

Summary

A major policy objective of the Ministry of Justice is to increase the effectiveness of the sanction system. In that context, more selectivity and differentiation is being sought in the application of suspended sanctions. The Research and Documentation Centre (WODC) of the Ministry of Justice has asked IVA Tilburg Institute for Social Research to conduct research into the practice of application and the possibilities to expand it in relation to suspended prison sentence and suspension of the pre-trial detention of adults. The results of this research, which was conducted on behalf of the Department for Sanction and Prevention Policy, will be described in this report. The main findings will be given here on the basis of the research questions.

This study centres on three themes and eleven research areas:

Theme 1: The suspended sentence in an international perspective

1. What is described in the literature about the application of suspended modalities, about the backgrounds and objectives of application practice and about experiences with and results of working with these modalities? What can our country learn about these points from application practice in other countries?

Theme 2: Trends in sentencing practice

2. How often are full and partially suspended prison sentences imposed in the Netherlands, and for what term? How often is a suspension of pre-trial detention ordered? How often are one or more special conditions imposed in that regard?
3. What special conditions are imposed in relation to the offence and the person of the accused/convict, described in target groups? In what cases does the probation service play a role in their application?
4. What reasons do the various parties involved have for choosing suspended modalities?
5. How high are the success and failure rates of suspended modalities? How often are the special conditions met and how often not?
6. What factors contribute towards the success or failure of the suspended modality?
7. How is the supervision/enforcement organised and how does it run in practice?
8. What actions are taken in the event of non-compliance with the conditions?
9. What are the bottlenecks and enforcement procedure (the process or advice and conversion in the event of non-compliance) and what are its causes? Why are sanctions sometimes not enforced?

Theme 3: Possibilities for expanding the suspended modality

10. What are potential target groups for suspended modalities? Are there yet more offences and more types of offenders on whom they can be imposed?
11. What are the counterindications, i.e. when should they not be imposed?

Information on the above-mentioned subjects was collected by studying literature, through the analysis of data from the operating process system of the Public Prosecution Service (Compas/OMDATA), by

asking for information from the probation service's client follow-up system, an in-depth analysis of 200 probation files, studying 100 criminal files and, finally, by means of interviews with ten members of staff of the probation service, five public prosecutors and five judges. The probation and criminal files concern cases which were settled in the first instance in the year 2002. The operational period of these cases, which is two years in by far the most cases of suspended sentences, could be deemed as terminated in 2005. The possibility to generalise the results is limited concerning the study of the probation service. This does not hold as much for the list of special conditions, but rather for the formulation of the target groups, whereby a limited number of disproportionately selected files were studied.

The suspended sentence in an international perspective

(1)

Aspects such as the reduction of reoffending, social reintegration of the convicted person, protection of society and the victim's interest are not only weighing more and more heavily in the Netherlands in the sanctioning process, but we also see this in other countries. This makes an international comparison interesting, particularly in the context of this study, as far as the translation of this attention into suspended modalities is concerned.

In section two of this report, the suspended modalities available in Germany, Sweden, England, Belgium and France are described, as well as the developments in enforcement practice in these countries. The legal systems in these countries diverge strongly. In France and Belgium, a suspended prison sentence can be imposed for up to five years. In Sweden, there is no possibility to suspend a prison sentence. The suspended sentence consists of a finding of guilt with an order to 'live an orderly life' for two years and to support oneself according to one's own ability. A person may be placed under the supervision of the probation service instead of in prison. In Germany, the short prison sentence is avoided as far as possible by imposing each sentence for a year or less in principle as a suspended sentence. With a favourable prognosis, prison sentences can be imposed as suspended sentences for up to two years. England, with 51 weeks, has the shortest suspended prison sentence (also shorter than the Netherlands), whereby the conditions are also formulated in terms of sentences.

Further distinguishing characteristics are:

- The extent to which the accent lies on control or on treatment and/or providing assistance and support;
- The degree to which the conditions in the law are listed limitatively as opposed to allowing a (probation) authority a great degree of freedom in the ultimate formation of the special condition;
- The degree to which responsibility is placed on the offender as opposed to imposing and monitoring specific instructions for behaviour.

