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# **ALTERNATIVES TO PRISON SENTENCES EXPERIENCES AND DEVELOPMENTS**

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## **PREFACE**

This study has been conducted at the request of the Director-General of (Juvenile and Adult) Corrections of the Dutch Ministry of Justice, who wanted an overview of experiences with alternative sanctions in other countries with a view to future development of the Dutch sanctioning system. The principal objective of the study was to examine the use of alternatives to prison with respect to their effectiveness and efficiency. Therefore, the focus of the study is on the evaluation of alternative sanctions on the basis of empirical research.

The study covers 135 documents from 12 western countries: the United States, Canada, Australia, New Zealand, England, Scotland, Sweden, Finland, Norway, Germany, Austria and France. Much of the research material has been provided by the Documentation Department of the WODC (Research and Documentation Center). In addition, the Ministries of Justice of the above-mentioned countries and a great number of foreign academic colleagues have been approached in order to collect more recent research material as well as policy documents. In this way an attempt has been made to obtain as complete a picture as possible of the state of the art with respect to the substitution of prison by new sanctions and their effects in terms of reduction of the prison population, of recidivism and of costs.

Bearing in mind the willing co-operation received from foreign colleagues and their readiness to be of assistance, as well as the interest which they may have in this overview, the WODC has made an English translation of the report.

**Josine Junger-Tas**

# I

## BACKGROUND AND ORIGINS OF ALTERNATIVE SANCTIONS

Alternative sanctions, or as they are also termed, 'intermediate sanctions', 'community sanctions', or 'task-sanctions', have become widespread throughout the western world in the last ten to 15 years.

The introduction of alternative sanctions has been one of the most important developments in sentencing policy in the last decades. It has meant looking at offenders, victims, the community, and sentencing in general, in a totally different light.

The question remains, however, exactly what is understood by 'alternative sanction', and is this interpreted by everyone in the same way.

According to a useful standard definition from the United States Department of Justice (1990), it is understood to mean "a punishment option that is considered on a continuum to fall between traditional probation supervision and traditional incarceration".

The development of these new types of sentences was introduced in the 1970s by the United States and England, two countries which were already being confronted with an ever-growing prison population and – in England's case – with a totally antiquated and inadequate prison system. However, most types of alternative sentences were initially developed in the 1980s. What were the reasons at this particular time for the authorities to start experimenting with the sentencing policy which, up until then had served them well, and why were the existing sentences no longer satisfactory? Some will attribute this search for new types of sentences to certain social developments and the associated high level of criminality, others point particularly to changes in people's attitudes towards punishment and the continuous efforts to make criminal justice more humane, while still others see it simply as the search for a solution to urgent (prison) problems.

In the first place, one can point to the sudden increase in the level of crime in the 1970s, and also to the consequent public outcry for stiffer sentencing. The judiciary, independent though it is, is actually very sensitive to public opinion. Whenever increased pressure is exerted by the media and the public, with calls for the rise in criminality to be halted by the criminal justice system, the

courts respond by pronouncing more frequent and longer terms of imprisonment.

Initially the response to the rising crime rate was an accelerated prison-building programme, in order to cope with the tidal wave of prison sentences being meted out by the courts. In the United States in 1987, one in every 55 adults, one in every 31 men and one in every 9.5 black men were under 'correctional control' (in prison or under probation supervision), which is a total of 3.2 million and an increase of 30 per cent compared with 1983 (Harris, 1987). In 1990 this number had risen to more than four million: more than a million (1,155,000) adults were imprisoned, 2.5 million people were under probation supervision and 400,000 prisoners were released early under control of probation officers (Bureau of Justice Statistics). That represents an increase of seven percent in the 'correctional population' since 1989 and a 44-percent increase since 1985<sup>1</sup>.

This type of development was certainly not unique to the United States. In Canada the prison population rose by 10.6 percent between 1975 and 1979 and rose still further by 10.3 percent between 1979 and 1982. The detention ratio per head of population increased from 84 per 100,000 to more than 100 per 100,000. The length of prison sentences increased in the same period by 31 percent (Billingsley and Hann, 1984) and is still increasing. According to Landreville, it is not so much the rise in criminality which accounts for the growth in the prison population but the changes in legislation, in the policy of the judiciary and in prison management policy. One of the legal measures which has contributed most to the increase is the decision that those who have been sentenced to life imprisonment cannot be released on parole until they have served at least 25 years. Given the fact that every year there are 30 to 50 such sentences (in 1988 there were 300 inmates serving life imprisonment), it can be expected that in the year 2000 there will be at least 1000 long-term prisoners occupying cells. Although they form barely one percent of the sentences they actually take up ten percent of the detention capacity. In addition, the period to be served by the other prisoners, before parole can be considered, has increased. In Quebec in 1984, only seven percent of prisoners had sentences of longer than six months, but they occupied half the cell capacity (Landreville, 1988). In Europe too, the prison population grew and new prisons were built. In France the prison population totalled 50,352 on January 1 1993, 10,000 more than in 1981, despite mass pardons in 1985, 1988, 1989, 1991 and 1992. This growth is the result of the increased length of prison sentences rather than an increase in the number of sentences passed: the average detention period was 4.6 months in 1980 and 6.5 months in 1991, whereas the number of sentences passed amounted to 97,000 in 1980, and since 1981 has averaged 83,000 per year (CESDIP, 1993).

Even in Switzerland, a country with a relatively low crime rate, the length of the prison term rose by 50 percent between 1982 and 1991. Furthermore, the country has to contend with a great number of on-going sentences: barely 20 percent of those given an unconditional prison sentence are immediately imprisoned after conviction, and more than half must wait longer than three months for a place to become available (Kuhn, 1993).

From surveys which were carried out by the Council of Europe, it is apparent that in practically all the member states the same type of development has occurred. This has been coupled with an increase in the number of women, members of minority groups and refugees in prison, and on average an 'older' prison population than before. As in France, the principal cause is the increased length of prison sentences. This is true in Switzerland, for example, where 83 percent of all prison sentences are six months or less and these account for only 27 percent of the detention capacity; 73 percent of the prison population is made up of prisoners serving a sentence of more than six months (Kuhn, 1993). Only three countries are exceptions to this pattern: Germany, Austria and Finland. Up to 1990, Germany and Austria had a decreasing prison population.

In 1975 Austria abolished short prison sentences (up to six months). In 1988 partial release on parole was introduced and prisoners became eligible for parole after half the sentence had been served. It is mainly these two measures which have contributed to the reduction in the prison population (Kuhn, 1993).

Germany also limited short sentences (in 1969) and promoted parole. The detention figure in West Germany dropped from 79 to 62 per 100,000 between 1984 and 1987 (Sessar, 1989). However, since 1990 the figures seem to have stabilized in both these countries (CESDIP, 1993). Also in Finland, the prison population has steadily declined over the last 15 years, due to statutory measures (Törnudd, 1991).

A second important underlying reason is the loss of confidence in the treatment and rehabilitation of offenders. A parallel development has been the intense individualization of society and with it a strong emphasis on the rights of the victim and the responsibility of the offender.

Both developments have led to changes in opinion about the objectives of punishment. In the 1960s and 1970s the most important objective was the rehabilitation of the offender. This objective has lost a lot of credibility, mainly because of increased criminality and reduced confidence in the ability of the probation service, assistance and therapy programmes to achieve this objective. In its place, first in the United States and then in Europe, neo-classical or retributive principles were (re)discovered. These principles are best expressed by Von Hirsch (1976) in 'Doing Justice: The Choice of Punishments', the report of a Commission which was set up to reform the American system of indeter-

minate sentences. The system devised by Von Hirsch and his colleagues was based on three related principles: the principle of '*just deserts*', which means that the convicted person must receive the punishment he 'deserves' based on the seriousness of the committed offence and his criminal record; the principle of '*proportionality*', that is to say, the sentence passed must be directly proportional to the seriousness of the crime; and the principle of '*equality*', which means that like cases must be treated alike. The aim of Von Hirsch and his colleagues was to eliminate the arbitrariness of the indeterminate sentence and to come to a fairer and more just sentencing policy. With the rejection of 'indeterminate sentencing', they did however also reject the principle that the judge, when deciding the sentence, can take into account considerations such as the personality of the offender and the circumstances under which the crime was committed, besides the seriousness of the crime and the criminal record. Von Hirsch and his colleagues wanted the personal (aggravating or mitigating) circumstances to be disregarded because these increase the judge's discretionary power in an uncontrolled way. It was this freedom which had led to the notorious indeterminate sentencing policy of the past. The Von Hirsch reform really amounted to a strengthening of the suspect's legal position. But what happened was that the merging of a more severe sentencing policy with renewed attention to the classic principles of criminal justice, both in the United States and Europe, led to less consideration for the offender and more frequent use of (longer) prison sentences for adults and for minors. In line with its efforts to protect the rights of the offender, the Commission proposed that the discretionary powers of the judge be restrained. Accordingly, guidelines were laid down which limited the imposition of the prison sentence to only the most serious offences. In fact the results were just the opposite to what was expected and this important and influential reform led primarily to a more retributive criminal justice system, with a great emphasis on punishment and retribution and a secondary role for rehabilitation.

Apart from that, it is obvious that it is not so simple to define precisely what a 'deserved' punishment for a particular crime is: judges have widely varying opinions on this. In addition it is evident that judges definitely take into account the gravity of the offence and the criminal record when deciding a sentence, but this is seldom the only criterion. Practically always there are other considerations, which together with the personality of the offender and the circumstances under which the crime was committed, play a role (Morris and Tonry, 1990).

Thirdly, there was the autonomous development of alternative sanctions. These must originally be seen in the context of a centuries-long development towards the humanization of the criminal justice system. Thus, the death pen-

alty and exile were replaced by corporal punishments and these in turn were replaced by the more humane prison terms, which were aimed at rehabilitating the offender and making him a better human being. Now there are efforts to introduce punishments which can be served in the community rather than in prison, which is seen as a dehumanizing and criminogenic environment. Not only would the rehabilitation of the offender stand a far better chance of success in the community, but moreover this same community would have the responsibility and be involved with the punishment and the rehabilitation process of the offender. This more or less autonomous development stimulated reflection on the possibility of introducing alternatives to imprisonment and the establishment of a much more all-embracing and more coherent sentencing system, where both alternative sanctions and traditional punishment have roles to play.

One of the obstacles which supporters of the extension of alternative sanctions face is the fact that (especially in the United States, but not exclusively) the prison sentence is still seen as "the yardstick for all sentences, the 'only real' punishment". For many, imposing punishment means almost automatically the imposition of a prison sentence: all other sentences are seen as weak alternatives for the 'real' punishment. This is true not only in the minds of the public but also in the minds of the judiciary. Moreover, the prison sentence has the advantage that it can be infinitely varied in length, whereas fines and, for example, community service are much more restricted in their use.

The problems associated with the introduction of alternative sanctions together with the problem of the disparities in sentencing between judges, have led in the United States to the development of the so-called '*presumptive sentencing guidelines*', which might be interpreted as 'indicative' sentencing guidelines. This means that the guidelines are not absolute but rather indicative of sentencing within certain margins. If the judge deviates from these guidelines, he must have good reason for doing so (Morris and Tonry, 1990). This will be expanded on in the following chapter.

