the community in crime prevention and control policies, including through periodic evaluation of police performance and community patrols around vulnerable public infrastructure. In the same vein, the group agreed that local communities and all government agencies should co-operate and support efforts to control recidivism, including through monitoring of relevant interventions with offenders.

G. The Adoptability of Intervention Models in Respective Countries

With respect to implementing policies to enable the adoptability of intervention models and schemes against recidivism in their respective legal systems, the participants put emphasis on political will and commitment as the driving force for introducing changes and developing a clear policy in this field. It was further stressed that political initiatives on behalf of Governments will also enable the necessary infrastructure to be put in place and resources to be made available as appropriate. Further to that, partnerships with elements of civil society such as community organizations, organizations of professionals working in the criminal justice sector, and non-governmental organizations that are active in the field of crime and punishment, could be productive and conducive to more integrated and multifaceted action against recidivism.

Some group members identified legislative reform as a first element and component of focused and integrated strategies aiming at achieving better results with the treatment of offenders and the control of recidivism. They emphasized that the availability of a comprehensive legal framework for diversion mechanisms and alternatives to imprisonment at every level, and the existence of statutory requirements for implementing them, could provide the necessary safeguards for clearly defining roles and responsibilities of the authorities concerned and preserving public safety while taking into consideration the specific needs of offenders.

The lack of institutional capacity and experience in tackling the problem of recidivism would further require, as the participants noted, the establishment and promotion of training programmes and activities for enhancing the expertise and skills of law enforcement officers, prosecutors and judges. From this perspective, the provision of appropriate technical assistance to countries in need, especially developing countries and countries with economies in transition, was considered to be vital. The relevant role of the United Nations in providing such assistance was highlighted by one participant.

The group also referred to the need to raise awareness of programmes in action and underscored that a strategy should be developed for placing sufficient information in the public domain so that members of the community are aware of the issues at stake and can make an informed input into the relevant debate on improving counter-recidivism mechanisms. Furthermore, it was noted that the media have an important role to play in informing the public about such issues. It is therefore necessary to brief representatives of the media about the overall efficacy of diversion mechanisms and alternatives to imprisonment so that they are able to put occasional failures into a wider context.

One participant underlined that the lack of trust in rehabilitation and the perception that the treatment of offenders tends to spend too much time and resources on criminals and, in addition, is too lenient and minimally intrusive are challenges that need to be addressed by treatment providers. It was further argued that these kinds of views tend to discriminate against individuals who have completed the institutionalized part of treatment and are attempting to reintegrate into the community. Lack of employment, educational opportunities, and peer pressure, that lead to the commission of an offence in the first place, are doubled after a person is labeled as an offender undergoing a treatment programme. These social miscarriages need to be corrected for treatment to be effective and initiatives to raise awareness are a first step.

H. Recidivism and Restorative Justice

At the beginning of the deliberations, the group agreed that this sub-topic should be incorporated in the proposed agenda that was brought before its attention.

Starting point for the relevant discussions was the suggestion made by one participant (from Ethiopia) that in seeking alternative models of effective interventions with offenders and dealing with problems of recidivism, the role of the community should be considered. It was argued, in particular, that many restorative justice approaches provide for an expanded role for community members in the resolution of conflict and in responding to crime problems, usually by resorting to customary law. The contribution of such approaches to the conclusion of agreements to be adhered to by offenders, and sometimes also by other parties, may well strengthen social control capacities and preserve the social cohesion of the community. For this reason, it was further pointed out that a systemic change in criminal justice agencies and systems in order to empower community decision-making and responsibility in the response to crime and harm could be a viable approach. Such an approach can be adapted to the circumstances, legal traditions, principles and underlying philosophies of national criminal justice systems. It may also encourage the offender to gain insight into the causes and effects of his or her behaviour and take responsibility in a meaningful manner. It may further be particularly suitable for situations where juvenile offenders are involved and in which an important objective of the intervention is to teach the offenders new values and skills.

In the same vein, the group took into account that there is a considerable variability in the nature and extent of community involvement in the various restorative justice approaches. For example, in victim-offender mediation,⁹ the community is absent and the process consists of a mediator, the offender and the

⁹ Victim-offender mediation or reconciliation programmes are designed to address the needs of victims of crime while ensuring that offenders are held accountable for their illegal acts. These programmes can be operated by both governmental agencies and non-profit organizations and are generally restricted to cases involving less serious offences. Referrals may come from the police, the prosecutors, the courts, and probation offices. The programmes may function at the pre-charge, post-charge/pre-trial, and post-charge stages and involve the willing participation of the victim and the offender. They can also offer a pre-sentencing process leading to sentencing recommendations. When the process takes place before sentencing, the outcome of the mediation is usually brought back to the attention of the prosecution or the judge for consideration.

victim. In circle sentencing,¹⁰ on the other hand, the process is open to all members of a local neighbourhood, village or indigenous group. In this connection, cases were mentioned regarding the function of quasi-formal courts at the community level dealing with minor cases, or other instances where a village chief mediates conflicting parties to settle their conflict and achieve reconciliation without reporting to the police. The Chinese participant introduced the restorative justice system in his country. Restorative justice should at least include three most important factors as follows. First, the victim should participate in the criminal procedure dealing with the case. This is a conspicuous characteristic different to traditional justice. Traditional justice stresses retaliation against the offender, but doesn't attach the importance of the protection of the victim's rights. He was of the view that stressing the victim's increased participation in criminal procedure is the major change in the criminal justice system at present. Second, restorative justice underscores that offenders should try hard to compensate the victims for loss, and seek for forgiveness from the victim. Third, more non-custodial penalties should be imposed, for example, a community penalty, suspension of sentence, parole, fines and so on. In recent years, China has begun to apply the basic principles of restorative justice in dealing with criminal cases.

A number of participants acknowledged that many members of the community are likely at first to view restorative justice processes as more lenient and less effective at preventing or controlling crime than the traditional criminal justice system and its reliance on punishment. An innovative restorative justice programme may be seen as an enabling factor for a 'lighter' treatment of the offender, particularly when a more serious offence is involved. Therefore the group stressed the importance of developing materials and designing initiatives to educate the community and raise awareness of the principles, objectives and practices of restorative justice and the potential role that community members can play in responding to crime.

A number of participants further recognized that strategies of restorative justice may play a crucial role in decisions about diversion. Where mechanisms are in place to allow for settlement of disputes by restorative means, they may also encourage the use of alternatives to imprisonment. Meetings with offenders, victims, and community members where techniques of mediation and alternative dispute resolution are used to deal with matters that would otherwise be subject to criminal sanctions, have the potential to divert cases which might have resulted in imprisonment both before trial and after conviction.

Moreover, the participants underlined that where the diversion is linked to full restorative justice processes which interrupt the further operation of the criminal justice system in particular cases, it is necessary to have a parallel structure to facilitate these alternative processes. This requires administrative support that can be provided by the State authorities or by non-governmental organizations operating in partnership with criminal justice agencies.

With regard to the link between restorative justice programmes and reoffending, a number of participants noted that a growing number of empirical studies in this field have not so far provided a straightforward answer. Some of them have not shown reduction in recidivism, while others indicated that restorative justice interventions are associated with small but significant decreases in reoffending, mostly in cases of low-risk offenders. There are a few reasons for this which the group took into account. First, restorative justice includes a broad range of justice activities and processes, some of which aim to divert offenders away from traditional justice proceedings and others which run in conjunction with traditional processes. In addition, restorative initiatives may also be placed at various levels of the criminal justice process: pre-court diversion (e.g. restorative cautioning and conferencing), pre-sentence and post-sentence. It was the opinion of the group that with so many variations, it is not surprising to come up with varied research outcomes on the relationship between restorative justice and reoffending. However, the participants also acknowledged that,

¹⁰ Circle sentencing is a characteristic example of participatory justice in that members of the community can be directly involved in responding to incidents of crime and social disorder. In this process, all the participants, including the judge, defence counsel, prosecutor, police officer, the victim and the offender and their respective families, and community residents, sit facing one another in a circle. Circle sentencing is generally only available to those offenders who plead guilty. Discussions among those in the circle are designed to reach a consensus about the best way to resolve the conflict and dispose of the case, taking into account the need to protect the community, the needs of the victims and the rehabilitation and punishment of the offender. The sentencing circle process is typically conducted within the criminal justice system, includes justice professionals and supports the sentencing process.

if restorative justice processes meet the key objectives of holding offenders accountable, encouraging them to accept responsibility for their wrongdoing, not stigmatizing them, and providing a forum that promotes reintegrative and rehabilitative outcomes, then re-offending is less likely. The group highlighted the importance of attempting to understand how and why restorative justice renders change in offenders, including more detailed qualitative assessments of what offenders in restorative justice understand about the process and how this affects their future behaviour.