In the countries studied, one encounters different forms of the suspended modality: mandatory supervision by the probation service (England, Sweden), postponement of or dispensing with sentencing (Belgium, Germany, England France and Sweden), conditional suspension of the enforcement of a sentence or non-punitive order, with and without special conditions (Belgium, Germany, England, France and Sweden) and conditionally dispensing with prosecution (Germany, England). In addition, conditional release (CR) should be mentioned, which in some countries is

closely integrated into the system of suspended sentences. In Germany, for example, where a partially suspended sentence is not possible, the court can achieve almost the same result by applying the CR. A suspended modality exists in England as well, *Custody plus*, which is in between a partially suspended sentence and a conditional release.

The application of suspended sentences shows great differences in the countries studied. If we compare the percentages of fully or partially suspended sentences to the total number of custodial sentences per country, we see Germany at the top of the list with 69% (reference year 2003), followed by France with 62% (reference year 2002). If we consider the Swedish conviction without punishment, subject to conditions and supervision, as a suspended sentence, then 51% of the custodial sentences in that country can be considered suspended (reference year 2004). Belgium and the Netherlands are at the bottom, each with about 45% (reference year 2003).

In all countries studied, a development can be observed towards more monitoring of compliance with conditions, whereby the importance is also acknowledged of assistance and support, with or without the help of volunteers. The approach in Sweden is striking in this respect: intensive monitoring is limited as far as possible here to the first part of the operational period. This is based on two reasons. Firstly, experience teaches that precisely in the first period after the judgment, the chance of reoffending is greatest, while, on the other hand, an unnecessarily long period of intensive monitoring has rather a counterproductive effect on the risk of reoffending. In this respect, experiences have been positive with the use of volunteers during the operational period, as they, unlike the official probation staff, do not aim as much at monitoring, but (are able to) place more of an accent on the necessary assistance and support function, also outside office hours.

It is remarkable that the petty offences are no longer those which lend themselves for a suspended modality. In various countries, serious crimes are also eligible for a suspended modality. Where in the Netherlands, a fully suspended sentence is limited to prison sentences not exceeding two years¹, some other countries have a much broader scope of application, which is also used frequently in practice.

Trends in sentencing practice

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In the year 2000-2004, fewer fully suspended sentences were imposed in the Netherlands. We see a drop of 5.6% in the total number of convictions. The *partially* suspended sentence shows a slight rise of 1.3% in the same period. In 2004, a total of 16,070 fully suspended sentences were pronounced (14% of the total number of convictions) and 8,730 partially suspended sentences (7.5% of the total number of convictions).

In 2004, special conditions were imposed in 16% of the total suspended prison sentences. Special conditions are imposed much often with partially suspended prison sentences, namely in 43% of the cases.

¹ Just before the completion of this report, a legislative proposal was adopted in which the old limit of three years for partially suspended sentences was increased to four. Before that time, not more than a third of the prison sentence could be imposed as suspended. A fully suspended prison sentence was limited to one year at most (Upper House (EK), 2004-2005, 28 484 A, see also the Wolfsen Amendment, Lower House (TK) 2003-2004, 28 484, no. 14).

The popularity of special conditions increased in the period 2000-2004. This increase, with respect to the whole of suspended prison sentences, related especially to violent crimes which, proportionately, give the most cause to impose a special condition. For partially suspended prison sentences, the increase can be observed across a wide range of types of offences, except for traffic offences, which show a decrease. The duration of the suspended prison sentence and the suspended part of the partially suspended prison sentence has increased in the last few years as well.

Specifically with respect to traffic offences and violations of the Opium Act, there is a downward trend in the number of suspended sentences. For these types of offences, community service in particular seems to have assumed the role of the suspended sentence, and the number of non-suspended sentences also rose. It is also striking that differences between men and women in the type of special conditions have decreased in the five years studied, which is probably due to the fact that the offence patterns of men and women have come to resemble each other more closely.

In 2003, suspensions of pre-trial detention took place in 14% of the detentions and in 12% of the detentions in custody. There are great differences in applying the suspension of pre-trial detention at the various district courts. Exact figures on the incidence of special conditions attached to suspensions of pre-trial detention are not available. An estimate comes down to 15%.

The results do not give a reason to conclude that there is a strong, autonomous trend in the application of suspended sentences and special conditions. A plausible explanation seems to exist for most of the shifts observed. For instance, the decrease in the number of suspended sentences seems to be due to the strong increase in the popularity of community service, and the remarkable 'leap' in the increased application of special conditions in 2004 may possibly be due to the fact that 'process counselling' was abolished as a service of the probation service in January 2004, because of which courts now impose contact with the probation service by way of special conditions in order to give some offenders some form of probation assistance nevertheless.