As is often the case with reforms, the most important impetus to the 'new' way of thinking about sentences has been given by the United States. The social circumstances which lie behind this thinking have, however, also affected other countries such as Canada and western Europe.

In Canada, the Canadian Sentencing Commission was established in 1984, and in 1987 it brought out the report 'Sentencing Reform: a Canadian Approach'. The recommendations of the Sentencing Commission were mainly concerned with the setting up of so-called 'presumptive guidelines' with respect to the use of the prison sentence, the setting up of a permanent sentencing commission, the abolition of 'parole' and of minimum sentences, the review of life sentences and the greater use of alternative or 'community' sanctions.

Not all these recommendations were considered by the Permanent Commission of Justice in the federal parliament. Its members wanted 'parole' and minimum sentences to be retained, life sentences to remain as they were, and they opted for '*advisory sentencing guidelines*' in place of 'presumptive guidelines'. This indicates that Canada has a somewhat different attitude to sentencing and sanctions than the United States.

In two documents in 1990<sup>2</sup>, the Canadian Government laid down that the criminal law had two principal objectives:

- the preservation of public order, the prevention of crime and the protection of citizens (security objectives);
- fairness, justice, the guarantee of rights and freedoms of the individual citizen against the power of the state and the provision of an appropriate response against criminal behaviour (rights objectives).

It is also noted that, although protection of the citizen is the prime objective, restraint and fairness in the application of the criminal law is possible:

"Restraint should be used in employing the criminal law because the basic nature of criminal sanctions is punitive and coercive, and, since freedom and humanity are so highly valued, *the use of other, non-coercive, less formal and more positive approaches is to be preferred wherever possible and appropriate.*"

Moreover, and in this the Canadian view deviates considerably from the American, Canada remains in the vanguard where the '*rehabilitation*' concept is concerned, although recognizing that the ability of the criminal justice system to exert any drastic influence on the behaviour of individual citizens is limited<sup>3</sup>.

Finally, as always, the question of cost is decisive; reforms which demand big additional budgets are rejected out of hand.

The sentencing principles which have been proposed by the Canadian government are for the most part in accordance with the 'just desert', 'proportionality', and 'equality' principles developed in the United States, except that the judge should take *aggravating or mitigating circumstances* into account.

- the sentence must be proportional to the seriousness of the case, taking into account the extent to which the offender can be held responsible for the offence and to any aggravating or mitigating circumstances;
- the sentence should be the lightest alternative that is appropriate in the circumstances;
- the sentence must be equal to other sentences pronounced on other offenders who have committed similar crimes under the same circumstances;

- the maximum prescribed sentence should be reserved exclusively for the most serious offences;
- the prison sentence should be selectively given in the following cases:
  - to protect the citizen from violent crime;
  - when every other sanction is inappropriate in view of the seriousness of the crime, when the criminal is a persistent offender, to protect the citizen or to preserve the integrity of the administration of criminal justice;
  - if all other sanctions have not led to compliance with the conditions laid down in the sentence.

The Canadian Sentencing Commission, together with the permanent Commission of Justice in the House of Representatives have put forward recommendations with a view to broadening the scope of alternatives to the prison sentence. Although Canada imposes prison sentences less frequently than the United States, the figures are nonetheless substantially higher than those in western Europe. The prison population in the federal penitentiaries, besides violent offenders, is predominantly made up of offenders who have committed crimes against property. In the provincial prisons, the majority of inmates have been convicted for less serious crimes and alcohol-related traffic offences, followed by theft and receiving stolen goods. In addition, three out of ten prisoners are serving time because they failed to pay the fine.

The proposed reform of the Canadian government offers a solution to the 'over-use' of the prison sentence, the unjustified discrepancies in sentencing, the lack of a coherent sentencing policy and the confusion felt by citizens over the role of sentencing in the criminal justice system.

In Europe too, the subject has received increasing attention. In 1989 The Council of Europe set up a Select Committee of Experts on Sentencing in which initially 12 countries and subsequently 14 countries participated<sup>4</sup>. In 1992 this Commission produced a report with recommendations regarding sentencing (Recommendation on Consistency in Sentencing).

The Commission stated that its activities were a consequence of the fact that an ever-increasing number of countries was voicing concern about the reliability of the penal law system that had become debased by the great differences in sentencing between judges. Three principles form the basis of the recommendation:

- 1 like cases should be treated alike ('equality');
- 2 the decision of the judge should *always* be based on the individual circumstances of the case and the personal situation of the offender;
- 3 consistency in sentencing should *not* lead to more severe sentences.

With these three principles, the Commission in fact distanced itself from the American reform. The United States wished to dispense with the second principle in particular and the reform undoubtedly has led to harsher sentencing. With regard to the criminal record, the Council of Europe report states that this must not necessarily lead to stiffer sentences. The sentence should be *proportional* to the seriousness of the last crime committed and the extent to which the criminal record influences the decision should be dependent on the nature of its contents. Therefore, this past record should not be taken into account if the previous offence had been committed in the distant past, the misdemeanour(s) is not very serious, or if the offender is still very young.

The Commission put its recommendations clearly in the light of the present policy that is aimed at restricting the use of the prison sentence. To that end, they wanted to make sentencing policy more structured and consistent. Primarily they wanted to limit the sentencing options for certain offences by ranking crimes according to their seriousness. The Commission has also introduced two specific techniques which can act as a guideline for judges:

- '*sentencing orientations*' indicate ranges of a sentence for different variations of an offence according to whether there are any aggravating or mitigating factors. The judge is not obliged to follow the '*orientations*', but remains free to deviate from these sentencing options; however, if the judge does depart from the orientations he must have good reasons for doing so;
- '*starting points*' indicate a basic sentence for different variations of an offence and from which the court can move upwards or downwards so as to reflect aggravating or mitigating factors.

The prison sentence shall only be used if the seriousness of the crime is such that every other punishment is absolutely inadequate. For this to come about, legal restrictions on the imposition of the prison sentence will have to be introduced (especially with regard to short-term sentences). This has happened for example in the English Criminal Justice Act 1991 where the passing of a prison sentence is restricted to the most serious crimes, crimes involving violence or sexual crimes (Part I, 1.(2) a and b). When a prison sentence is to be imposed the judge must pronounce it 'in open court', explaining it to the suspect 'in ordinary language'. (Part I, 1.(4) a and b).

Following the Council of Europe report, not only prison sentences but also alternative sanctions are to be ranked, whereby not only different sorts of sanctions but also the relative harshness of the sanction (the level of the fine, the length of the community service) must be taken into account. Therefore, using this simple method, the judge can set the appropriate sanction and the correct sentence.

The Commission is aware that, although alternative sanctions in most countries are used a great deal, judges are sometimes inclined to impose them as an alternative for sanctions other than prison sentences. Instead of as an alternative for the (short) prison sentence, these sanctions are imposed on people who would not be sentenced to prison but would get a lighter sentence. This is what is meant by 'net-widening'. The Commission is therefore convinced that no consistent sentencing policy can be carried out unless both the prison sentences and the non-custodial sentences, ranked in order of harshness, are related to the gravity of the crime and the circumstances under which it was committed.

The benefit of this approach is that the uniform ranking of non-custodial sentences enables the judge to individualize the sentence and to respect the principle of proportionality. The judge does this by first deciding how harsh the sanction must be (according to the seriousness of the case) and then makes a choice from the range of punishments on that specific severity level.

The report condemns the practice of detaining people who fail to fulfil the conditions of the alternative sanction and the practice of imposing custody on those who fail to pay fines.

To summarize the main origins of the sentencing reform, the following points are noteworthy.

The basic philosophy in the majority of western countries, including Canada and Australia, consists of three principles: 'just desert', the proportionality principle and the equality principle. In its purest form, this philosophy is adhered to most strictly (although not completely) in the United States. Canada and western Europe have introduced important modifications. In these countries the 'rehabilitation' concept remains an essential part of legislation and policy. Another modification is that the judge must explicitly take into account the related aggravating or mitigating circumstances of the committed crime. In other words, the circumstances of the crime and the personality of the person continue to play an important role in the decision making process. Finally, both in the United States and in other western countries efforts are made to restrict the use of the prison sentence, either by introducing restrictive legislation (namely in England), or by introducing sentencing guidelines.

All this has undoubtedly created the climate in which concrete changes are possible. But the most important driving force for reform in sentencing policy must undoubtedly be sought in socio-economic and financial considerations. These factors are on the one hand the result of *an increase in the prison population*, combined with (or as a consequence of) the imposition of ever longer prison sentences, and on the other hand *the high cost of both the construction and management of prisons*. In addition, the western world has to contend with an economic recession which acts as a powerful brake on the further use of

large budgets for building new prisons.

The development of alternative sanctions is therefore in the first instance to be seen as a product of the search for new sentencing strategies to overcome both these problems.

## II

### OBJECTIVES AND DIRECTIVES

Alternative sanctions have a great many objectives, some of which are even contradictory. One can distinguish between objectives oriented towards the individual offender and objectives with a more general, system-oriented character.

#### 1 Offender-oriented objectives

The crucial aspect of alternative sanctions lies in controlling and supervising the execution of mandatory orders in the community, instead of restricting the freedom of movement in a prison. Initially the objectives were mainly offender-oriented with the accent lying firmly on the resocializing character of the punishment: by doing useful work in his free time, the offender could offer some kind of compensation to his victim and society and, in this way, as it were, could regain his membership of the 'moral community'. The stronger emphasis on the rights of victims and their growing influence on the sentencing process have contributed to a gradual shift away from 'rehabilitation' being seen as a punishment objective, towards 'restitution' as an objective.

There are actually a great number of alternatives. Community service, 'mediation', restitution and compensation still bear a sense of reparation to the violated legal order and a sense of redress for the victim: in these sanctions there is definitely an element of education and 'improvement'. This element is found in many countries in the sanction objectives. Finland, for example, introduced community service to the legal system in 1991, establishing as its prime objectives: a decrease in the prison population, a reduction in the adverse effects induced by a prison sentence and an endeavour to make working in 'normal' social organizations a positive experience for the offender. In addition, the law stresses the necessity of upholding essential sentencing principles (Takala, 1991, 1992).

Sanctions such as (electronic) monitoring, intensive probation supervision, compulsory treatment, drug control and regular house searches to find prohibited substances present a different case. These alternative options have a definite element of control. This characterizes their primary function which is to guarantee compliance with the imposed conditions. The ever-growing emphasis

on control and the intrusive nature of permanent supervision result from apprehension about two things: on the one hand, there is the fear that the judiciary will find the retribution and punishment nature of alternative sanctions unsatisfactory and therefore will not use the sanctions; on the other, there is the fear that the public will feel they are not being adequately protected against re-offenders. One of the consequences of this attitude is that some sanctions, particularly Intensive Supervision Programmes (ISP), are so severe and present such an intrusion on privacy that a considerable number of those convicted prefer to serve their sentence in a prison (Petersilia, 1991). Another consequence is that with the increase in the number of special conditions, the risk of so-called 'technical violations' increases and with it the risk that the offender will be sent back to prison (Petersilia, 1991).