III. CONCLUSION AND RECOMMENDATIONS

Effective interventions through prosecutorial and sentencing decisions play an important role in bringing about reduction of recidivism and ensuring public safety. The common denominator in the discussions of Working Group 1 was that alternative intervention models that go beyond the conventional criminal justice process of prosecution, sentencing and imprisonment, such as diversion mechanisms at both the prosecution and sentencing stage and drug court programmes or other schemes targeting specific categories of offenders, may well serve the objectives of preserving public safety and order and rehabilitating the offenders with a view to controlling recidivism. In that sense, authorities and agencies involved in this area should establish an effective collaboration network to avoid fragmented action and ensure that a holistic and integrated strategy to address the problems posed by recidivism is pursued and effectively implemented.

Upon completion of the deliberations reflected above, the participants came up with the following recommendations which intend to provide a set of key principles and factors for enhancing the effectiveness of interventions in reducing recidivism and promoting public safety at the prosecution and sentencing stage:

1. Where necessary, legislative reform should be pursued and carried out as a first element and component of strategies aiming at achieving better results with the treatment of offenders and the control of recidivism;
2. There should be various options such as suspended sentences and other non-custodial measures to be applied at the pre-trial and sentencing stage, and the rehabilitation of the offender should always be considered in conjunction with other objectives of sanctioning policies to ensure that the interests of both the offender and the community are well served;
3. A more integrated approach should be followed to enable better co-ordination among national and local agencies, as well as consistency of action and more effective case management in preventing and controlling reoffending;
4. The designation of focal points in each authority or agency involved in intervention models with offenders, as well as the establishment of a communication network between them and the enhancement of information-sharing mechanisms should be prioritized as a means of boosting co-ordination and facilitating concerted action among the various stakeholders;
5. An integrated information system of database on recidivism incidents and rates should be developed to carry out an in-depth evaluation and assessment of the extent and impact of the problem and formulate appropriate policies and guidelines based on comprehensive, timely and reliable data and information;
6. In order to ensure the operational success of intervention models with offenders, primary consideration should be given to establishing the appropriate infrastructure and making available the necessary resources for supporting such infrastructure;
7. In order to address the lack of institutional capacity and experience in tackling the problems posed by recidivism, high priority should be accorded to training programmes and activities, and the provision of technical assistance generally, aiming at enhancing the expertise and skills of law enforcement, prosecutorial and judicial authorities, as well as other staff involved in criminal justice affairs;
8. Effective mechanisms primarily aimed at monitoring and assessing the effectiveness of intervention should be developed;
9. Partnerships with non-governmental organizations and other elements of civil society should be built and further encouraged to allow for multi-stakeholder involvement in the implementation of intervention schemes;
10. In seeking alternative models of effective interventions with offenders and dealing with problems of recidivism, the role of the community should be examined and restorative justice approaches can be considered as a response to crime problems, especially with regard to less serious offences.

GROUP 2

PROMOTING PUBLIC SAFETY AND CONTROLLING RECIDIVISM USING EFFECTIVE INTERVENTIONS WITH OFFENDERS WHILST SERVING THEIR SENTENCES: AN EXAMINATION OF BEST PRACTICES

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<i>Co-Chairpersons</i>	Mr. Nor Afifi Bin Sulong	(Malaysia)
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I. INTRODUCTION

It is agreed that mechanisms to enhance the opportunities for offenders' rehabilitation and their re-entry into society are an essential part of any strategy to reduce recidivism. However, the issues are extremely complex. It is not safe to assume that the offender was well integrated in society prior to his or her imprisonment. Worldwide evidence is that many prisoners were not well integrated, and in fact in many countries, the 'average' prisoner does not have good life skills, educational or trade qualifications, work experience or stable housing.

According to Mr. Peter Wheelhouse, visiting expert from the United Kingdom, studies have revealed that 58% of offenders not being rehabilitated in prison are more likely to be convicted of another crime within two years.

The process of reintegration begins at the time when the needs of the offender are assessed at reception into Correctional Services. For an offender to be successfully reintegrated into the community, it is important to have strategies in play to address the needs and support required by the individual offender.

II. PROBLEMS AND CURRENT SITUATION

At this point of the Workshop, individual country representatives spoke about issues that inhibit effective rehabilitation in their respective jurisdictions.

A. Overcrowding

Overcrowding can severely inhibit the desired results when treating offenders for reintegration into communities.

In Jamaica and Honduras most of the prison facilities are very old. No new penitentiaries have been built and the prison population has increased over the years. They lack necessary infrastructural space for rehabilitation in keeping with twenty first century practices.

In the case of Malaysia, the increasing numbers of prisoners sentenced or awaiting trial for breaches of the Immigration and other Acts, and for which the Prison Department has been assigned responsibility for incarceration and detention since 2003, is a contributory factor to overcrowding in that country.

The total capacity of all prisons in Brazil is approximately 200,000, while the number of inmates is about 360,000. This denotes a great rate of overcrowding and the necessity for newly built prison facilities. Moreover, a significant proportion of prisoners are remand inmates in trial custody. The Government also emphasizes repressive efforts against crimes instead of rehabilitation programmes.

Although the Directorate General of Correction has established more new prison facilities, still it is not enough to accommodate the increasing number of prisoners. Indonesia is also facing the same problem as Malaysia and Brazil with the increasing number of prisoners on remand.

In contrast, it could be said that the current total number of prisoners in Thailand (154,486) does not present a problem of overcrowding. Furthermore, the overall extended capacity of all correctional facilities can accommodate 205,436 inmates.

Before 1995, Japan's prisons were not affected by overcrowding. However, since 1995 the prison population has been increasing continuously, due to recession in the economy and other factors. Even though the incarceration rate is still lower than other participating countries, one of the main causes for the increase of the prison population is severe sentencing based on public anxiety about crime. The public prefer offenders to be kept in prison. Serious crimes committed by probationers or parolees have also increased public anxiety. It is said that probation and parole supervision is not sufficient.

B. Budget

In most countries, budgets for corrections are a last priority. All participating countries except Japan are allocated a limited budget for strategic and operational functions. Corrections departments are not considered to be revenue generating. Public sentiment often impacts on these decisions as budget allocations come from tax earnings. When compared with other agencies in criminal justice systems, the correctional services tend to receive the lowest budget allocations.

A good example is the Japanese experience as shown in the following table:

Agency	Budget (US\$ million)	Staff
Police	28,038	288,451
Prosecution	800	11,532
Court	2,562	25,349
Correction	1,688	21,839
Rehabilitation	156	1,429

C. Human Resources

All the participating countries shared their common problems with human resources, especially professional staff, such as medical doctors, dentists, nurses, psychologists, social workers and vocational instructors, and also discussed insufficient basic and advanced training for correctional officers.

1. Japan

In Japan, to deal with about 60,000 probation and parole supervision cases a year, about 50,000 Volunteer Probation Officers and about 1,100 staff of Probation Offices operate the rehabilitation system in a framework of co-operation between Volunteers and Government Officers. However, in reality, there is a heavy dependence on the volunteers. Within this framework, problems, such as an inability to prevent recidivism, exist and have contributed to present concerns.

In 2006 a new prison act came into force, but the number of staff members in charge of rehabilitation is very low and a staff training system for implementation of the new programme is also not yet established. Therefore, for the moment, the targets and contents of the rehabilitation programmes will be limited.

2. Brazil

Each one of the States of the Federative Republic of Brazil is in charge of its own Corrections Institutions, which is regulated by a federal law. This situation proves difficult because each State pays different salaries for officers and has different levels of public investment, infrastructure, equipment and numbers of professionals. Low salaries for the officers result in a lack of staff for the treatment of offenders. Also, there is no systematic training. The penitentiaries' administrations are also facing problems with corruption; lack of equipment, technology and appropriate spaces for lawyers and visitors; and clinics to guarantee adequate support for the proper work of the human resources.

3. Malaysia

The ratio of staff to inmates in Malaysia is about 1:16. This situation leads to problems for the Corrections Department in carrying out necessary activities for the inmates, especially activities related to rehabilitation. Basic training for the supporting staff lasts for three months before they start working in the prison institution. The Department encourages all staff to continue their studies in many fields. Currently there are a number of senior staff with master's degrees and two staff are pursuing Ph.Ds. The Department is receiving good support from other agencies in giving training to the inmates.