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Probation institutions in the Netherlands play a very great role in sentences with special conditions. The probation service provides assistance in and/or supervises 94% of the cases in which special conditions are imposed. About half of the special conditions relate to 'mandatory contact with the probation service' without further specification. In that way, the court places the responsibility for the ultimate type of the special condition on the probation service. If a further indication is given in the judgment, it is usually formulated with the phrase 'even if this means or entails that ...' (this is the case in approximately one fourth of the judgments). This often concerns treatment for addiction, psychological treatment or another type of preparation for employment. The 6% of special conditions in which the probation service is not involved generally concern compensation (approximately 2%), and for the rest, restraining orders in respect of location and contact and a few very exceptional special conditions.

An analysis of special conditions imposed and interventions used by the probation service shows that seven (clusters of) conditions/interventions can be mentioned which are generally used fairly often.

These are:

- addiction-related treatments,
- psychological treatments,

- a combination of psychological and addiction treatments,
- training courses aimed at aggression control;
- sex education,
- social education (for example a course in social skills),
- functioning in society (interventions aimed at employment, education, housing and finances).

Compensation and restraining orders in respect of location and contact (whether or not in combination with tagging) are used considerably less often as special conditions.

Special conditions for a suspension of pre-trial detention mainly involve restraining orders on contact and location (for example in the event of domestic violence), but addiction treatments are also started occasionally. One of the typical conditions for the suspension of pre-trial detention is cooperation in an information report to be drafted.

The offenders from the study who ended up at the probation service are predominantly men (90%). At least sixty per cent have had previous contact with the law. Over a third are on drugs or alcohol, or addicted to both. Two thirds have minor or serious psychological problems. Among the group of addicts, there are quite a few people with more or less serious debt problems. Psychological problems are also rather common among the group of addicts. Depending on the problems, addiction treatment, psychological treatment or an aggression control course is used for the violent offenders. In addition to these 'heavy' courses of treatment, the probation service also has a major task in helping people to function in society. In these cases, debt rescheduling programmes and budget courses can help to prevent reoffending.

The special conditions are difficult to describe in terms of target groups. In half of the cases, the court only imposes the special condition 'mandatory contact with the probation service'. This condition has no target group, except that it concerns suspended sentences. In another fourth of the cases, notification is given of the intervention that may be started, formulated as '... even if this means or entails that...'. Subsequently, the probation service tries to provide as much custom work as possible, and has a great degree of freedom (and responsibility) in doing so. This sometimes results in one on one counselling (a course in sex education for the sex offender, a course in aggression control for the violent offender, etc.) and often combinations of interventions. Those combinations are determined so differently and individually that it must be concluded either that there are no target groups or that there are as many of them as combinations of interventions.

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In the interviews, the judges and public prosecutors indicated that, in considering a suspended modality with only the general condition, the nature of the offence and the criminal past of the accused play an important part. These matters also play a part in the special conditions, but the offender's receptivity to treatment and counselling are also taken into account. The offender must be willing to cooperate and bring the conditions to a good end during the operational period. By means of information or early help reports, the probation service takes a leading role in the choice of the type of intervention to be started in relation to a special condition for a suspended sentence or a suspension of pre-trial detention. An attempt is generally made in choosing a certain intervention to be as closely in line as possible with the offence committed and the specific problems or combination of problems

which the offender has. It follows from this that a course in aggression control is offered to violent offenders as a matter of course, but also that, for example, addiction treatments are combined with interventions aimed at functioning in society in relation to employment/education, housing and finances for (frequent) theft preceded by forcible entry.

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According to its own registration system, about half of the special conditions imposed and supervised by the probation service in the context of a suspended sentence are fulfilled successfully. About a third are terminated prematurely, while in about one out of eight cases, supervision by the probation service cannot be started. Programmes aimed at psychological treatments are more often completed successfully. Offenders on whom a fully suspended sentence has been imposed are considerably more successful at complying with their special condition(s) (75% succeed) than those who have received a partially suspended sentence (39% succeed).

Special conditions attached to a suspension of pre-trial detention have a higher success rate than suspended sentences (as a whole). In about six out of ten suspensions with special conditions, these conditions are complied with successfully.