It is worth noting that, although the rehabilitation character is more evident in some alternative sanctions than in others, nowhere is the reduction of the retributive element in the sanction put forward as an objective. On the contrary, from all the reports it would seem that the generally accepted neo-classical principles of fairness, proportionality and equality are opposed to this. It is generally agreed that the person who commits a crime should not escape his 'lawful' punishment, but it must be said that in some countries more emphasis is placed on the personality of the offender and the circumstances surrounding the offence than in others. The English 'National Standards for Community Service Orders' (Home Office Circular No. 18/1089) state as the three main objectives of community service:

- to impose a *punishment*;
- to make *restitution* to the community;
- to work *for the benefit of the community*.

The circular also adds that the work carried out can provide a positive experience for the offender, but that the work must, above all, be tough and demanding and clearly be of benefit to the community.

In the United States, a gradual shift from rehabilitation-aims towards control-aims can be seen. This is most evident in the objectives of the ISP projects, where the emphasis is placed on continuous control of a combination of several alternative measures. This objective can therefore be summarized as:

"to minimize the risk during the supervision period that probationers will re-offend or breach other conditions of their release, by restricting their opportunity and propensity to do so, via primarily the incapacitative and specific deterrent means of intensive regulations and monitoring of their whereabouts and conduct and the corresponding increased threat of de-

tection and strict enforcement of consequences in event of violation.”  
(Harland and Rosen, 1987)

There are also additional objectives, such as compensation for the victim, fulfilment of the need for retribution by means of adequately severe and exacting punishments, and rehabilitation (Harland and Rosen, 1987). The crux of the matter, however, is definitely control.

## 2 System-oriented objectives

With the introduction of the new sanctions, an improved, fairer and more effective administration of criminal justice was not the only thing borne in mind. Possibly even more important than these individual offender-oriented objectives are the more utilitarian system-oriented aims.

According to a report from the U.S. General Accounting Office, alternative sanctions have three objectives:

- the reduction of the prison population;
- to cut costs by replacing expensive prison sentences by cheaper alternatives;
- a decrease in numbers of re-offenders.

Some states add still other objectives such as the provision of suitable ‘intermediate’ punishments in the community (New Jersey), the protection of the public (Minnesota), while yet others want to reconcile two objectives with each other: to control the growth of the prison population and the associated costs and at the same time to satisfy the demands of the public for adequate punishment of offenders (Georgia). As a consequence of this last option, many states have attempted to develop alternatives which are more severe, more exacting and more ‘incapacitating’ than the prison sentence (Jones, 1990).

To summarize, the explicit aims of the new sanctions are:

- to reduce the number of people in detention;
- to increase protection for the public;
- to re-socialize the offender;
- to strengthen the role of probation;
- to cut costs.

The Norwegian Thorvaldson (1982) called this a smörgasbord of sanction objectives. Moreover they are contradictory: if the emphasis is placed on rehabilitation then the needs and requirements of the offender are central. On the other hand, if the emphasis is on reparation, then the victim is central and if it is on retribution then the punishment objective of ‘just desert’ plays the leading role.

Apart from the contradictiveness of some of these objectives, one wonders in all honesty if all these pretensions can ever be realized: from this perspective alternative sanctions are seen as the obvious judicial solution, the invention by which all the problems in the application of criminal justice can be solved in one fell swoop! Apart from this, Tonry (1990) points out that the new sanctions also fulfil important latent functions. Thus, the government is keen to show the public and the politicians that they have a firm grip on the crime problem (and yet at less cost). The probation service enhances its credibility by imposing stricter control on the compliance of probation conditions: that will bring them bigger budgets, more staff and more projects. It means, moreover, that probation is once again allocated a more important role in the battle against crime and that in turn gives more status to the profession and more professional and psychological satisfaction to the staff.

### **3 Directives in respect of reform objectives**

If we want to realize one or more of the aforementioned objectives, then it is of the greatest importance that the judiciary use alternative sanctions according to the letter and the spirit of the new penal options. In the introduction, the relatively limited penal options which the judge has at his disposal were set out. In all western countries a need exists for a greater range of sentences which lie between the prison sentence and traditional probation supervision, for the sake of "those offenders who deserve more than a mere symbolic punishment but less than a prison sentence" (Tonry, 1990).

The most important problem in this respect is how to ensure that the judiciary make use of the sanctions developed for this purpose.

A poll held among judges in Canada revealed that the substitution of the prison sentence by an ambulatory alternative did not work in practice (Doob, 1990). Most judges declared that they used the prison sentence only as a 'last resort', namely in cases:

- involving a serious, violent crime;
- where the accused had a prison record;
- where the accused is probably a persistent offender;
- where there is no suitable alternative which would have a satisfactory deterrent effect.

Alternative sanctions can, according to these judges, only be imposed in cases:

- involving young first offenders;
- of non-violent crimes;

- in which there is a real possibility that the offender is willing to carry out the order.

Such views express that alternative sanctions are only imposed on offenders who will not be sentenced to prison anyway. If we want to increase the utilization of alternative sanctions then the execution of these sanctions must be strictly controlled, the terms of operation satisfactorily guaranteed, the violation of conditions penalized and adequate means must be made available for the sanction to be implemented. Only then will alternative sanctions gain credibility in the eyes of judges.

But even then there is no guarantee that alternative sanctions will replace the prison sentence. In 1977 Rutherford and others, in a report to the American Congress, expressed the view that the new 'law and order' philosophy and the tendency towards stiffer sentences would lead to a 15 percent increase in the chance of receiving a prison sentence and to a 20 percent increase in the average detention time (calculated over all offences). The increase in the prison population does indeed seem to have more to do with changes in sentencing policy than with the level and the seriousness of criminality: between 1980 and 1988 the population in American prisons doubled while the figures for murder, robbery and burglary fell by a quarter in the same period (Morris and Tonry, 1990). Similar developments can be found in other countries.

The greatest obstacle in successfully replacing the prison sentence is the judge's absolute freedom to impose sanctions which he deems suitable. In this respect, there is evidently a dilemma. Even though no judge would impose an alternative sanction without first making sure that the essential related provisions in the community are in place, judges pronounce prison sentences without considering that the government has to guarantee that this sentence will be carried out and it is the government who has to find the necessary cell capacity. Moreover, if we add to this the great discrepancies in sentencing between judges, then it will come as no surprise that a growing number of countries are considering legislation or regulations on the basis of which some structure and control can be given to sentencing policy. The principal objective is a more rational use of the available sentencing options and the restriction of the 'over-use' of prison for the average non-violent offender against property.

A number of countries are searching for an answer to the problem by issuing guidelines for judges. In the United States, most states have developed such guidelines, and some states are already working on a second revised and improved version. Recommendations for Sentencing Commissions were laid down by the 'Australian Law Reform Commission' in 1980 and the 'Canadian Sentencing Commission' in 1987. Europe is in the process of considering a

revised sentencing policy, having been given a strong impetus by the Council of Europe's report on sentencing.

In the United States where they have progressed the furthest along this line, they diverged in three directions. The first direction led the judiciary into developing their own guidelines which could be employed on a voluntary basis. This path did not lead anywhere: neither the nature of the sentences nor the discrepancies in sentencing were influenced by this exercise. Proceeding in the second direction, they modified the law by laying down well-defined sentences. These laws did not have much influence on sentencing practice either. The third direction which led to the introduction of indicative guidelines, laid down by sentencing commissions on the basis of offence and offender characteristics, has the most supporters to date. The first and best known are the 1978 'Minnesota Guidelines'. These, however, only served as a detailed guideline for the use of prison sentences and not for sentences which are given to 80 to 85 percent of offenders who are not sentenced to prison.

This is a serious shortcoming because sentencing should be put within the framework of a range of sentences: from a warning and restitution/compensation, to many other forms of 'community sanctions', such as (intensive) probation supervision, fines and community service, combined with restrictions and obligations, up to and including custody (Morris and Tonry, 1990). Offenders can be placed on a range of sentences according to the seriousness of the committed offence and their prison record. Therefore, Morris and Tonry plead for a model from which the judge, within certain margins, has a wide choice regarding various combinations of sanctions. Their model would imply that a prison sentence and mandatory community service are interchangeable up to a certain point and that eventually detention of variable length can be combined with alternative sanctions. In that case criteria must obviously be developed – a sort of exchange rate – which delineate a clear directive for the judge.

In the United States, a number of initiatives have been taken to try and develop a system of guidelines which take into account alternative sentences as well as the principle of interchangeability: the Delaware Sentencing Reform Commission developed such a system for adults in 1983 and the Minnesota Citizens Council on Crime and Justice did the same for juveniles in 1982. An example of this last system is a youth who commits a burglary (level 4) and already has a criminal record (level 3): the imposed sentence would in this case be 120 days' detention, or 480 days' probation supervision, or 80 hours' community service, or a fine of \$320, or a combination of some of these sanctions. The system was rejected on the grounds that it was too mechanical, but it was a real effort to arrive at an all-inclusive sentencing package. The latest system that has been developed is one from the staff of the U.S. Sentencing Commis-

sion which lays down 'penal units' to correspond with every combination of seriousness of crime and criminal record. With this, account was taken of the circumstances of the crime (damage, loss and injury) and the personality of the offender. In 1986 and 1987 they developed the 'interchangeable' concept further, whereby equivalents are proposed for prison sentences, detention in a community institution, house arrest, community service and fines. However, only the proposals of the Delaware Commission have led to concrete results. The federal Sentencing Commission has gone no further than producing guidelines for the use of prison sentences (Morris and Tonry, 1990).

Another and much more cautious approach is followed in Canada and Europe. The Canadian sentencing Commission has put strong emphasis on the use of 'community sanctions' for a great number of crimes which still warrant a prison sentence. In order to achieve this, they suggested, at the same time, a permanent sentencing commission to promote and monitor the implementation of the reform (Doob, 1990).

Other countries have attempted to reduce their prison populations using statutory measures. In this way, the number of people in detention in Finland between 1971 and 1991 was significantly reduced by a number of modifications in the criminal law. Public drunkenness has been removed from the criminal justice statute book, so that the prison sentence, the predominant alternative punishment for the non-payment of fines, has practically disappeared. New legislation in 1976 led to an increase in the use of the conditional sentence combined with an immediate fine from 42 percent in 1975 to 58 percent in 1987. Statutory revision of the laws relating to robbery and drunken driving led to a raising of the number of fines for robbery from 37 percent in 1971 to 77 percent in 1987 (although a number of these sentences had to be replaced later by prison terms). The standard sentence for drunken driving without damage, with a blood alcohol level of 1.5, was lowered from three to four months detention to one to two months. Remarkably, all these changes in sentencing were not exclusively achieved through modifications in the law. They were coupled with courses and seminars for judges, where the new practice was debated at great length and informal consensus was achieved. Secondly, and even more important, crime in Finland has never been a political issue and there has never been any pressure from public opinion to impose harsher sentences. Instead, the over use of the prisons was recognized by civil servants, the judiciary and the prison authorities, and this led them to take collective action to solve the problem (Törnudd, 1991).