4. Indonesia

Based on recaptulation data of correctional officers, it is known that the total number of correctional officers in Indonesia in 2002 was 22,895. Around 85.23% of them were at staff level, the majority having high school education. There is a shortage of professionals and experts to carry out treatment and rehabilitation programmes. In the last two years, the Directorate General of Correction tried to overcome the human resources problem by recruiting new employees and also developing and maintaining co-operation with several government institutions and non-government organizations.

5. Thailand

In Thailand, the number of correctional officers is about 12,000. The ratio of staff to inmates is about 1:13 whereas the international standard is 1:5.

D. Lack of Family and Community Support

Lack of family and community support is the most challenging reintegration problem shared by all participating countries. Positive family and community support is very important in terms of providing accommodation and emotional and financial assistance to released prisoners. Moreover, a strong and supportive family can psychologically influence released prisoners and hence are in a better position to assist them to be good citizens.

All participants agreed that the positive attitude and active involvement of the community are main factors in the successful reintegration of prisoners. However, the community's negative perception of ex-prisoners and inaccurate publicity in the media about ex-prisoners and correctional operations can result in poor community involvement in the reintegration process.

In Japan, some prisoners do not have family accommodation to stay at when they are released from prison. Half-way houses accept such kinds of offenders and provide them with accommodation and meals. One of the problems that the half-way houses are facing nowadays is the insufficiency of treatment. Many offenders who stay in half-way houses have problems such as alcohol dependence, drug addition, lack of interpersonal skills and so on. There is a risk of reoffending when offenders leave half-way houses without solving these problems.

In Indonesia, many prisoners, especially drug dependent and HIV/AIDS afflicted prisoners, are rarely visited by their family. Besides that, because Indonesia is an archipelago country, many prisoners, especially in big cities, are not placed in prisons close to their families.

E. Insufficient Education and Vocational Training for Offenders

Basic educational and vocational training programmes are provided for prisoners in every correctional service, aiming to render prisoners with essential knowledge and skills to earn a living after release. However, all participating countries agreed that prison overcrowding and inadequate budgets created difficulties in the implementation of education and vocational training for prisoners.

1. Jamaica

In Jamaica, it is mandatory under the Juvenile Act that every juvenile in a Correctional Institution must receive basic education before his release. Limited resources make it difficult to improve training, but the inmates have agricultural and computer training, etc. There is a National Training Agency with responsibility for accreditation of vocational training and skills. Inmates are sometimes accredited by that agency to enable them to be certified for jobs.

2. Malaysia

In Malaysia, prisoners are given opportunities to participate in educational and vocational training. The prisoners are given training in many fields, such as tailoring, carpentry, agricultural work, etc. When released, the prisoners are able to use the knowledge and skills received in prison.

3. Thailand

In Thailand, after the key purpose of punishment was shifted to rehabilitation and reduction of the number of prisoners, the Department of Corrections has been committed to the principle of through-care and has implemented various rehabilitation initiatives to generate safe and successful prisoners' re-entry into the community. However, there are still some problems in implementing educational and vocational training programmes in some correctional institutions.

4. Japan

Japan's Department of Corrections has a programme with the public employment security office. This involves corporative employees' recruitment due to the fact that ex-offenders cannot gain optimum employment immediately after release because they don't have the high skills that are necessary. Juvenile Training Schools have two goals of vocational training: to award vocational training certificates and to guide the juvenile in the right direction.

One weakness of the Japanese system is insufficient co-operation between the public employment security office and the probation office. It is necessary to establish strong links to help offenders in finding employment.

F. Insufficient Health Services

All the participating countries provide basic medical treatment in a specific area inside the prison. However, the health service staff, medical equipment and infrastructure need to be improved.

1. Brazil

Brazilian prisons seldom have sufficient health services to provide for the huge number of inmates. There is a lack of correctional hospital equipment, medicines, medical and dental staff inside the penitentiaries. However, in cases of grave illness or for further exams, prisoners are often taken to hospitals outside prison.

2. Indonesia

In Indonesia, most of the correctional institutions, especially in rural and remote areas, do not have appropriate health care facilities and medicine stocks. The room space and tools to deliver the services are very limited. Because of the limited budget for supplying medicine, most of the time correctional institutions apply one type of medicine for all kinds of health problems. The limited number of medical personnel is one of the factors leading to an insufficient health care service in correctional institutions, besides the lack of health care facilities and medicines.

3. Japan

In Japan, the situation is different, for example HIV/AIDS inmates are rare due to the low level of persons with this disease in the wider population.

Concerning parolees who are drug offenders, in April 2004 urinalysis of stimulant drug offenders was introduced. This method is as follows. In the first interview, the parolee receives an explanation of urinalysis. If the parolee consents to urinalysis a test date is fixed beforehand at regular intervals, such as

every two or three weeks. The parolee comes to the probation office at the fixed date to receive a urinalysis. The point of this method is its voluntary basis. Officers do not carry out the urinalysis except on the fixed date. Some might think it is nonsense, since it is natural for parolees not to use drugs before the set date. However, we consider this training for drug offenders to refrain from using stimulant drugs. This programme provides an opportunity for such offenders to stop drug use by obtaining a feeling of attainment and praise from officers when they receive a negative urinalysis result.

4. Malaysia

In Malaysia, the Prison Department has been trying its best to give good health services, according to the UN standards. Most of the prison institutions have health units to attend to any minor health problems. However, there is still need to increase the number of medical staff. For severe health problems inmates they are sent to local hospitals; as for the case of HIV/AIDS, there are quite a number of HIV positive inmates in the institutions. However, they are well taken care of even though the number is increasing gradually.

5. Honduras

In Honduras only two detention centres have a psychologist. There is no drug treatment programme.

6. Jamaica

In Jamaica efforts are being made to give the inmates comprehensive treatment but the employment of more professionals would be ideal.

7. Thailand

In Thailand, there is one medical correctional institution for a long term treatment of sick inmates. In addition to this, every prison has a small medical unit. However, the ratio of medical staff to inmates is still very wide.

III. TREATMENTS

A. **Effective Assessment to Select Appropriate Offenders for Appropriate Treatment¹**

Definition of treatment based on the United Nations Standard Minimum Rules for the Treatment of Prisoners, Part II, Section A (Prisoners Under Sentence) is that the treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.²

Upon consulting various pieces of literature, the group came up with the following definition of treatment: *intervention measures to change offenders' behaviour to lead law-abiding lives and to encourage their self-respect, develop their sense of responsibility and self-supporting lives after release.*

Identification of effective treatment models is important for three reasons:

Firstly, some kinds of treatment models (for example, open or half-open institutions) make people anxious. So it is necessary to show them the evidence and long-term benefits of effective treatment.

Secondly, to ensure an adequate budget for treatment, the evidence of effectiveness must be presented to the respective government agencies.

Thirdly, to keep improving treatment, and to know "what works". This can prove difficult if there is no control group. According to Dr. Brian A. Grant, Visiting Expert, the assessment of offenders upon entry in the institution is critical. So to begin with, we must start to develop measurement techniques.

¹ Content of this section relies heavily on Bonta, James, Offender Assessment: General Issues and Considerations. Correctional Service Canada – Research. <http://www.csc-scc.gc.ca>, <http://www.csc-scc.gc.ca>. 2000: 1.

² Compendium of UN Standards and Norms in Crime Prevention and Criminal Justice: 12.

These measurement techniques will help to determine what will work based on each offender's individual needs. This will ultimately guide research and testing of alternative approaches. It will also guide outcome prediction through identification of some dynamic factors such as antisocial personality, companions, criminogenic needs, interpersonal conflict, personal distress, social achievement and substance abuse. Ultimately this will provide some determinant factors such as who to treat, what to treat, how to treat, when to treat and where to treat.

One prerequisite of effective treatment is classification and assessment of offenders. An accurate assessment facilitates the fair, efficient and ethical classification of offenders. A failure to conduct a proper assessment can lead to serious consequences such as placing an inmate within an inadequate security setting with subsequent escape; the mistaken release on parole of an offender who was thought not to present a danger; or the failure of a parole officer to recognize a parolee's deteriorating situation. Therefore, in general, the assessment of offenders has centred on issues related to security and release. However, through recent developments in effective classification and assessment of offenders, correctional institutions can devise appropriate treatment for each offender. The classification and assessment of offenders for effective treatment must be based on risk, needs and responsivity factors of offenders as the general principles.

1. Risk Assessment

Risk assessment is one tool to predict an offender's future criminal behaviour (probability of reoffending). In order to improve the predictive accuracy of an offender's future criminal behaviour, multi-method measurement of theoretically relevant factors (e.g. sociological, psychopathological and general personality and social learning) is the first necessary step. The second step to improving predictive accuracy is to combine the individual factors to form more comprehensive offender assessment measures.