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The reason for the failure of a programme (premature termination or impracticability) in most cases is failure to appear often enough or at all at contact appointments (44.4%), followed by failure to adhere to the (substantive) agreements made (27.2%). In 8.6% of the cases, the programme is discontinued because the client has again come in contact with the law. In other cases, there are usually specific other reasons why (further) treatment is not given, for example that the client is ill or has died, that he is in detention or cannot be found.

The convicted person's intrinsic motivation is an important factor in bringing the special conditions to a good end. Probation service workers consider it their job to turn the extrinsic motivation (the threat of imprisonment) into an intrinsic motivation, and then to maintain that motivation. Information and early help reports play an important part in this, because they enable agreements to be made quickly with the accused on successful compliance with the conditions.

Probation service workers mention as important factors for the success of supervision:

- strong intrinsic motivation on the part of the offender;
- having a home, income and a way to spend the day,
- "having something to lose", for example a job or a partner,
- a good contact (a good *match*) between the offender and the probation service,
- making clear agreements at the start and setting them out in an agreement.

The following aspects were mentioned as impediments to a good implementation of supervision:

- the often long time between the drafting of the information report, the court judgment and the actual start of supervision;
- the waiting lists for admission to specific supervision courses, such as assisted living and preparation for employment;
- limitation of the opportunity for house visits;
- the fact that housing and an income (or benefit) are sometimes lacking upon the release of a person serving a partially suspended sentence;

- the limitation of supervision to 30 hours on average. As a rule, this makes it impossible to accompany clients to agencies to arrange matters such as housing and benefit.

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It was established earlier that 94% of the special conditions entail some form of contact with the probation service. This means that in far and away the most cases, the probation service is responsible for supervision and for monitoring compliance with the special condition(s).

The monitoring of conditions in which the probation service is *not* involved, compensation and injunctions on contact and location, for example, are arranged by the public prosecutor himself, usually in cooperation with the police. In those cases, the public prosecutor sometimes suffices by sending a fax with instructions to the station, sometimes certain officers are personally informed and asked to act as contact person for the victim. In this way, the victim plays an important role in the monitoring of compliance organised in this way.

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Of 23 cases in which, according to the records of the probation service, compliance with the special conditions had failed, it was examined whether enforcement had been demanded. In over three fourths of the cases with special conditions which were not complied with, enforcement proved to have been demanded. In the remaining fourth, it *could* be that no enforcement had yet been demanded, that it was not (yet) possible to do so for administrative reasons, or that this was not done for whatever reason. In approximately two thirds of the cases studied, the suspended sentence was fully enforced.

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The public prosecutors interviewed were generally of the opinion that sentences are enforced consistently when both the general and special conditions are violated. Enforcement when general conditions are violated was said to be more consistent than when special conditions are violated, because this is sometimes easier to arrange administratively. Enforcement sometimes fails because of service problems. For an accused person who is placed in detention or custody after committing a new offence, one can enclose the intention to demand enforcement immediately with the new summons to be issued and have it served. If only special conditions have been violated, the accused sometimes has to be tracked down again.

Sometimes enforcement is purposely not demanded. Although most public prosecutors are of the opinion that sentences should always be enforced consistently, some are willing to make an exception for special circumstances or (in case of violation of the general condition) reoffending which strongly deviates from the offence to which the condition applied. Regarding the latter, one could think of shoplifting during the operational period that applied to a sex offence. In those cases, the operational period is sometimes extended. Pressure of work and capacity shortages at the Public Prosecution Service sometimes play a part in the enforcement, or not, of suspended prison sentences. There are district courts where the pressure of work is experienced as so high that priorities have to be set on this point. At some district courts, so-called outside enforcement sometimes presents a problem. In that case, for administrative reasons, violations of conditions which took place in another district do not reach the public prosecutor promptly or at all.

Possibilities to expand the suspended modality

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Possibilities to expand the suspended modality exist, on the one hand for the category of short sentences, where more special conditions could be applied by means of timely and consistent information reports. On the other hand, there are possibilities for the category of long(er) sentences where, thanks to the broadening of the statutory maximum application periods for suspended sentences, also 'more serious offenders' can be eligible for suspended sentences with one or more special conditions, as is possible in some other countries. 'More serious offenders' can also mean people with multiple problems, such as addiction in combination with psychological problems. This could be a category of more serious sex offenders, who, after all, often have psychological problems.