From this we can conclude that it is probably not enough to use exclusively statutory measures in order to bring about changes in sentencing practice. In France, for example, community service and the system of day-fines were in-

roduced by law, but this by no means led to substitution of the prison sentence by alternative sanctions. In 1988 approximately 5000 alternative sanctions were imposed: 3000 for community service and 2000 so-called day-fines (*jours-amende*). Most of these sentences were for theft and receiving stolen goods, traffic offences, vandalism and ordinary violence (*coups et blessures volontaires*), crimes which in all probability did not warrant a prison sentence. The offenders were predominantly young men between 18 and 25 years of age (*Statistiques du Ministère de la Justice*). The only way in which the French Government keeps the prison population in balance to any extent is by granting regularly collective pardons.

Another course of action is currently being taken by the English government. The 1990 Government White Paper (Crime, Justice and protecting the Public) declared for the first time that the government must treat sentencing policy as a subject for concern. The White Paper recognized the independence of the judiciary but attached to it a clear limitation: "no government should attempt to influence the decision of the judge in *individual* cases."

To this was immediately added that "*sentencing principles* and the *sentencing practice* are matters of legitimate concern to Government" (para. 2.1). The British government expressed its appreciation for the way in which the Court of Appeal had developed sentencing principles over the last few years by means of sentencing guidelines. Thus, the Appeal Court laid down as a guideline that for a burglary which warrants a nine to 12-month prison sentence, 190 hours community service is to be imposed. In addition the Appeal Court laid down that a short community service (40 to 60 hours) can be appropriate for crimes which on the whole do not warrant a prison sentence (National Standards for Community Service Orders, Home Office). Nevertheless, the government is of the opinion "that there is still too much uncertainty and inadequate guidance regarding the principles to be followed when sentencing" (para. 1.4). Therefore the government proposes a *partnership* between *legislator and judiciary*, where parliament provides a new statutory framework, stipulating the requirements which have to be met by custodial as well as non-custodial sentences and within which the Court of Appeal should work out the legal principles in more detail. In this way, the government hopes to arrive at a different sentencing practice.

In this chapter, the objectives of alternative sanctions have been discussed. There are indeed many and they are directed both at the individual and at the criminal justice system (or parts of it). What is wanted is a reduction in the prison population, a reduction in the number of persistent offenders, more security for the public and all this at less cost. In order to achieve these objectives, the collaboration of the judiciary is needed and this is not an easy task.

# III

## IMPLEMENTATION OF ALTERNATIVE SANCTIONS

It is perhaps as well to point out that a number of already existing non-custodial sanctions, such as conditional sentences and fines, were developed at the time to reduce the use of prison sentences. In this report we shall limit ourselves to recently developed forms of alternative sanctions. That means that we shall concentrate on a modified use of the fine, the day-fine, and on an improved variant of 'normal' probation supervision, intensive probation supervision, but not on older options employed to avoid a prison sentence.

Before going on to the implementation practice of alternative sanctions, a short review of the most frequently used alternatives follows.

When we think in terms of a coherent and distinct range of sentences, we come across a number of options which fall under the heading 'diversion'. These are:

- '*mediation*' / '*Victim-Offender Reconciliation Programmes*' / '*Täter-Opfer-Ausgleich*': this is the organization of a meeting between the offender and the victim, usually combined with compensation;
- *restitution and/or compensation* – the payment of compensation, the return of stolen property or reparation for the damage, doing work as redress; in some countries (Canada) *compensation* means being reimbursed by the State.

A little higher up the (sentencing) ladder are the following:

- '*day-fines*' – a system of individualized fines;
- *community service* – doing unpaid work for the benefit of the community, for a number of hours and for a restricted period.

Finally, the expressly intended alternatives for the prison sentence:

- '*day-centres*', '*attendance-centres*', '*day probation*' – developed in the United States and England with the aim of replacing detention and to intensify supervision;
- (*electronic*) *monitoring* – to replace remand in custody or, at the end of the term of imprisonment, to release the prisoner early but keep him under strict

- supervision;
- '*intensive supervision programmes*' – intensive probation supervision combined with other alternative sanction elements and/or compulsory counselling/therapy;
- '*boot-camps*' – a short term of imprisonment ('shock incarceration'), followed by intensive supervision.

## **1 Mediation projects**

The so-called 'mediation' projects exist in Canada, the United States, England, Germany, Austria, France, Norway and several other countries. They started in Ontario, Canada in 1974, and the practice quickly spread to the United States where more than 20 states have similar projects at the moment (Conrad, 1988), and subsequently to Europe.

Mediation is based on two fundamental elements: a conciliatory meeting between the offender and his victim, organized by a (probation) community worker, and some form of restitution, usually compensation. The principal objectives of mediation are: to recognize the interests of the victim more effectively through the reparation of the damage, to promote a real 'reconciliation' between the offender and the victim, and to make the offender explicitly aware of what he has done.

In a number of countries (Norway, Austria, Germany), mediation is used principally with juveniles. In Germany this is currently being extended to the criminal code for adults. In 1990 there were 31 'mediation schemes' in England, of which 17 were specially aimed at disputes between neighbours. They were carried out by the probation service and private organizations. From a Home Office investigation it appears that in projects exclusively directed at juveniles whose cases had been dropped, 57 percent of the young people involved attempted to give the victim an explanation of their behaviour and apologized. In a little more than a quarter of the cases compensation was paid and in some cases work was done for the victim. Eighty percent of the victims of juvenile crime and 50 percent of the victims of adults were prepared to cooperate in the mediation process. Ninety percent of the offenders were prepared to cooperate (Marshall, 1991).

In Canada, VORPs (Victim Offender Reconciliation Programmes) were imposed on adults as well as on juveniles. For the latter, this was brought about by new legislation in the Juvenile Criminal Code in 1982. There are about 40 mediation programmes in Canada. In Quebec only first offenders are considered for mediation but this is not the case in the other provinces.

In Germany, 'Täter-Opfer-Ausgleich' has expanded enormously (Schreckling, 1991). Begun experimentally in youth sentencing, TOA became part of the juvenile penal law process in 1990. In the meantime a number of other federal states started to experiment in adult sentencing. In Austria new legislation in the Juvenile Criminal Code in 1988 made TOA possible, but here TOA remained restricted to juvenile offenders. In France mediation has primarily taken off in the voluntary sector. This has led to a great variety of projects organized by neighbourhood organizations, victim organizations, community organizations and in a few cases by the public prosecutor.

The position within the criminal justice process varies: in some cases (Ontario) the arrangement was made before court appearance and formed part of a conditional sentence. In other countries (Germany, Austria, Norway, Quebec) the case is dismissed by the Public Prosecution, following a successful completion. In Germany the TOA projects are well entrenched in the penal law system. At present about a third of law courts, public prosecutors and probation workers are involved directly or indirectly in the implementation of similar projects; 11 percent of the projects are adult oriented.

In the United States there are all kinds of mediation projects: 'arbitration programmes', 'citizen dispute settlement centres', and 'neighbourhood justice centres'. Many mediation projects are run by private organizations which do not always have the backing of the judiciary. These private organizations generally find themselves on the margins of the criminal justice system. The result is that mediation is only used with petty crime. This is not true for the VORPs where mediation takes place after conviction and the agreed compensation forms part of the sentence.

One of the most successful VORP projects in the United States is that of the 'Crime and Justice Foundation' in Boston, a foundation associated with the Lawyers' Union, which supplies the majority of voluntary staff. This project is based on close cooperation with the judiciary, who refer 90 percent of the cases to the project (Zeder, 1990).

In general it can be concluded that the closer the judiciary are involved with the project, the greater the chance that mediation is presented as a real penal option. However it should be observed that mediation is imposed mainly for minor crimes.

## **2 Restitution and compensation**

In practically all countries, restitution and/or compensation in some form are part of the sentence. In Canada about three quarters of conditional sentences

include compensation and/or unpaid work as special conditions. Compensation always forms part of the Victim-Offender Reconciliation Projects. In the United States there are restitution centres, which are types of open prisons in which the inmates must work in order to pay for any damage their offence caused. In most countries restitution is seen not as an independent sentence in itself nor as an alternative for another sanction, but as a supplement to the sentence.

### 3 Day-fines

In Europe the use of fines has always been more popular than in the United States. Take West Germany for example, where in 1986 81 percent of all adult crimes and 73 percent of all violent crimes were settled with a fine being imposed as the main sentence (Strafverfolgungsstatistik, 1986). In England, 38 percent of all crimes and 39 percent of all violent crimes were dealt with by a fine (Home Office, 1988).

In the United States a system of fixed fines operated, according to the seriousness of the crime and the criminal record of the offender. This meant that fines were used sparingly, because judges were of the opinion that fining was too light a sentence to impose on wealthy offenders and too heavy a sentence for poor offenders (Hillsman and Greene, 1992; Morris and Tonry, 1990).

In a number of countries the fine has become the most important alternative for short prison sentences, usually a sentence of up to six months. This is mainly the case in Europe where many countries operate a day-fine system (Sweden, Finland, Denmark, France, Germany, Portugal, Greece, Austria and Hungary). Finland introduced the system in 1921, Sweden in 1931, Denmark in 1939, Germany in 1975 and France in 1983.

Recently, day-fines have been introduced in England on an experimental basis and also in various places in the United States (Hillsman and Greene, 1992).

The advantage of the day-fine is that the punishment element of it can certainly be as harsh as that of a prison sentence. Furthermore, research has found that some criminals see a heavy fine as a harsher punishment than a prison sentence.

There are, however, two problems which are associated with imposition of the day-fine:

- the sanction must reflect the *seriousness of the case* (proportionality) and it must be tailored to the *financial position* of the offender;
- the sanction must be *enforceable*; fines must be paid in full.

The system of day-fines is essentially simple. Offences which warrant a fine – and that is most of them, with the exception of serious violent crimes and sexual offences – are ranked according to seriousness and then translated into a number of *day-fines or fine-units*<sup>5</sup>. Then, the offender's financial position is taken into account. After making allowances for fixed expenses and costs incurred for the number of dependent family members, the *daily income* is calculated. Finally, a fixed percentage of the daily income is multiplied by the number of fine-units. In this way a fine is imposed which is proportional to the seriousness of the crime and which imposes a similar financial burden on offenders who have committed similar crimes but who have different incomes (Hillsman and Greene, 1992).

Variations are of course possible with this system. In Sweden the day-fine is 1/1000 of the offender's annual income, with allowances for taxes, the number of dependent family members and any debts. On this basis, the fine is raised to a level where only the income necessary for essential living expenses remains. Permission can be granted for extending the payment period or for paying in instalments. Unpaid fines can be converted to a prison sentence: five day-fines are equal to ten days' imprisonment, 100 day-fines equal to 64 days'. However care is taken to ensure that this procedure does not nullify the effectiveness of the day-fine as an alternative sanction to the short prison sentence (Thornstedt, 1975). Since the introduction of day-fines in 1931, this sanction has been seen as an alternative for even more serious offences. It is felt that the preventive effect of the day-fine is certainly no less than the prison sentence. Because the short prison sentence is seen as very undesirable, it has almost entirely been replaced by the day-fine (National Council of Crime Prevention).