Risk assessment has implications for release and security decisions and also for treatment planning. By conducting this assessment, the correctional officer will be able to match the levels of treatment services to the risk level of the offender. The target of this assessment is the higher risk offenders, because reductions in recidivism are found when intensive levels of treatment are directed at higher risk offenders.

2. Needs Assessment

In order to deliver effective treatment it is important to identify the offender's needs because many factors identified as important are dynamic or changeable. For offender assessment, it is important to assess dynamic risk factors objectively and systematically. Dynamic risk factors are also referred to as criminogenic needs, which are those offender needs that, when changed, are associated with changes in recidivism.

This need principle of effective rehabilitation calls for the targeting of criminological needs in treatment programmes. From the assessment perspective, the measurement of criminological needs is highly important for directing treatment services and for the active supervision of offenders. Based on convincing evidence (Andrew & Bonta, 1998), it is said that interventions targeting criminogenic needs are associated with reductions in recidivism. By this assessment, correctional institutions can provide the most intense services to higher need offenders. Determination of risk levels of offender and appropriate sanctions and supervision are arranged in risk management. Based on risk management, the determination of risk level and criminogenic needs and the reduction of risk factors through effective treatment and appropriate supervision can be fulfilled.

3. Responsivity Factors Assessment

How people learn from life's experiences depends on their cognitive, personality and social-personal factors, which may not be offender risk factors or criminogenic needs. These responsivity factors influence the individual's responsiveness to efforts to help them change their attitudes, thoughts and behaviours. It has an important role to play in choosing a type and style of treatment programme, consistent with the ability and learning style of the offender, by identifying the offender's characteristics. Finally, we can easily recognize that offenders may be more responsive to certain staff members based on gender or ethnicity.

B. Best Practices Treatment Models

Some of the participant countries have adopted specific models of treatment of offenders which include

interesting concepts concerning rehabilitation, and which can be considered best practices in this field. Such models provided interesting insights that can be useful in developing a comprehensive model suitable for other countries.

1. Brazil

A programme, created by the Association for Protection and Assistance of Convicts – (APAC), associated with the Prison Fellowship International – PFI (an United Nations collaborative organization), is based on the concept of human valorization and consists of cost-effective non-governmental treatment of offenders.

This has been developed in Brazil from 1972, and has been able to reduce recidivism by measures such as:

- (i) health assistance, based on the fact that an offender mentally and physically ill is not capable to reach optimum rehabilitation;
- (ii) legal assistance, in order to guarantee a fair fulfilment of the penalty before Justice;
- (iii) motivational interviewing by means of valorizations classes to improve self-esteem;
- (iv) education, work, vocational and social skill training, improving pre-release measures;
- (v) community participation by means of volunteers, employers' partnership and social services;
- (vi) cognitive behavioural therapy, aiming to improve self-discipline, respect for other people and society, human appreciation, achievement of a sense of responsibility and disciplinary evaluation;
- (vii) enhancement of family relationships, rebuilding the good image of the family, emphasizing its importance, and engaging the family to support and take responsibility concerning the inmate's rehabilitation;
- (viii) religious assistance, in order to restore principles and moral values;
- (ix) the fulfilment of the sentenced sanction in small and proper facilities, near the inmate's family or original community.

The programme, based on the progressive system of sanction fulfilment stated by Brazilian law, is divided in to four stages, each one focused on the progressive re-entry of the offenders into society, applying the referred fundamental elements.

2. Jamaica

Jamaica has a national rehabilitation strategy and the core functions are carried out by the Rehabilitation Unit of the Department of Correctional Services. This approach is not simply to help clients but also facilitates public safety.

The Juvenile Act mandates that wards who are made subject to correctional orders must be assessed and placed at appropriate institutions. It is mandatory that they be exposed to an educational or vocational environment with optimal care and opportunities for behaviour modification.

C. Methadone Substitution (Maintenance) Treatment

In Indonesia the number of the HIV/AIDS infected population is increasing gradually. This is also happening in prisons and remand prisons. In fact, the World Health Organization stated that the rate of HIV infection among inmates in most countries in the world is higher compared to the general public. Based on WHO data and the infection rate of HIV in prisons and detention centres in some states, there are inmates who were infected by HIV before incarceration and there are also those infected while in custody as a result of unsafe needle syringes for drug injection, sharing needles or unsafe sexual activity.

Realising the importance of intervention in overcoming drug abuse and preventing the increase of HIV/AIDS prevalence in prisons, in 2002 the Ministry of Law and Human Rights, the Directorate General of Corrections, through the Directorate of Narcotics Treatment, decided to make a connection between the methadone pilot service which was underway in the Centre of Methadone Treatment (CMT) in Sanglah Hospital, Bali with Kerobokan Prison, Bali. Correctional institutions' medical officers (doctors) with supervision from Sanglah Hospital, conducted methadone therapy in prison. Based on the successful result of the Methadone Substitution Treatment in Bali, in 2005 and 2006 the Directorate General of Corrections expanded this programme to several prisons, such as Jakarta Narcotics Prison, Central Jakarta Remand Prison, East Jakarta Remand Prison, Bekasi Prison, and also Bandung Prison, West Java.

The principal object of Methadone Substitution Therapy is reducing the harm of drugs use individually and in the community, which is related to opiate injection inside prison. The special objectives of the Methadone Substitution Therapy in prisons are:

- Decreasing injecting heroin use in prisons;
- Decreasing the spread of infection, especially through blood, in prison;
- Decreasing the mortality rate among opiate user prisoners including released prisoners;
- Decreasing the crime rate related to opiate usage;
- Increasing the health and social skills of clients in the community reintegration process.

D. Vivat Polamuang Rajatan School Project, Thailand

The project is a four-month intensive military-style treatment programme specially provided to classified prisoners who have already served one third of their sentences in prisons. After finishing the programme, the prisoners receive special parole (two thirds of their sentences in case of normal parole). The curriculum has been run from the military's Vivat Polamuang School which provides an intensive treatment programme for drug addicts. Short-term vocational training, behavioural change and disciplinary training have been added into the programme in order to help them to resettle during their conditional release in the community. At the end of the programme, prisoners passing the evaluation receive special parole and return to the community as decent citizens. Since 2003, there were about 2,700 inmates graduating from the school.

This project aims to bridge the period of transition from prison to the community and allows well-behaved inmates who have high chance of reintegration to restart their new lives in the community, under some forms of supervision or monitoring, more quickly. Not only can conditions imposed with parole ensure public safety, it also helps ex-prisoners in maintaining acceptable behaviour until they successfully settle in the mainstream community.

E. Juvenile Training School (JTS), Japan

In Japan, juveniles accommodated in JTSs will return to society and will grow up in the community after release. In order to ensure their rehabilitation, JTSs need to promote co-operation with other agencies, including volunteer groups, and provide them with opportunities to participate in various activities within their own communities. Volunteers from the neighbouring community also support various activities at JTSs such as counselling and advice, lectures, seasonal events, games and sports, etc. Juveniles at JTSs are greatly encouraged through these interactions with volunteers in their rehabilitation into society. In order to promote our activities, JTSs regard guardians and parents of juveniles as partners in correctional education. JTSs need to help them trust in their various correctional activities and to feel that the institution is a secure place for juveniles. JTSs need to promote guardians' commitment to their educational activities. At JTSs, guardians and parents are invited to the institution and meetings are held with juveniles and instructors to discuss family environment, juveniles' future plans after release, and so on.

F. Community Based Treatment

1. Classification System

This system divides probationers and parolees into two groups in accordance with the difficulty of treatment. Probationers or parolees who were found to be difficult to treat receive intensive supervision and special attention by both professional and volunteer probation officers.

2. Categorized Treatment

There are a variety of types of offenders and juvenile delinquents. The type of treatment given depends on the type of probationer or parolee, in order to be effective in supervision. There are 13 categories, as follows: paint thinner abusers, stimulant drug abusers, alcoholics, organized crime offenders, 'joy' riders (motorcycle gangs), sex offenders, people with mental disorders, junior high school students, those who commit school violence, aged people (65 and over), unemployed people, those who are violent towards family members, and gambling addicts. Methods of assessing cases, problems of supervision, treatment plans, and specific methods of treatment for each type are made and manuals published. Both professional and volunteer probation officers should use the manuals and implement effective treatment.

G. Human Development Plan, Malaysia

The Malaysian Prisons Department has practiced the Human Development Plan as its sole rehabilitative programme for all convicted prisoners. It is an integrated programme based on both spiritual and physical aspects, balancing the elements of attitude (A), skills (S), and knowledge (K).