Another possibility to broaden the application of special conditions, to both suspended sentences and the suspension of pre-trial detention, is to expand the possibilities of electronic tagging, especially in enforcing contact and location injunctions. Although the scope of application of this type of special conditions is still small (approx. 4%), those interviewed were generally in favour of expanding it, if its monitoring can be better guaranteed through electronic tagging. It can be applied, for example in cases of stalking, domestic or other relational violence, nightlife violence, football vandalism, (street) trafficking in drugs and suchlike.

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Counterindications for imposing suspended sentences, with or without special conditions, cannot actually be given. In principle, anyone is eligible for a suspended sentence, with or without special conditions, unless he/she has too long a criminal record, or has earlier and repeatedly violated a (special) condition. There was much willingness among those interviewed to keep offenders outside prison walls as far as possible.

Recommendations

1. Information and early help reports often form the basis for the application of special conditions for suspended sentences or suspensions of pre-trial detention. It is advisable to use those reports as much as possible, in any case if the public prosecutor is considering demanding a custodial sentence (whether or not suspended). This could reduce the number of so-called gift cases, and more offenders will be eligible for counselling, treatment or behaviour influencing in the context of a special condition. It is important for all parties involved to consider this option at an early stage. In that context, it is advisable to give the legal counsel or the accused the opportunity once again to request reports, as well as to give the probation service the opportunity to make a report on its own initiative.
2. Training courses can now be imposed as principal penalties (in the context of a training order) and as a special condition for a suspended prison sentence. The introduction of the training order, unlike the community service order, has not taken over its application in the context of special conditions. Special conditions apparently have an advantage in practice, for example because of their flexibility, the possibility to combine interventions and the longer term. The training course, as a behaviour influencing instrument, also seems more in line with special conditions than with principal penalties. It is therefore advisable no longer to include training courses as penalties in the law, but to give them a place among the special conditions. An

alternative is to define the distinction between a training order and a special condition more clearly than the case is now, and to regulate it by law.

3. Compliance with special conditions largely depends on the convicted person's intrinsic motivation. It is therefore advisable, when a suspended sentence is given, to turn the external motivation of the threat of a prison sentence into an intrinsic motivation in a timely manner in order to maximise the chance that the motivation will be maintained and that the special condition will be complied with successfully. Short processing times are therefore important. This holds for the period before the start of supervision, but for afterwards as well, should the special conditions not be met. The convicted person should know that, in that case, he can count on a quick enforcement of his suspended sentence.
4. It is advisable to study the possibility to expunge a conviction with conditions from the judicial documentation after the operational period has been completed successfully. In that way, a positive consequence is attached to compliance with the conditions which could enhance the convicted person's motivation.
5. It is advisable to explore the possibilities of (different types of) electronic tagging, particularly when the enforcement of location injunctions is concerned. It can be used especially in relation to stalking, domestic or other relational violence, nightlife violence, football vandalism, (street) trafficking in drugs and suchlike. To increase familiarity with this means of monitoring, more attention of public prosecutors and judges should be drawn to its possibilities.
6. The success rate of special conditions is considerably higher for fully suspended prison sentences than for partially suspended prison sentences. It is advisable to carry out further research to determine the separate contributions to that difference of the type of sanction and offender and offence characteristics, respectively.
7. Expanding the application of suspended modalities cannot be viewed separately from the application of pre-trial detention, as the time spent in pre-trial detention is deducted from the prison sentence to be imposed. Less use of pre-trial detention or more and earlier suspension thereof increase the possibilities for a suspended sentence. Great regional differences are evident in the use of the suspension option. A broader application of special conditions to the suspension of pre-trial detention can provide opportunities for better use of the policy space, which apparently exists in that respect.
8. Specifying special conditions in the law helps to make this type of sanction recognisable and promotes a wider acceptance of it. Conferring more legal status in this way also offers an opportunity, in view of the legality principle, to attach guarantees to special conditions, for example regarding their content and scope.
9. The application of special conditions to the suspension of pre-trial detention should be viewed in the light of their possible continuation in the context of a suspended sentence with special conditions. In that context, it is advisable to include an enumeration of the special conditions for the suspension of pre-trial detention in the law in order to optimise continuity.

10. Study of the application of suspended modalities in other countries provides several points for consideration regarding the situation in the Netherlands:

- encouragement of the accused's intrinsic motivation to improve his situation by offering him the opportunity to come up with his own proposals for special conditions;
- investigating the possibility to make broader use of the efforts of volunteers to support compliance with the special conditions;
- compliance with radical behavioural conditions, such as admission to an institution, to be submitted periodically to the court for review.