The German system is based on what a day of freedom costs. In fact the day-fine comes down to a calculation of the income the offender stands to lose if he is in detention. In the calculation, account is taken of individual circumstances.

In Germany, overcrowded prisons coupled with the pronouncement of the Supreme Court that three prisoners to a cell is unlawful, led to a reform of the Criminal Justice Code in 1969. The legislator decided that the short prison sentence (up to six months) must – except in exceptional cases – be replaced by a fine. In order to simplify this transition, the system of day-fines was introduced in 1975. Day-fines should be proportional to the seriousness of the case, fair and collectible. The results were as follows: before the reform, 110,000 offenders in West Germany were sentenced each year to a short term of imprisonment (20 percent of all convictions); this number fell to 10,000 (Hillsman and Greene, 1992). Nowadays a fine is imposed in 80 percent of these cases and an unconditional prison sentence in only six percent of cases.

Moreover, the total number of sentences fell by seven percent, as a conse-

quence of the extension of the Public Prosecutor's powers<sup>6</sup> (Sessar, 1989). One striking fact is that the total sum of money from imposed fines rose considerably, which could probably be accounted for by the more frequent imposition of fines on offenders with substantial incomes. The determination of a person's income is not always without problems. From research carried out into the practice of day-fines in Baden-Württemberg, it appeared that in a third of the cases the judge did not have this information and therefore estimated the fine on the basis of the professional status of the offender. This can of course lead to sentencing discrepancies (Albrecht, 1982). In England, 85 percent of Magistrate Court cases resulted in a fine. However, as unemployment increased, the number of fines imposed dropped drastically. The judges were afraid to impose fines on people with a (very) low income because there was a strong correlation between unemployment, the non-payment of fines and substitution-imprisonment (Moxon, 1983). Two investigations carried out by the Home Office Research and Planning Unit led to the adoption of day-fines (unit-fines) in the Criminal Justice Act 1991. However, in 1993 as a result of some resistance against the system of unit-fines, it was abolished. The system was initially introduced experimentally to test whether adequate information regarding the offender's income could be obtained, whether the fines would prove to be collectible and whether, as a consequence, the substitution of fine default by a prison sentence would diminish. In the English variant, the fine-unit is based on the weekly income instead of the daily income, because people estimate their income in weeks rather than in days. The Home Office evaluation involved 17 offences among which were violent crimes, (tax) fraud, drunken driving and driving without a licence. Besides quicker collection of the fines and less substitution of prison sentences, it was also hoped that the discrepancies in the level of the fines would be reduced (Moxon, 1991).

The imposition of these alternative sanctions stands or falls with the certain collection of the day-fines. Various methods have been tried to solve this problem.

In the first place, the payment of the fine can be made easier by allowing payment in instalments or by extending the payment period. This seems to work well in the main: in the German investigation 70 percent of the research group paid their fine in instalments as agreed, and the rest did so after a reminder (Albrecht, 1982). From American and English research, it is evident however, that three factors are associated with successful collection: the fine must not exceed the paying capacity of the offender to any great extent, although paying the fine may cause real hardship; payment instalments must be limited as much as possible; and the payment period must not be too long (Cole, 1992).

Secondly, those who are responsible for the collection of fines should have

an interest in their payment. Sometimes a collection agency is employed for this purpose, following the example of financial institutions. Another solution, which is worthy of consideration for The Netherlands, is to put the onus for the collection of fines onto the probation service. The service may then reserve a proportion of the money to invest in special probation projects for which finance is lacking. This system is used a great deal in the United States: the probation service receives part of its budget through the financial contribution of offenders attached to sanctions imposed by the court. For example, 50 percent of the budget of the Department of Adult Probation in Texas comes from this type of contribution and this leads, among other things, to 80 percent of imposed fines being recovered (Cole, 1992). In a world where so very much depends on money, the financial sanction is one of the most satisfactory sentences. Financial sanctions – fines, compensation, the payment of an amount of money into a special fund, the creaming off of illegally obtained profits – bite deeply into the lives of people. When enforced in an effective way, these sanctions therefore form a particularly efficient alternative which could certainly be used more often than is the case in many countries at the moment.

#### **4 Community service**

Community service was started in the United States in 1966 in Alameda County as a penalty for traffic offences. This penalty has now spread over the whole of the United States, but is restricted mainly to so-called 'white collar' criminals, juvenile delinquents and to non-serious crimes. As a result of this, the sanction is used primarily as a supplement to other sentences and only rarely as a sentence in itself. This is unlike Europe where community service is imposed more frequently as an independent sanction.

In Germany the sanction was introduced in 1969 and adopted into legislation in 1975. In France an Act on unpaid work, passed for the benefit of the community, came into operation in 1984. The sanction can be imposed as an alternative to a prison sentence or as a special condition in a conditional sentence. However, a paradoxical condition for its use is that those who have earlier undergone a prison sentence of more than four months, cannot be considered for community service (Perdriolle, 1984). It follows therefore that the sanction can only be imposed for minor offences and is hardly ever seen as a real alternative for a prison sentence. In 1986, 7500 community service sentences were imposed, of which 70 percent constituted the main sentence. This was 31 percent more than in 1985 (Sessar, 1989), but it is still a small number.

Community service in Germany was – with the exception of sentencing of

minors – only imposed in place of a prison sentence for the non-payment of fines. Community service as a special condition was removed from the Federal Criminal Justice Code in 1974 and moved to the criminal justice laws adopted by the separate states (Sessar, 1989). The German criminal justice system had to reduce the large number of substitute prison terms (one in ten fines led to a substitute prison term: between 1980 and 1983 this was between 25,000 and 30,000 each year). The conversion rate was six hours' work for one day's imprisonment. The introduction of community service has indeed led to a fall in the number of substitute prison terms. As a consequence of this, the use of community service in the states has been extended within the framework of a conditional discharge and/or a conditional sentence.

It is remarkable that, in many of the countries which have introduced community service, the minimum number of hours imposed is 40, and the maximum 240. The results appear to indicate that the imposition of many more hours only leads to more failures. In this connection Morris and Tonry (1990) note that if community service is to be used for more serious crimes, this sanction should form a part of a package of alternatives.

In Finland, they are still at the experimental stage. In 1991 community service was introduced in 11 jurisdictions for a trial period of three years. Community service can be imposed as an alternative for a maximum of eight months' imprisonment. In the first nine months of operation, 75 percent of the community service sanctions were imposed for drunken driving, while drunken drivers only made up 30 percent of the prison population (Takala, 1991). In 1992 about 20 percent of the short prison sentences were replaced by community service. That is 14 community service sanctions for every 100 unconditional prison sentences (Takala, 1992).

In Canada, community service is also used, but not as a substitute for the prison sentence. In most cases the sanction is imposed as a special condition of a conditional sentence, or as a kind of conditional sentence which is imposed for minor offences. The way in which sanctions are imposed in practice (including alternative sanctions) is placed under the authority of the individual provinces. This means that between the provinces substantial differences are apparent in the way these sanctions are implemented. In 1978 a number of trial projects were started in Ontario. Recidivism, in the year following the completion of community service, was only 18 to 23 percent, which certainly relates to a 'low-risk' population who would not have received a prison sentence in the first place (Jackson and Ekstedt, 1988). Community service is used exclusively for non-violent offenders. The average length varies from 49 to 60 hours. In some provinces community service can be done instead of paying a fine (one hour's work converting to \$5).

The most interesting development is in England because that country has had the most experience. Community service was introduced in England in 1972 on the advice of the Advisory Council on the Penal System. In 1989 National Standards for Community Service Orders were introduced and in 1991 a new Criminal Justice Act, with regulations governing the use of community service, came into operation. In 1990 more than 37,000 offenders received a community service order, which accounted for eight percent of all sentences for serious offences. The Community Service Order was originally introduced as a main sentence. The new 1991 Act has now made it possible to combine community service with (intensive) probation supervision (for a maximum of 100 hours). This extension of its use could, however, lead to community service being imposed for minor offences. Comparative studies on the use of community service in Canada and England clearly showed that community service in England was imposed for more serious offences than in Canada. The authors attribute this to the difference in statutory regulations: a sanction which is only suitable as a supplement to a conditional sentence instead of as a sanction in its own right, leads almost by definition to its use for minor offences which would not warrant a prison sentence (Vass and Menzies, 1989). Moreover, from the start of the experiments about half the judges and the probation officers were of the opinion that community service should not be used exclusively as an alternative for a prison sentence (Pease, 1985). The English application stems from a 'tariff system' which emphasizes the principle that the sentence is, as it were, payment for the crime. In practice, community service is ordered for offences that vary greatly in seriousness, which results in an unclear position of these sanctions in the tariff system. Pease (1985) found that prison records and age had no bearing on the length of the community service. Research in Northern Ireland has shown that type of offence, number of previous convictions and number of previous detentions had equally little effect on the length of the sanction. The only variable which bore any influence was the offender being in work or not: the unemployed received a longer community service order than offenders who had a job. This could, according to Pease (1985), lead to criminal inflation and he pleads for better guidelines in this field.

There are certain types of offenders who are not eligible for community service: these are mentally disturbed people or people who have serious personal problems, such as those who are addicted to alcohol or drugs and offenders who have no permanent home. Both the frequency of the imposition of community service by the different law courts and the type of work that is undertaken, as well as the work conditions, vary greatly (Pease, 1985, Skinns, 1990). In some courts, four times as many community service orders are imposed than in others. In Pease's investigation (1985), community service was

imposed primarily for crimes against property (65 percent) and traffic offences (27 percent) and about a third of those doing community service had previously been detained (detention centres, borstal or youth custody). The average length of the order was 140 hours. Most of the work consisted of maintenance, repairs and painting work.

In 1989 the Home Office brought out National Standards for Community Service Orders with the following objectives: a more frequent use of community service, stricter regulation of the order and a greater uniformity in its application. The principal stipulations of the National Standards are as follows:

- community service must be seen as a realistic alternative for detention, that can also be imposed for more serious offences;
- the type of work must be physically, psychologically or mentally taxing; the work must benefit the community;
- the suitability of the offender for community service must be determined on the basis of a probation report;
- the fact that a previous community service order was breached or that the offender re-offended is *no* reason to reject him for consideration for a community service order. The risk of detention carries more weight than the risk of failure of community service;
- offenders with a community service order of 60 hours or more must carry out at least 21 hours in a group situation where physical work is being done;
- the work must not take up more than three days (21 hours) per week;
- the policy towards violations must be strict, predictable and consistent, to uphold the confidence of the courts and the public; following failure to turn up at work a few times, the offender must be brought before the court again.

The National Standards have led to an increase of Orders being terminated for breach of conditions, from 14 percent in 1988 to 17 percent in 1989. This has led to a steady growth in the number of convictions for 'breach of the Order' and in the subsequent detentions. Up to 1990 the numbers of both completed and breached community service Orders clearly increased. The so-called 'breach' procedure usually starts after the offender fails to report for work three times without permission, whereas initially this happened after four or more non-appearances (Lloyd, 1991).