The rehabilitation plan is developed based on an integrated rehabilitation concept between physical and spiritual aspects through four main phases. They are:

- i) Phase 1: Discipline Development (three months)
- ii) Phase 2: Personality Enhancement Programme (6-12 months)
- iii) Phase 3: Skill/Trade Development
- iv) Phase 4: Pre-Release Programme (six months).

The main aim of this plan is to produce inmates who are rehabilitated with strong determination and who possess skill either in the aspect of vocational training or excellence in sports.

IV. CO-ORDINATION AMONG AGENCIES

A. Agencies that Provide Treatment

Most prisoners will, at a future date, return to the community. Generally, a successful reintegration process is one which provides a gradual, structured, supervised release which considers public safety and which involves public sector agencies and/or all community organizations as partners. In terms of public sector agencies, reintegration is likely to involve a range of government services that go beyond the boundaries of prisons and corrections. Most countries rely heavily upon the goodwill of community organizations (NGOs) to assist in the rehabilitation and reintegration of offenders. Generally, depending of the type of public sector agency and community organization, the service and support they offer may extend from the time in custody through to post-release.

In order to deliver the treatment programme a number of considerations must take place at the organizational level and should include the following:

Types of offenders, such as:

1. Drug offenders
2. Sex offenders
3. First time offenders
4. Organized crime offenders
5. Drunken drivers

Prison authorities cannot manage an effective treatment programme without any collaboration from other agencies. Due to budgetary constraints, human resources etc., this can be an opportunity to foster community participation. Some critical agencies are:

1. Department of Public Health and related health services
2. Drug Rehabilitation Centres
3. Police Department
4. Parole Board
5. Department of Probation
6. Half-way Houses
7. Religious Organizations
8. Traffic Department
9. Educational Organizations
10. Employment Agencies
11. Local and International NGOs.

B. Problems and Challenges of Collaboration among Related Agencies

The collaboration of the above relevant agencies is essential to ensure the continuity of service, which is key to boosting offenders' chances of resettlement. Also, co-operation of every sector of the community is vital since offender reintegration demands a great deal of resources and is a complex task that is unlikely to be accomplished by a single agency. However, if this integration process is not managed properly it can be

tedious and result in ineffectiveness of the programme. Some of the problems that commonly arise include the following:

1. Competition among agencies – e.g.: display of superiority complex
2. Information not shared
3. Lack of political support – e.g.: no close support and oversight from central government necessary
4. Bureaucracy and splinter government agencies
5. Lack of integrated teams
6. Staff lack of knowledge and motivation
7. Staff not involved in planning process
8. Infrequent report back/debriefing sessions
9. No central database.

Mr. Peter Wheelhouse (Visiting Expert) mentioned that the success of the United Kingdom's Drugs Intervention Programme depended heavily on partnerships at the local level which worked through integrated teams created to work together and deliver case management of offenders.

In Jamaica the police and correctional services formed a partnership to carry out rehabilitation through a music project which has been very successful so far.

V. MONITORING AND EVALUATION OF TREATMENT

The ultimate goal of corrections is offenders' successful reintegration into community. It is important to have the tools to measure success in prisoner treatment programmes and to conduct appropriate monitoring and evaluations. In principle, evaluation of effective programmes can be achieved as follows:³

- (i) Quality assurance processes:
 - Internal processes to ensure that assessments, services and interventions provided by the programme are delivered as designed;
 - External processes to ensure services and interventions provided by outside providers are delivered as designed.

This step can include case-file audits, videotaping groups, client satisfaction surveys or exit interviews, clinical supervision, programme audits, site visits and observation and certification processes.

- (ii) Assessing progress of offenders in acquiring pro-social behaviour:
 - Assessing dynamic risk factors and then reassessing;
 - Developing a treatment and supervision plan based on assessment, then closely monitoring attainment of goals;
 - Measuring behavioural indicators linked to recidivism and risk;
 - Pre/Post testing on attitudes, knowledge and behaviour.
- (iii) Outcome Studies which should include:
 - Tracking of recidivism using as many measures as possible (e.g. re-arrest, reconviction, incarceration);
 - A comparison group;
 - A report or published results to be compiled periodically (e.g. every five years).

VI. RECOMMENDATIONS AND CONCLUSION

A. Recommendations

The group members, after taking into consideration the diverse social, economic, cultural, legal and geographical features existing in their respective countries, discussed the possible recommendations to challenges concerning effective treatment programmes that can be adapted by individual countries in reducing recidivism and promoting public safety whilst the offender is serving his sentence. These are as follows:

1. The implementation of comprehensive assessment methods, to improve management of prison systems. This should include measures such as:

³ Compendium of UN Standards and Norms in Crime Prevention and Criminal Justice: 10.

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- Establishment of a database;
 - Provision of centres for research;
 - Ensuring classification of offenders is in keeping with the United Nations Standards Minimum Rules (UNSMR) for the Treatment of Prisoners.
2. Identification of the most important treatment target:
 - Ensuring that the highest risk offenders are given priority treatment;
 - Making optimal use of the budget;
 - Maximizing human resources;
 - Enhancing community participation.
 3. Identification of the most effective treatment methods by providing comprehensive treatment, to include:
 - Motivational interviewing;
 - Cognitive behavioural therapy;
 - Education, work and social skills training;
 - Enhancing family and community participation;
 - Health, legal and religious assistance.
 4. Revision and concentration of resources on target groups:
 - Preparation of an annual plan and budget;
 - Review assessment and classification of offenders.
 5. Development and expansion of collaboration with other agencies:
 - Formation of teams to reflect diversification of professional staff roles, Government and community support;
 - Dissemination of information through development of public relations plans;
 - Establishment of Memorandum of Understanding with all stakeholders.
 6. Increase public awareness of the importance of family and community in the reintegration process of ex-prisoners:
 - Encouraging development of family relationships during an offender's incarceration;
 - Implementing strategies to keep families informed of the progress of prisoners;
 - Strengthening networks with potential employers and keeping them updated on prisoners' competences;
 - Collaborating and maintaining relations with welfare agencies.

B. Conclusion

Over the past decade, key challenges in the reintegration of offenders have emerged due to increasing and ageing populations, economic and unemployment issues, homelessness, mental health issues, public health issues, environmental problems and the limited acceptance of offenders returning to the community. In order to solve these problems four basic principles have to be taken into account in developing assessment and treatment services to meet the criminogenic needs of offenders and their cultural diversities. These are the risk, need, responsivity, and professional discretion assessments.⁴ Some jurisdictions have in place intervention strategies and programmes to address the needs of offenders, including substance abuse, sexual offending, violent offending, education, and life skills for community reintegration.

⁴ Dr. Brian A. Grant, Ph.D, "Reducing Recidivism by Applying the Principles of Risk, Need, and Responsivity", contained in this volume of the Resource Material Series.

GROUP 3

THE USE OF EFFECTIVE INTERVENTION IN REDUCING RECIDIVISM AND PROMOTING PUBLIC SAFETY AFTER THE OFFENDER HAS SERVED HIS OR HER SENTENCE

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I. INTRODUCTION

The alarming rise in crime rates all over the world has forced the international community to explore new avenues to save the public at large from criminals. In the pursuit of public safety, different effective measures and models for the rehabilitation of offenders and their reintegration into society after their release are being vigorously examined.

Reintegration demands that the scope of the legal system be enlarged so that the future life of the offender in the community is considered in sentencing and during the correctional phase. By now it should be clear that the reintegration concept not only serves the social interest by preventing recidivism, but also the personal life of the offender who benefits from the opportunities of a crime free life. Reintegration should introduce the broader social issues into the criminal justice system, creating an area of convergence with the social welfare, public health and educational systems.

The group is comprised of two judges of District Courts, an Additional Secretary from the Public Prosecution Department, a public prosecutor, an immigration officer, police officer, and two prison officers. The group is grateful to the visiting experts and professors of UNAFEI especially Professors Shinkai and Sugiyama who not only advised us during the discussion but also guided us to prepare this paper. The group was assigned to study the topic and present a detailed report keeping in mind the following tentative points:

- Problems and challenges facing current legal systems;
- Identification of effective policies and models that reduce recidivism and promote public safety;
- Continuation of treatment programmes offered while the offender served his or her sentence and provision of new programmes;
- The supervision of known offenders in the community;
- Appropriate co-ordination among related agencies and the use of community resources;
- Monitoring and evaluation of the selected interventions;
- The adoptability of such models in the respective countries.

II. PROBLEMS AND CHALLENGES IN CRIMINAL JUSTICE SYSTEMS

The criminal justice system is comprised of police, prosecution, courts and corrections (prison, probation and parole) and is facing a number of challenges and problems, in particular in the implementation of correctional programmes.