## **5 Attendance and day centres**

The English *attendance centres* were initiated and financed by the Home Office who asked police commissioners to set up such centres in their jurisdiction.

This initiative was not very successful: the attendance centres have a precarious existence and in 1987 there were only 24 left in the whole of England. The objective is to provide an alternative sentence for 17-20-year-old offenders<sup>7</sup>, but whether this is actually the case is questionable. The centres are open every (second) Saturday – morning or afternoon – for three hours.

Leadership and organization rests with the police. Lessons are given in First Aid, carpentry and car maintenance and there is plenty of physical training. Finance is arranged on the basis of the number of offenders attending and the number of truant absentees. The officer in charge is expected to chase up the absentees in his free time and to initiate any necessary action to be taken against them. An attendance centre order is imposed for a number of hours (frequently 36), but the period over which the sentence will be carried out can vary depending on the opening hours of the centre. Following completion of the sentence, it remains the responsibility of the officer in charge to direct the juvenile towards welfare or youth work, but this is seldom done and there is very little after care.

*Day centres* were set up, and are now supervised by the probation service. The number of these centres has increased considerably: in 1985 there were already more than 80. Attendance at such a centre is imposed on 17-25-year-olds, mostly as a special condition of a conditional prison sentence and in a few cases on a voluntary basis. The sanction is expressed in days, with a maximum of 60 days. Opening days and hours as well as staffing at the centres vary greatly. Although both types of centres run the same types of activities, in the day centre attention is also focused on criminal behaviour, alcohol and drug abuse. Sports activities are also organized.

Generally, both categories of those ordered to attend a centre have committed the same types of crime. They differ most strongly in their criminal record: in the attendance centres a quarter of those attending are first offenders and three quarters have less than three previous convictions; those attending day centres have many more convictions and a sizeable proportion of them have already served a prison sentence.

The biggest problem of the attendance centres is the absence of a well-defined objective. In addition there is no real support for them and a general lack of enthusiasm as far as running them is concerned. This last point does not apply to the day centres in which the probation service undoubtedly has an interest (Mair, 1987).

The day centre has various objectives: three quarters of the centres consider themselves to be an alternative form of detention; others see the reduction in recidivism and the development of their clients' skills as the most important goals.

The typical client is an unemployed young man (under 30). Three-quarters of the committed offences are crimes against property, mainly robbery and burglary. More than 41 percent have served a previous prison sentence, while 34 percent have six or more previous convictions. This suggests that the criminal record rather than the offence committed leads to a referral to a day centre. If we consider those who have been ordered to attend such a centre within the framework of a conditional sentence, it appears that 51 percent have already served a prison sentence (against only 36 percent who had previously received a community service order).

Inspired by the British model, day reporting centres (DRCs) have recently been set up in the United States (McDevitt and Miliano, 1992). Introduced in Massachusetts, only about six states have now adopted this model. Moreover the centres have a spill-over function for prisons: they accommodate offenders in pre-trial detention and those waiting to be paroled. The centres function therefore as an option to release prisoners early, rather than as an alternative sanction. From an evaluation of the DRCs in Massachusetts, it is obvious that, here too, the way in which the projects are implemented varies enormously. One of the centres demands five to eight contacts a week while another combines three contacts a week with electronic monitoring. The average length of compulsory day attendance at a DRC is between 40 and 50 days. Besides specific special requirements, such as community service, all clients with a hard drugs problem (37 percent) or an alcohol problem (47 percent) must undergo compulsory treatment (mainly group counselling or meetings with Narcotics/Alcoholics Anonymous). In addition, regular urine tests are carried out to check drug use. Checks are also made on offenders at home in the evening (curfew checks). Every day, clients must fill out an activity plan which they must follow in detail the next day, an activity which is expected to have an educative value.

The crimes committed include mainly crimes against property (a quarter), drug related (property) crimes (20 percent), drunken driving (18 percent) and violent crimes (eight percent).

The level of supervision in day reporting centres is higher than in Intensive Supervision Programmes. Most importantly, the staff is empowered to decide that the client must return to prison if he has failed to comply with the programme's requirements satisfactorily or if the urine tests are positive. During the operation electronic monitoring is brought in as a back-up. Although this bears no relation to the success of the programme, clients are made aware that they are being severely punished and the neighbourhood in which the centre operates is ensured that the security and safety of its residents will be safeguarded.

## 6 (Electronic) monitoring

A number of misunderstandings exist regarding house arrest. In the first place, house arrest can be imposed without the need of using electronic devices. In the second place, house arrest does not mean that the offender must stay at home 24 hours a day. House arrest most resembles an intensive supervision programme where the offender under the order must be at home for precisely stipulated times. Outside these hours he can carry on a job or, for example, follow a course or attend therapy. The house arrest supervision can be enforced by means of regular telephoning or repeated house visits. It is true that these personal contacts are being replaced more and more by electronic devices.

Electronic monitoring is a typical American product and up to now has been most popular in the United States. At the University of Harvard in 1964, experiments were already being carried out with EM (electronic monitoring) and it was then seen as an electronic rehabilitation project: on the one hand, it would reduce recidivism and, on the other, communication with a central station would have an educative and humanizing effect (Schwitzgebel, 1969). The latter aspect has never really been developed. There are two elementary 'monitoring' systems: an 'active' system whereby a transmitter in the form of an ankle (or wrist) band is worn and a receiver telephonically transmits signals to a central computer; the second 'passive' system controls the whereabouts of the offender by the use of irregular telephone calls. This system is technically more simple and cheaper (Baumer and Mendelsohn, 1992).

In 1971 EM was introduced as an alternative for placement in a juvenile institution. Although it was presented as a way of reducing psychologically destructive detention and improving social integration, the objectives gradually changed. Currently, the principal objective is to provide a contribution to the solution of prison overcrowding. In addition it also costs less. Finally, the punishment element of EM is emphasized (Renzema, 1992).

In the eighties there was a real explosion in EM projects. In 1990 EM programmes were established in all states in the United States and there were between 10,000 and 20,000 people under daily electronic supervision.

From evaluation research, it is evident that most of these convicted offenders have the same characteristics as prisoners and in about half of the cases – and sometimes more – prison is indeed substituted. When EM is used in conjunction with work-release or early release, prison overcrowding is indeed relieved.

EM has three components: electronic control, frequent contacts between staff and offender and urine tests to check on the use of drugs. The average duration of EM in the United States is 79 days or about two and a half months.

Only eight percent of the offenders are on EM for longer than six months. On average, there were four to eight staff-offender contacts at the probation office and the same number away from the office. In two-thirds of the EM programmes, urine tests were routinely carried out on half the participants (Renzema, 1992).

The target group has changed in character. In 1987 only six percent had committed a violent crime and in 1992 this was 12 percent. In the same two years, the number of drug offenders rose from 14 percent to 22 percent and the number of property crime offenders (mainly burglary) rose from 18 percent to 32 percent. The percentage of traffic offenders (mainly drunken drivers) fell from 33 percent to 19 percent. In fact, there has been a development towards a considerably more hardened target group than in the beginning. In 1989 half the population released directly from detention was on parole or was ordered directly to EM. EM was also gradually used more frequently with remand prisoners (Renzema, 1992).

The use of EM has gone hand in hand with an increase in supervisory staff. This expense was in part defrayed by an income-related contribution being levied on those undergoing EM.

Implementation of EM is not without problems. Most importantly, these include technical failures, such as transmitter breakdown, overloading of the telephone system and incorrect reports of the offender violating rules. Regarding the last problem, it is now required that extra personnel be brought in to check out the facts personally if an offender is reported to be in breach of the rules. This means a rise in the costs involved with the system.

One of the few countries which – besides the United States – has set up a number of experimental EM programmes, is England. Here also, the most important stimulus for the experiments was the problem of prison overcrowding. Because amendment of the law was necessary before the court could impose EM, the English experiments were restricted to using EM as an alternative for remand imprisonment (Mair and Nee, 1990).

Altogether three experiments were set up over a six-month period. The experiments were on a small scale: only 50 offenders were under house arrest with EM. Practically all had initially been remanded in custody. It involved primarily young men between 20 and 30 years of age. More than half had served a prison sentence during the previous three years. The English test model implied that after a period of EM the case would be brought again before the court and a sentence would be passed. In many cases this would be a prison sentence (from the eight who appeared in court after the period of EM, five received an unconditional prison sentence). This model presents a number of shortcomings which will be dealt with in Chapter 5.

## 7 Intensive supervision (ISP) programmes

Intensive supervision programmes consist of a number of punishment and treatment elements carried out under the strict control and supervision of the probation service. This new sanction is also an American initiative and is oriented towards a relatively high-risk category of offenders.

### *Objectives*

Although there are some substantial differences between the various projects, the objectives are practically always the following:

- a more efficient use of scarce prison cells;
- a cheaper alternative for loss of liberty;
- the reduction of criminal behaviour, or the recovery from alcohol or drug addiction, of offenders who remain in the community;
- the administering of appropriate (sufficiently severe) sentences.

### *Methods*

A survey of the use of ISP projects in all states of the United States brought three implementation models to the fore (Byrne, 1986).

*The legal model:* where the emphasis is on punishment, which is seen to be a just punishment, based on the seriousness of the crime ('just deserts' principle). The consequence of this model is that the offender is not compelled to take part in counselling or treatment. Within this model the responsibility for sentencing lies with the legislator and/or the sentencing authority. Although this model is not used in any states in its pure form, practically all projects employ a number of punishment or restitution elements such as the payment of a contribution for the supervision, fines, community service and house arrest.

*The risk-control model:* attempts to bring the risks associated with recidivism into balance with the need for just punishment. This model implies a certain predictability of future criminal behaviour of the offender. We know that prediction may imply two mistakes: false positives (predicting a great risk of re-offending, but this does not happen) and false negatives (expecting no further criminality from the offender, but he re-offends). Both mistakes are frequently seen and, in general, the ability to predict future (criminal) behaviour is extremely limited. It is better therefore to speak of a 'limited risk-control model'. Also, this model is not primarily oriented to rehabilitation but to the reduction of re-offending. As has been pointed out: "A supervision agency is not a welfare

agency, and an extension of its activities beyond a crime control focus is both inappropriate and dangerous." (O'Leary and Clear, 1984, 18).

*The treatment-oriented model:* has, it is true, a number of punitive elements such as mentioned before, but in contrast to the other two models, this model requires treatment. This means that, once a treatment plan is laid down, the prime responsibility for further participation in the project rests with the offender. For example, New Jersey's ISP project requires that an individual plan is laid down with regard to employment, education, community service, etc.; that the offender has a job or participates in an educative project and that there is a sponsor or a network of people so that support and guidance is given to the offender. In fact nearly all the states operate this model of compulsory treatment in spite of the many statutory reforms of sentencing practice.

The criminal justice procedures in which ISP projects are applicable also vary. Firstly, the court can sentence an offender to ISP as an alternative to custody. This application is typical in states where the legislator has laid down a system of mandatory sentences and/or where sentencing guidelines have been developed. Secondly, the probation service can place an offender in an ISP project if the court has imposed a conditional sentence with probation supervision. This application occurs in states with a system of indeterminate sentences. In this system the probation service is responsible for both the classification of offenders and for their supervision. To support the probation service in its decisions, many states have developed techniques to assess the re-offending risk and the treatment requirements of offenders<sup>8</sup>. Thirdly, ISP can be laid down as a condition for early parole. This type of decision is taken at the time of sentencing or after sentencing, in the form of 'shock probation', sentence revision, or so-called 'split sentences' (first a prison sentence, then ISP).

#### *Target groups*

As has been explained before, ISP projects have been developed expressly as an alternative to prison for hardened criminals, that is to say, for a more serious category of offenders than those on whom a fine or a community service order would be imposed. An interesting question is, therefore, which offenders are considered eligible for ISP. In this respect, there is substantial variation between states. In some states, for instance, the choice of ISP is not determined by the offence, but by the length of the imposed prison sentence.

What do we consider a serious category of criminals to be? These would include 'high risk' criminals with a long and varied criminal record with a high risk of re-offending, 'dangerous' criminals who carry a high risk of violence,

and 'serious' criminals, referring to the serious nature of the last crime committed.

In actual fact, offenders of violent crimes or with a history of violence are for the most part excluded from taking part in an ISP project and the same applies to offenders with a long criminal record (Clear and Hardyman, 1990).

For example, in one of the best known projects (New Jersey), the majority of the clients are offenders who have committed crimes against property, mainly burglars and small drug dealers. Most of these offenders had only one previous conviction (Pearson, 1988; Pearson and Harper, 1990). In another much discussed project (Georgia) more than 30 percent of the participants belong to the 'minimum' risk group and less than 20 percent to the 'high' risk group. In both these projects, which belong to the most publicized ISP projects in the United States, the clients are not any different from the average 'probation' population. In other projects, depending on the chosen model, the target group is recruited from offenders who are being considered for 'parole'.

The problem that arises time and again in this respect is that community projects, which profess to be an alternative for prison, are by definition open to the criticism that they put the safety of the public in jeopardy. In order to preclude these criticisms, very restrictive criteria are used when selecting candidates for the projects. As a consequence the really hardened criminals – who are most likely to receive a prison sentence – are excluded. In defence it is argued that, among those who receive 'probation', there are many hardened criminals for whom no custodial accommodation is available and who are consequently eligible candidates for ISP. Although this is undoubtedly the case, in this way ISP can hardly be seen as a real alternative for custody (Clear and Hardyman, 1990).

There are various ways in which ISP clients are selected. The courts can sentence someone to participation in an ISP project. In that case, it remains unclear whether the candidate – without ISP – would have been given a prison sentence or probation. In some states (New Jersey among them) the offender must first receive a prison sentence before he can be eligible for ISP, after which a selection committee determines the final allocation of clients. A third ('resentencing') model is that following the imposition of a prison sentence, ISP officials screen the cases and the judge revises the sentence in favour of ISP (Clear and Hardyman, 1990). In a number of regions (including Ventura, California) a so-called 'split sentence' is used: first the offender is detained and when he has served all but 60 days of his sentence he becomes eligible for ISP. In California, though, frequent use is made of a screening technique that attempts to measure both the high risk factors and the treatment requirements of potential clients (Petersilia and Turner, 1990). In general, those detained in prison belong

to a group of more hardened criminals than offenders on probation. The more the projects are oriented towards hardened criminals, the more they present a real alternative for a prison sentence (Lurigio and Petersilia, 1992).

#### *Actual content of ISP*

ISP must not be underestimated as a sanction: it is a very demanding intervention. One unexpected finding in a large-scale evaluation of 14 ISP projects carried out by the RAND corporation was that, in one of the projects under investigation (Marion county, Oregon), 25 percent of those in detention turned down the opportunity to take part in an ISP project: they preferred prison! An offender who had experienced both sanctions said:

“It’s harder to do time in the community than in prison. In jail you just do as you’re told, on ISP you have to take responsibility for your life.”  
(quoted by Petersilia and Turner, 1990).

This quotation sums up the whole essence of ISP projects.

The actual interpretation of the projects once again shows many variations in the case-load for probation officers, in the number of compulsory contacts between the offender and the probation officer and in the checks made during house arrest (Byrne, 1986). Light case-loads and many contacts do in fact form the corner stone of ISP projects but both are interpreted very differently. The average case-load is 25 offenders per ISP worker. The total number of monthly contacts varies from two per month (Texas) to 32 per month (Idaho). Face-to-face contacts vary also from two per month (Texas, Nevada, Ohio) to daily contacts (California, Idaho, Indiana). In addition there are also great differences in checks made during house arrest and the required number of contacts with the support networks in the offender’s immediate environment.

The following elements are to be found in practically all existing projects:

- an as accurate as possible assessment of risks and needs of the offender on the basis of an objective measuring technique;
- community service;
- (electronic) monitoring;
- (urine) checks for drug and alcohol abuse;
- compulsory assistance and/or treatment on the basis of recognized needs and requirements: counselling on finance and individual and/or family problems; victim courses, therapy in the case of drug, alcohol or gambling addiction, education and training, assistance in finding employment.

The differences arise mainly with respect to case-load, in the way supervision and assistance are administered, in the use of electronic monitoring and in the imposition of fines, restitution, or a financial contribution to the ISP project by the offender (Byrne, 1986; Pearson, 1988). There are also differences in the use of so-called 'shock incarceration', whereby the offender first serves some time in prison before ISP comes into operation (Pearson and Harper, 1990).

The average or standard ISP project is characterized by at least two contacts per week, house visits at night, community service and restitution, usually combined with house arrest, urine checks and electronic supervision: ISP is publicized in the United States as 'tough, strict, and harsh' and many people want it to be so (Clear and Hardyman, 1990). From this it is evident that assistance and treatment are not always part of the practical implementation of ISP projects and this also became apparent in the extensive evaluations of the RAND corporation (Petersilia and Turner, 1990; Petersilia, 1991, Lurigio and Petersilia, 1992).

## 8 Boot camps

"Two more weeks  
Until we're through  
We'll be glad –  
And so will you."

(Song of the work crew in Alabama Boot Camp – cited by Osler 1991).

'Boot camps', otherwise known as 'shock incarceration', is a sentence which is imposed in the United States on young adult offenders. The objective is that this relatively short sentence (the average length is three months' detention) is followed by a period of intensive supervision. Boot camps form an alternative for the usual prison sentence. They are directed towards young, non-violent first offenders between 17 and 25 years of age, who would have received a sentence of one to two years' imprisonment. Instead of this they can be sent to a boot camp for a maximum of six months. Participation in a boot camp is usually voluntary and those who choose not to participate must serve the (longer) traditional prison sentence. Also, those participants who do not (or cannot) complete the programme are sent back to jail. The idea originated in Georgia in 1981 but the first boot camp was built in Oklahoma in 1983. Georgia followed in 1983 and Mississippi in 1985. The success was so great that in 1991 there were already 34 boot camp prisons open in 23 states and 4000 convicted criminals were being detained in boot camps (Osler, 1991; MacKenzie and Souryal, 1991).

The philosophy of boot camp prisons is summed up very well in the following quotation:

“Military-style boot camps, with their rigorous regimes and austere conditions, bring a sense of order and discipline to the lives of youthful, non-violent first time offenders, and perhaps serve as a deterrent against future crimes...” (National Drug Control Strategy The White House, September 1989).

Although there are various differences between boot camps, they do have a number of common elements. Thus, all boot camps are characterized by a military regime with a great deal of square bashing, marching, physical training and military discipline, where even small misdemeanours are punished severely on the spot (Morash and Rucker, 1990). These aspects are combined with hard physical labour, education, the acquisition of vocational skills and sometimes, counselling. The expectation is that the combination of a strict military regime with rehabilitation activities will lead to less re-offending among these convicted young men.

Another characteristic of this alternative to the traditional prison sentence is its many objectives (Osler, 1991):

- *specific deterrence*: the ‘shock’ experience of a boot camp should provide a strong motivation to avoid behaviour that will lead to a return to prison;
- *general deterrence*: the punishment element of boot camps (including for instance, shaved heads) is made a lot of in the media. Politicians in particular expect this to have a general preventive effect;
- *rehabilitation*: it is expected that the military regime will develop a lifestyle which will be transferred and adapted to the home environment. In addition, the therapeutic programmes have rehabilitation as an objective;
- *punishment goals*: boot camps have a strong ‘punishment value’ and, therefore, accommodate the general need for retribution;
- *incapacitation*: as the detention period is so short, this objective is of limited value, unless of course an intensive supervision period follows detention;
- *making the prison system less expensive*: in comparison with the traditional prison, the costs of boot camps are higher; it is true of course that detention in a boot camp replaces what would be a much longer stay in prison, which means it is a cheaper alternative in the end.

Boot camps have rapidly become very popular with the American public and the media. One of the reasons for this is the American belief in the great educational benefit of military training for young adults. A second reason is that boot camps offer young first offenders the chance to receive a relatively short

but certainly sharp sentence.

A survey among the states which have set up boot camp programmes shows a varied picture. Only a third of the states judge the punishment character as the primary objective of the programme; the other states found the punishment character of only relative importance; 16 states gave high priority and spent a great deal of time, on educational activities, some finding vocational training the most important element and others concentrating on both training and 'drug education'. Others saw the reduction in recidivism as the most important objective, but independent of what they considered as the causes of crime, they all put great emphasis on education, on social shortcomings, on the necessity of treatment (drug and alcohol addiction) and on the deterrent aspect of hard physical labour and physical training (MacKenzie and Souryal, 1991). Although all states have adopted these elements in their programmes, there are substantial differences in the number of hours inmates spend on these aspects.

Which offenders are referred to boot camps and how does this come about? In some states the young criminals are sentenced directly by the court to a boot camp. If the camp authorities cannot or will not implement the sentence, then the offender must make another court appearance. In other states those receiving prison sentences are simply referred to the prison authorities who then select the potential participants for the boot camp programme. Proceeding in this manner means that no 'net widening' occurs because in any case the result is deprivation of liberty. Those who are not eligible for the programme are sent to serve a traditional prison sentence.

Although about half the states surveyed state that they permit perpetrators of violent crime to take part in the programmes, in practice it seems that by far the majority of participants has been convicted for non-violent crimes: robbery, burglary and drugs-related crimes. Ninety to 95 percent of the participants are drug addicts: in addition, four states go on to report that their programmes are specially designed for non-violent drug offenders and all states report that drugs education and/or drugs treatment form part of their programme.

Programmes also differ in the after-care they offer. There are only a few projects which attach a period of intensive supervision to the three to six months' detention. It is now evident that these programmes have a greater chance of success than projects where the offenders are simply sent back to an environment where their criminal friends, drug problems, unemployment and lack of support await them (MacKenzie, 1990; Osler, 1991). The probation service in New York (New York Division of Parole) has an intensive supervision period of six months attached to the project, during which time employment is sought, urine tests for drug abuse are carried out, there is treatment for drug addicts and support group sessions take place.