- Corruption, being an international problem, is prevailing in all countries. However, some countries, by enacting special laws and developing strong systems of checks and balances between the exercise of powers, authority and accountability, have been able to control corruption. The relationship of corruption to recidivism is relevant to the extent of implementation of policies to control recidivism. Lack of devotion to implementing policies can be regarded as corruption. Corruption is also one of the major problems not only in criminal justice systems but also in other departments.
- The courts are overburdened because of understaffing, the delaying tactics of defence lawyers and inefficient, insufficient and non-specialized prosecutors. Judges have no proper sitting arrangements and are sometimes even without adequate staff.
- There is massive overcrowding in jails and a preponderance of inmates under trial due to delays in completing investigations, restrictive application of bail laws, and frequent adjournment of hearings. Delay in submission of indictment results from inefficiency, non-availability of modern techniques of investigation, and lack of integrity on the part of police in the investigation.
- The police-public ratio is extremely low which results in the inefficiency of the existing police personnel. Frequently, they are to exercise their duties round the clock.
- The group observed the extent to which the participating countries exercise correctional programmes; however, they were not considered adequate. In particular, programmes for offenders who have satisfied their legal obligations are non-existent.
- Existing classification of offenders and rehabilitation or correctional programmes may not necessarily be based on established principles of risk, needs and responsivity.

III. EXISTING CORRECTIVE MEASURES

The group was of the view that rehabilitative programmes for released ex-offenders should begin on the very first day of custodial and non-custodial sentences. The programme cannot meet success unless the foundation is laid at the start on the basis of assessment of risk/need factors by a team of professionals. The offender should be classified in one or two particular groups as per requirement and be admitted to a particular programme. Reassessment should occur before release, keeping in mind the response shown by the offender to the programme. It was necessary to first analyse the existing system of classification of prisoners on the basis of risk/need factors, responsivity at the end of the sentence, and the presently available rehabilitation programme. There was also consensus on the proposal made by Mr. Mbongo that the offender should not be exposed to society directly. There should be a system of rehabilitation where he or she can be sent out for three months before release. The group found that the system of parole in some countries, and half-way houses in Japan and in some other countries, caters for this purpose before release in addition to providing residence and meeting other needs. We then discussed generally the present classification systems, rehabilitation programmes offered to offenders, parole systems and systems of half-way houses in some of the participating countries. The issue of rehabilitation programmes for inmates and released offenders was discussed thoroughly, keeping in mind the knowledge gained through visiting Kawagoe Juvenile Prison, Sapporo Prison, and a half-way house in Sapporo; and a presentation on the Hong Kong system of corrections. It was agreed that rehabilitation programmes should be based on these patterns.

A. Classification Systems

In almost all the countries in Group 3 there is a classification system for categorizing prisoners. In some countries, it is based on categories of crimes or the treatment programmes to be offered to the offender, i.e. violent offenders, sex offenders, drug addicts, etc. and in some countries the offenders are classified on the basis of the length of sentence, age, gender and work to be assigned in the prisons. Some of the countries classify the prisoners in the categories of organized crime, major crime, middle crime or minor crime. The group considered the classification systems of many countries and agreed that prisoners should be classified on the basis of risk, need and responsivity factors.

B. Rehabilitation Programmes

Presently, different countries are running different rehabilitation programmes according to their system of classification and their social environment. On the basis of classification, the inmates are provided the following rehabilitation programme:

- (i) General academic education; and
- (ii) Skill development education such as carpentry, bakery, dressmaking, cosmetology, etc.

Some of the countries, in addition to providing formal and market based vocational education, also introduced the following rehabilitation programmes:

- (i) Psychological treatment like anger management control
- (ii) Anxiety intervention treatment
- (iii) Creative thinking and resolution of problems
- (iv) Emotional control treatment
- (v) Sex offender treatment
- (vi) Drug addiction treatment.

Several kinds of sport and recreation are offered to prisoners to keep them mentally and physically fit. Many countries, like Pakistan and Thailand, provide religious education to the inmates.

C. System of Parole

In Japan, Pakistan, Korea, and Thailand etc., prisoners are released after serving one third of sentences in prison, on the basis of good conduct. During the parole release period the offender is supervised and kept under observation by probation or parole officers. During parole release, he or she enjoys full or limited liberty according to the law of his or her country. In case they misuse their release, they are punished with revocation of license and return to prison to undergo the remaining period of their sentence of imprisonment.

D. Half-Way Houses

Half-way houses can be defined as community-based centres where offenders can obtain basic necessities like food, clothing and shelter. They generally cater for probationers, parolees and fully released prisoners.

Half-way houses are generally run by private associations (such as the Juridical Persons for Offenders' Rehabilitation Services). Half-way houses offer vocational guidance to discharged prisoners and help them to find suitable employment. The half-way houses provide accommodation, money and food as well as training and job referrals for the discharged prisoners. Most residents work outside the half-way house on a daily basis. Employment offers them financial independence and builds in them good work ethics. The Japanese and Korean systems have a nationwide special type of supervision and aftercare for discharged prisoners. Thailand has only one half-way house which provides assistance including the offering of accommodation, meals, job placement and counselling services.

IV. POST RELEASE REHABILITATION PROGRAMMES

A. Legal Framework

At the very outset of the discussion, consensus was reached that fully released offenders must be rehabilitated to help their reintegration into society and that the assessment of offenders on the basis of need/risk factors should be made before their release. If required they should be sent to rehabilitation centres for further treatment. In many countries, it was found that different post-release rehabilitative programmes, especially for drug offenders, are being implemented successfully, but it was noted that most of the offenders after their release do not come forward or volunteer themselves for rehabilitative programmes. Many group members proposed that treatment should be compulsory for those who are assessed as requiring it. At this stage, lengthy discussion started on the point that after full release of the offender, compulsory rehabilitation programmes violate constitutional protection against double jeopardy in most countries and violate human rights.

Ms. Valdivieso, participant from El Salvador, vehemently opposed making rehabilitation programmes compulsory for fully released ex-offenders on the aforementioned grounds. On the contrary, Mr. Jaffery proposed that, for recidivists, it can be made compulsory, whereas for first time and juvenile offenders this can be voluntary. For achieving the objective of public safety, such provision can be enumerated in law. Ms Valdivieso was of the view that in her country, the matters pertaining to offences and punishment are constitutionally governed, therefore such a law cannot be promulgated in contravention of the constitutional provisions.

The group was about to reach to a conclusion that in this context, practices of the United Kingdom regarding compulsory drug treatment, and Hong Kong for all types of offenders, can be adopted as role

model by every country according to its circumstances.

However, there was strong dissenting opinion that such a model may not be applicable to some countries' legal contexts. The group then discussed how we can motivate ex-offenders into programmes when there are no legal provisions. In this controversy, Mr. Mbongo floated the idea of awarding of certificates after undergoing a rehabilitation programme making the involvement of the offender in the programme indirectly compulsory and to make it helpful in seeking employment. He stressed his idea on two points: firstly, it will serve as good behaviour certificate; secondly, it will motivate the offender to undergo the rehabilitation programme in order to be accepted by society. Such certificates may be important for society: offenders who have undergone rehabilitation have a good conduct certificate with which to find a job. However the idea was not supported by the majority of members on the grounds that it may have a reverse effect on the ex-offender due to the unco-operative attitude of society in their respective countries.

The group was advised by Dr. Marshall that in order to attract offenders to undergo the aftercare programme motivation factors should be addressed carefully. Motivation can be formed externally or internally. In some cultural contexts, motivation could be given in a form of incentive; e.g. provision of vocational training, employment or the issuing of good behaviour certificates. Offenders may even be coerced into treatment by making an appropriate legal framework. However, motivation can also be formed internally by offenders in order to lead a better life by receiving treatment.

B. Continuation of Rehabilitation Programmes

The group pondered the continuation of rehabilitation programmes after full release of the ex-offender and also discussed various modes for rehabilitation and reintegration into society. The group considered existing programmes in the participating countries. However, we did not find applicable ones except for a very modest example in El Salvador. In El Salvador, the provision of assistance to ex-offenders has been assigned to the Prison Department. After release of the offender, the prison officers make occasional calls to the ex-offender and ask about his or her activities. Consequently, the group agreed that the main stress was on the fact that continuation of rehabilitation programmes should not be for all ex-offenders but before release a team of professionals should reassess the inmate on the basis of conduct during the sentence (prison, probation and parole) on the basis of need, risk and responsivity. Thereafter, the period, degree and kind of treatment to be continued should be decided.

The group also considered how to decide continuation of rehabilitation programmes, and who would make such decisions. Two proposals were put forward by Mr. Jaffery. First, the already existing departments of prisons and parole boards may be assigned to assess and supervise the programme in consultation with each other. Second, new departments may be established to carry out the aforementioned functions. After deliberations the first option was accepted. During the discussions, the Hong Kong system of Corrections¹ was also examined and was found more suitable. The salient features of the Rehabilitation Service of Hong Kong are that:

- The service has been divided into Assessment Services, Programme Services, Psychological Services, Education Services, Vocational Training Services and Supervision Services;
- Each service provides a complete programme for offenders preparing him or her during the sentence period to become a useful and law abiding citizen according to assessments made by the Assessment Service;
- The supervision staff provide support to offenders and their families and advises the offenders during and after release.

C. Problems and Needs of Offenders

When a prisoner is released from prison or released on parole or has his or her sentence suspended, he or she generally faces many problems or has different needs, requiring help. There is now considerable evidence of the factors that influence reoffending. Building on criminological and social research, the Social Exclusion Unit (SEU) of the United Kingdom, for example, has identified nine key factors:²

¹ Kwok Leung-ming, "Mobilization of Community Resources and Successful Reintegration of Offenders", contained in this volume of the Resource Material Series.

² Peter Wheelhouse, "Interventions with Drug Misusing Offenders and Prolific and other Priority Offenders", contained in this volume of the Resource Material Series.

- education
- employment
- drug and alcohol misuse
- mental and physical health
- attitudes and self-control
- institutionalization and life-skills
- housing
- financial support and debt
- family networks.

The group was also informed of the fact that the Canadian model of correctional treatment is based on the principles of risk, needs and responsivity. Prof. Don Andrews from Carleton University in Canada,³ in his writing, has given four basic principles: risk, needs, responsivity and professional discretion, to be taken into account while making assessment and recommending treatment to an offender. He presented two types of risk factors: static factors and dynamic factors. Assessment of risks can be made using two types of information: static and dynamic. Static information is information that cannot change. For example, age and gender are clearly static factors. History of previous offences and type of crimes committed are also static factors. It is not possible to change these factors through treatment. Dynamic risk factors are important because these are the factors that are changeable. Risk factors are changeable, therefore they can be reduced through treatment, and it is possible to measure changes that indicate a decreased risk of re-offending. For example, treating substance abuse problems can reduce the risk of drug use that is likely to result in a return to prison, and educational and employment programmes can increase skills and work opportunities, thereby supporting employment after release. The offenders with the highest risk require the most intensive treatment services

The need principle states that in a correctional system only criminogenic needs should be addressed. The reason for this is that if one is trying to change criminal behaviour, it is only those factors that are associated with criminal activity that should be addressed. Other factors may seem likely to be targets for treatment, but they will not result in reduced crime by the offender. The principle of professional discretion recognizes that assessment instruments cannot be designed to address every case. There are, at times, unique characteristics of an individual or situation that must be taken into account when making decisions about treatment. This means that there will be situations when the assessment tools might indicate an offender has a low risk of reoffending, but special circumstances, such as behaviour since arrest, may indicate that there is a high risk or probability of reoffending. The professional classification officer should use this information when making decisions. Thus, addressing the criminogenic needs of the highest risk offenders contributes to public safety by reducing the likelihood of new offences after release from prison.

The group debated each of the factors given above and came to the conclusion that rehabilitation programmes are being provided to inmates during the period of sentence. The group has already resolved that post-release rehabilitation programmes for all of the above need factors should be continued after full release, except the provision of housing facilities and financial support due to the resource constraints of most countries. However, the ex-offender can be helped in seeking a job. The idea of half-way houses has also been supported as they also provide housing to fully released offenders. Instead of providing housing, ex-offenders can be accommodated in half-way houses as their capacity is increased.

V. UNHELPFUL SOCIETAL ATTITUDE

Society has inherent hatred for offenders and the public at large thinks that criminals should be punished severely for the crimes they commit. However, in order to grasp 'true' public opinion, we may need to create more reliable and valid social surveys. In any case, the idea of rehabilitation is new for the general public of the participating countries; therefore, as a general rule of resistance against change, the public shows its discontent with such idea. Research shows that rehabilitative treatment has produced better results compared to strict incarceration. The group discussed how the community can be motivated and involved in the genuinely required process of rehabilitation and reintegration of ex-offenders, as without the support of

³ Quoted in Brian A. Grant, "Reducing Recidivism by Applying the Principles of Risk, Need and Responsivity", contained in this volume of the Resource Material Series.

society, the desired objective of public safety can hardly be achieved. The group discussed the Hong Kong model in detail and concluded that by motivating and involving society through different effective steps society's attitude can be changed to a great extent, if not totally.

The print and electronic media can be very helpful in creating awareness and modifying the attitude of society to the reintegration of ex-offenders. Therefore, it was stressed that a media strategy should be developed by the corrections system in collaboration with the information ministries of respective countries to educate the public on the realities of the ex-offender population. The information ministries can launch programmes showing documentary films, interviews of film stars and renowned sportspersons on television through the co-operation of big industries and other business communities. The purpose can be further achieved by arranging seminars and workshops and walks or rallies involving non-governmental institutions, notables from all walks of life, and students.

The group was unanimous on the point that religious institutions can play an important role creating awareness in society for accepting and rehabilitating the ex-offenders as all religions preach that one should hate the sin and not the sinner.

Informal institutions like the Cooperative Employers of Japan, Volunteer Probation Officers, Juridical Persons for Offenders' Rehabilitation Services and Women's Association for Rehabilitation Aid can play an important role in mobilizing and motivating the community. These organizations can make efforts for employment of released offenders in the construction, manufacturing, service, wholesale and retail sectors.

VI. SUPERVISION OF KNOWN EX-OFFENDERS

A. Legal Dispositions

On this issue, the group again entered into a very heated debate that after full release of the offender, supervision is not possible on the following grounds:

- (i) Most of the Constitutions of the participating countries provide protection against double jeopardy; and
- (ii) Supervision after release interferes with the liberty of the person and will amount to violation of the human rights of the ex-offender.

Ms. Valdivieso, participant from El Salvador, vehemently opposed the supervision of known offenders on the aforementioned grounds. On the contrary, Mr. Young-hoon Ha and Mr. Jaffery were of the view that laws can be amended as laws are made for the people and for the sake of the safety of the people at large laws can be modified. The group predominantly concluded that for the greater interest of society laws may be made, where deemed necessary, and protection of society can not be sacrificed for the sake of the human rights of habitual and known ex-offenders. Mr. Peter Wheelhouse, Visiting Expert from United Kingdom, also endorsed the proposition. So it was decided to examine the systems of different countries which have already evolved some system of supervision of known ex-offenders which may be adopted by other countries with due modifications according to their needs.

B. Supervision by Police and Other Related Agencies

During the discussion it was apprised that police functionalities of almost all the countries keep track of the activities of known and habitual ex-offenders but it is not conducted in a systematic manner except in Japan and the United Kingdom.⁴

For instance, Japan⁵ has no comprehensive supervision system for prisoners who are released after completion of their sentence in prison, under parole or probation. The police have recently created a watching system for known sex offenders. According to the system, the Ministry of Justice is informed of the release of the sex offender by the prison authorities at least 28 days before release. Upon receiving such information, the Ministry forwards the information to the National Police Agency which alerts the police of

⁴ Peter Wheelhouse, "Interventions with Drug Misusing Offenders and Prolific and other Priority Offenders", contained in this volume of the Resource Material Series.

⁵ Based on the briefing given in the National Police Agency, Japan on 1 February 2007.

the area where the offender resides. The concerned local police keep the offender under observation indirectly. Till now, 237 sex offenders have been kept under observation. Sixteen have reoffended, including sex crime. Although this indirect watching system is being criticized to some extent it has met success. This may be because the offender knows that the police are keeping track of his or her activities. This system is good, but watching is confined to known sex offenders.

In the United Kingdom, the Prolific and other Priority Offenders (PPO) Programme started in 2004 and it specifically targets the small number of the most active and/or problematic offenders. It was designed to give offenders a choice between the cessation of offending with the acceptance of support in the form of rehabilitative programmes or to carry on offending, resulting in prompt arrest and punishment. The PPO programme is comprised of following:

- Prevent and Deter
- Catch and Convict
- Rehabilitate and Resettle.

The essential feature of the PPO programme is that it has been designed to tailor responses to local problems and avoid a prescriptive approach regarding implementation. In doing so, the PPO programme embraces the use of local knowledge, practitioner expertise, and previous experience of similar schemes. The individual stakeholders, practitioners, and specific agencies are responsible for all the decision-making aspects of the programme throughout, from how to choose the prolific offenders through to which interventions they may receive and how often they may receive them. These factors were all designed with a specific intention: to reduce the crime levels of the offenders on the PPO programme.

C. Vigilance Committees in Cities, Towns and Villages

While discussing the watching system conducted by the police and other agencies, it was realized that police alone, unless the community gives full support, are unable to handle the gigantic task of supervision of known ex-offenders because supervision is confined only to watching and to making the offender aware that he or she is under observation. The police cannot watch the offender every moment and also cannot interfere with his or her private life. Mr. Young-Hoon Ha informed the group that in Korea, the government notifies the public bi-annually of the list of known sex offenders and the public can check whether or not a sex offender is residing near their home. This helps the public to remain cautious. The role of non-institutional organizations and volunteers was also discussed. Such groups can extend full co-operation and support to the police in observing the known ex-offenders. Many proposals were considered and agreement was reached that in each city, town and village there should be a vigilance committee comprising of notables of the respected area from all walks of life including lawyers, doctors, educators, students, and representatives of the local police. In some societies, such vigilance committees could be made responsible for observing the activities of known ex-offenders. In other situations such committees' responsibility may be limited to general crime prevention. However, all members agreed that it should be used to create awareness in the concerned community of adopting safety measures.

VII. RECOMMENDATIONS

The group considered the topic for discussion in detail, keeping in mind that rehabilitation of the offender during the period of sentence and after sentence is key to public safety. Reduction in the rate of recidivism is possible only through rehabilitation of offenders; custodial or non-custodial sentences without rehabilitative programmes are useless. The issues of detrimental societal attitudes and supervision of known habitual offenders were discussed in detail and the following recommendations were made:

1. Necessity of an Aftercare Programme

- The group agrees on the general need for an aftercare programme when an offender completes his or her sentence. It is advisable that the programmes are designed to make the offenders useful and law abiding citizens who can rehabilitate and reintegrate and have an objective to reduce recidivism.
- Such programmes should be based upon standard assessment of the offenders upon their entry into prison. The programme should be based upon the risk, need and responsivities of each offender. The specific programmes could address a wide variety of their criminogenic needs such as: sex offender therapy, drug addiction treatment and treatment for their criminal style of thinking (cognitive distortion) so that the chance of reoffending can be reduced.

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- Priority would have to be placed on programmes for high risk and high need offenders in order to reduce the chances of reoffending and to effectively utilize limited resources.
- (i) *Gradual Reintegration*
 - Upon release, high risk offenders should not be exposed to society directly. There should be a system of rehabilitation where the information of the offender may be sent out for short periods prior to release, depending upon his or her risk.
 - As a practical system, where applicable, there should be half-way houses and parole systems, not only to provide board and lodging, but to offer mental care, living skills guidance and job placement services.
- (ii) *Good Staff: Recruitment, Training, Integrity and Motivation*
 - Aftercare programmes should be of employ specialized staff such as psychologists, social workers and psychiatrists. Staff should high integrity in the execution of their work.
 - To raise the level of efficiency, the conditions of service of personnel involved in the programme may have to be improved to motivate them and also to attract highly qualified staff.
 - Staff should be exposed to new techniques in carrying out their tasks. The staff should have access to institutions where they can acquire more knowledge and higher qualifications.
 - The current strength of correction officers should be enhanced to reduce the burden on the existing officers.
- (iii) *Volunteers*
 - Efforts have to be made to seek the involvement of volunteers with relevant competence to implement specialized programmes at minimum cost. The Japanese Volunteer Probation system could be a good model.

2. Post Release Rehabilitation Programme

- For successful results of post-release rehabilitative programmes, offenders should be given treatment from the very first day of custodial and non-custodial sentences.
- The standard classification/assessment system needs to be introduced to the custodial and non-custodial punishment system and used upon an offender's entry into the system. Assessment should consider the motives and circumstances of the crime and the degree of the criminal behaviour i.e. assessment on the basis of need/ risk.
- (i) *Information Flow*
 - Management information systems may have to be improved to keep and maintain up-to-date records of offenders. As far as practicable, computers should be utilized.
 - In order to judge the success of the programme, assessments may be made regularly, duly recognizing the risk of the offender.
- (ii) *Motivation of Offenders After Release*
 - In order to attract offenders to the aftercare programme, motivating factors should be addressed carefully. Motivation can be formed externally or internally. In some cultural contexts, motivation could take the form of incentive; e.g. provision of vocational training, employment or the awarding of a good behaviour certificate. Offenders may even be coerced into treatment by making an appropriate legal framework. However, motivation can be formed internally by offenders in order to lead a better life by receiving treatment.

3. Co-ordination among Related Organizations

- Efforts to co-ordinate the work of not only related agencies such as prisons departments, parole and probation departments, and police departments, but also private institutions like NGOs, religious institutions, and charitable institutions should be made to enhance the capabilities of these organizations.
- The personnel in governmental organizations engaged in the delivery of programmes may exchange information with each other freely to enhance better understanding of the offenders.

4. Community Involvement (Public Awareness)

- Societal attitude may be changed by conducting seminars or workshops, media campaigns, walks or

rallies, with the co-operation of non-governmental institutions, notables from all walks of life, students, and religious institutions to create or develop awareness of rehabilitation and reintegration of offenders and to reduce stigmatization of offenders by society.

- Informal organizations performing rehabilitative activities for reintegration of ex-offenders should be encouraged by the government.

5. Sustainability of Programmes (Political Support)

- In designing programmes, factors such as consistency, adaptability, feasibility, suitability and affordability ought to be given prime attention. Gaining political support by presenting the effectiveness of such programmes is of vital importance.

6. Supervision of Known Ex-Offenders

(i) *Supervision by Police and Other Related Agencies*

- In order to protect the public, there would be a need to keep eye on high-risk known offenders. Information on such offenders should be given to the police from correctional institutions upon their release. Examples from Japan and the UK can be used as a model.

(ii) *Vigilance Committees*

- Where applicable, a vigilance committee comprising notables of the respected area from all walks of life including lawyers, doctors, educators, students and representatives of local police, may take responsibility for the supervision of known offenders.

APPENDIX

COMMEMORATIVE PHOTOGRAPH

- ***135th International Senior Seminar***
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UNAFEI

The 135th International Senior Seminar



Left to Right:

Above:

Dr. Lappi-Seppälä, (Finland), Dr. Tak (Netherlands), Dr. Marshall (Canada), Prof. Noguchi

4th Row:

Mr. Yamagami (Staff), Ms. Izui (Staff), Mr. Matsui (Driver), Mr. Saito (Chef), Mr. Iwakami (Staff), Mr. Tanuma (Staff), Ms. Tanaka (Staff), Ms. Hosoe (Staff), Ms. Matsuoka (Staff), Mr. Mori (JICA), Ms. Matsuura (Staff), Mr. Inoue (Staff)

3rd Row:

Ms. Shibuki (Staff), Ms. Tomita (Staff), Mr. Abdul Baaree (Maldives), Mr. Getachew (Ethiopia), Mr. Lam (Hong Kong), Mr. Oguri (Japan), Mr. Ogushi (Japan), Mr. Afifi (Malaysia), Mr. Leiva Gamonedra (Honduras), Mr. Raja Shahrom (Malaysia), Mr. Daniel Jovez (Venezuela), Mr. Ha (Korea), Ms. Sukanuma (Japan), Ms. Ishikawa (Staff)

2nd Row:

Mr. Udo (Japan), Mr. Chryssikos (UNODC), Mr. Mbongo (Congo), Mr. Chit (Myanmar), Mr. Ueda (Japan), Mr. Yu (China), Mr. Pires (Brazil), Mr. Jaffery (Pakistan), Mr. Somphop (Thailand), Mr. Ito (Japan), Mr. Sukit (Thailand), Ms. Hidayati (Indonesia), Ms. Reid (Jamaica), Ms. Valdivieso (El Salvador), Mr. Kataoka (Japan), Mr. Nishimura (Staff), Mr. Kawabe (Staff)

1st Row:

Mr. Ebara (Staff), Prof. Uryu, Prof. Yamada, Prof. Higuchi, Prof. Shinkai, Deputy Director Senta, Dr. Grant (Canada), Director Aizawa, Mr. Wheelhouse (U.K.), Mr. Kwok (Hong Kong), Prof. Sakata, Prof. Ishihara, Prof. Sugiyama, Prof. Uchida, Prof. Naito, Mr. Cornell (L.A.)