Boot camps are discussed further in Chapter 5, which concentrates on the effectiveness of alternative sanctions. Apart from the problem of effectiveness, some people in the United States wonder whether it is realistic to expect socially positive results from a system that is oriented towards preparing people for war and which is based on a strong hierarchy, unquestioning obedience, submissiveness, strict discipline and the learning of an aggressive combative mentality (Morash and Rucker, 1990). Some doubt that these principles can really lead to rehabilitation, good social behaviour and that they succeed in deterring further criminality. Others point to the dangers of the sudden transfer from such a regime to the disorderly, disorganized and uncontrolled environment into which the offender is returned after six months (Osler, 1991).

## IV

### THE ADMINISTRATORS AND THEIR RESPONSIBILITIES

In an evaluation of seven intensive supervision programmes for drug offenders, Petersilia and her colleagues compared, over a period of time, an experimental group of offenders who had received ISP orders, with a control group who were serving traditional probation orders (Petersilia, Turner, Piper Deschenes, 1992). Although the researchers detected barely any difference in the re-offending rate between both groups *within* each project, they did find substantial differences *between* the seven projects. Thus, in Georgia 83 percent of the offenders were predicted as having a high risk of re-offending while the actual re-offending rate was only 15 percent, the lowest percentage of all the programmes. In Seattle it was predicted that 60 percent would probably re-offend, but during a follow-up survey a year later only 40 percent had been re-arrested. Above all, it seems that with relatively the same supervision strategy exercised on relatively similar offenders, the results between the projects under review differed a great deal. The researchers suggest that the large variation in results is not the result of differences between offenders but of differences in the implementation of the sanction.

Enforcement agencies can differ in the manner and degree with which they carry out (intensive) supervision and/or the way in which they deal with technical violations of the sanction conditions. A strict policy on this point affects the number of offenders who must re-appear in court and are consequently detained again. From this it follows that variations in enforcement agency policy can lead to differences in 'success' percentages. In my opinion it is undoubtedly the case that the manner of enforcement and the way in which the probation service carries out its job are of decisive importance for the successful implementation of alternative sentences.

The growth of these sentences has led to a necessary review of the function and responsibility of the probation service as an institution, and the job performance of the individual probation officer. It is noticeable that the discussion in those countries which have a probation service (including The Netherlands), is very similar. In all these countries, a conflict exists between the traditionally held view of the probation officer as a social worker, with the needs and re-

quirements of the client being of paramount importance and the emphasis placed firmly on assisting the client, and the demands of the criminal justice system and society which expect the probation service to ensure that the sentence is carried out in an orderly way, that there is strict supervision of the sanction conditions and that the security of the public is ensured. This conflict has not only led to opposition in probation circles against this new job definition, but also to great uncertainty with regard to the real objectives of the probation service and the principles underlying the role of the probation officer in the present system. All this has seriously damaged the confidence which the judiciary and the public have placed in the probation service as administrator and assistant in the implementation of sanctions *and* as a social service assisting those convicted. More and more, the probation service is being seen as an institution which glosses over criminality and by which the offender is protected as much as possible against further intervention by the law. Add to this the growing scepticism with regard to the effects of assistance and treatment, and the picture emerges of an institution whose usefulness is under serious scrutiny. It was in fact in the eighties that the probation service gradually realized that a real crisis of confidence existed between itself and society. In addition it became clear that the more extensive use of alternative sanctions presented a wonderful challenge for the probation service: if the service wants to continue playing a meaningful role in this development then it had to be prepared to redefine its function and responsibilities and drastically change the way in which these responsibilities are undertaken. In most western countries, where probation is an important institution, we see that great efforts have been made to enhance the credibility of the service. One of the discussion points connected to this is to what extent the traditionally most important objective of probation, rehabilitation of the individual criminal, should be replaced by an objective such as supervision of the offender for the protection of the community. Another point is to what extent we should maintain the very important helping and assistance role. Just how do we solve the contradiction which arises when we combine the function of social worker with that of policeman?

### **1 Role conflict in the administration of alternative sanctions**

In order to arrive at an appropriate role definition for the probation worker, we must consider the work practice and the data revealed by research. In this respect, offenders who have ISP imposed on them can be classified in three main categories (Meyerson, 1992):

- 1 offenders who say – and act as if – they want to cooperate, but in fact really want to do neither;
- 2 offenders who are not really motivated and cooperate only as much as is strictly necessary, to retain their 'relative' freedom;
- 3 offenders who, irrespective of the sanction, are motivated to change.

From this classification, it is clearly evident that for the probation worker to have a sufficient influence on the offender's behaviour he must fulfil many different roles. Thus, with group 1 considerable control must be exercised if the sentence is to be successfully concluded. In this group violation of the sanction conditions is probable and, if so, the probation worker must take action. With respect to groups 2 and 3 another strategy is necessary: if one wants to achieve the best results in terms of making effective behavioural changes, there has to be strict control and definite constraints. At the same time, the worker should draw up a list of the needs of these offenders, support them and gain their cooperation in assistance and treatment. In fact these two elements – control and help – are inseparably linked and a varied and flexible approach is necessary (Meyerson, 1992).

These fundamentals are not part of a theoretical exercise nor are they the consequence of a certain ideology: they have been confirmed through empirical research. For example, Erwin (1990), who evaluated the experiments with ISP in Georgia, concluded that electronic monitoring did indeed guarantee control of the movements of offenders, but it did not contribute to their motivation, cooperation and possible behavioural change. For this to be achieved, interaction with a social worker was essential. Erwin also pointed to the numerous research data which showed that the exclusive use of punishment had hardly any effect on behavioural change, in terms of less recidivism. The meaning of this is, according to Meyerson (1992), that sanctions which are exclusively based on supervision, control and constraints do not reduce recidivism, and therefore such sanctions cannot protect society. On the other hand, it was found that support and treatment without guidance and control had just as little effect on the behaviour of the offender. Finally, Petersilia in her many evaluations and research papers, reported on the minimal effectiveness of a sentence when there is no treatment element linked with it.

It is clear that supervision and control on the one hand and support and assistance on the other, are different behavioural dimensions. It is naturally conceivable that this may lead to a so-called 'role conflict' in social workers. In some cases the solution is to split the roles: a supervisor is restricted to the control duties and a social worker is restricted to rehabilitation. It is evident that this is an artificial split: for example in Georgia's ISP programme, super-

visors were perfectly capable of maintaining a friendly and supportive relationship with the offenders, while social workers actually had to exercise real pressure on their clients to induce them to participate in therapy and aid programmes. In New Jersey's ISP project, it was decided that one and the same community worker should bear all the responsibilities. From this experiment it appears that role conflicts certainly can be defeated and that control and even disciplinary activities (in the case of violation of sanction conditions), just like strict guidance by the supervisors, can be managed within a respectful and supportive relationship with the offender (Meyerson, 1992). However, it cannot be said that conflicts with offenders never occur: one of the most important quality demands for the satisfactory execution of alternative sentences is the ability of the probation workers to solve conflicts in a calm and restrained manner.

## **2 A new role definition for probation workers**

The essence of social work and/or treatment institutions is that the assistance is carried out on a voluntary basis and is oriented towards the welfare of the individual client. The essence of police work is the detection of punishable offences and ensuring that prosecution follows.

Probation work differs not only from both these opposing administrative goals, but also by its nature it is a completely unique institution. Meyerson sees as the most important mission of the community correctional practitioner "*to authoritatively assist persons under supervision in living a crime-free life and in successfully completing the conditions of their sentence in a manner consistent with obligations to public safety and obligations to the sentencing authority*". (Meyerson, 1992, p. 88). Such a definition has two important implications. In the first place, it means that every assistance or treatment – whether that is education, a job or drugs therapy – should not have as its main goal the well-being of the client, but should be subordinate to the effort of making the client lead a crime-free life. In the second place, it means that the probation worker cannot act entirely at his own discretion: his actions must take place within the obligations imposed by public safety demands and the sentence conditions imposed by the sentencing authority. Seen from this angle, objectives that are oriented towards social integration, which is a priority for the social work profession, are of secondary importance for probation workers. Work, education, emotional and physical well being only assume importance if they serve the final objective – a life without crime. Between probation worker and client there is no question of a therapeutic relationship based on each other's free will, but of an authoritative relationship. We should realize that the enforcement of

supervision takes place on the basis of the mandate that the probation service holds, but the exact form it takes is determined by the conditions which are imposed by the sentence of the court. In this respect, probation officers are seen as an integral part of the criminal justice system.

This view of the probation service in general and of the alternative sanctions in particular, has become generally accepted in those countries where the use of alternative sanctions has greatly expanded. This is evident for instance in the English Criminal Justice Act 1991 and the report of the English Audit Commission about the Probation service (1989), and also in probation circles. The most important reason for this change is that people have come to realize that alternative sanctions will occupy an increasingly important place in our western criminal justice systems. This development offers the probation service great opportunities: it can fulfil the key function without which administration of sanctions in the community is not possible. However, it can do this only if it is prepared to shoulder in full the implications of this type of sanction enforcement and the consequent responsibility with regard to the public and the sentencing authority. From research and statements expressed by the Probation service in the United States and England, it appears that the service is prepared to accept this challenge. Informal contacts with the Dutch probation service indicate also that in this respect there is a growing awareness of a different concept of responsibility.

### **3 A few operational aspects**

In the English Criminal Justice Act 1991, the following stipulations concerning the work done by the probation service are of importance:

- the obligation to produce a probation report prior to the sentence being decided;
- the introduction of new alternative sanctions and the possibility to make combinations;
- the introduction of clear criteria for the implementation of supervision;
- a consistent procedure for intervention in the event of violation of the sanction conditions.

The first and the last stipulations in particular have given rise to problems, and the search for solutions is in progress.

With regard to the first stipulation, the main problem is that a probation report, which must help the judge in determining his sentence, should always contain a certain risk analysis to enable the judge to weigh the security risk as well as the re-offending risk of the offender.

In the US, a number of risk scales have been developed, which include the following factors to help predict the risks involved (Austin *et al.*, 1989):

- the number and nature of previous convictions;
- the number of previous prison sentences;
- the age at first conviction and imprisonment;
- previous probation supervision;
- drugs and alcohol abuse;
- need for alcohol/drug therapy;
- employment record;
- need for education.

This type of scale has been tested extensively by the National Council on Crime and Delinquency, with the technique being applied and validated time and again with new generations of prisoners. This has led to a practical method of dividing prisoners into three categories: low risk, medium risk and high risk groups. The system applies to those who are serving a prison sentence and where, from their number, the prison staff must decide who qualifies for an alternative sentence. However, the principles of risk estimation remain the same. That these risk estimates are useful is evident from the results of a two-year follow-up: of the group with an estimated low risk 16 percent were re-arrested, of the medium risk group 31 percent and of the high risk group 54 percent (Austin, 1989).

In England, designing a risk-estimating instrument has to be seen against the background of the desire of the government and the judiciary to use probation for serious offenders rather than for petty criminals. National statistics show that in this they have been successful. In 1980, 25 percent of those who were under probation were first offenders and 22 percent of them had previously served a prison term. In 1989 these figures were 14 percent and 28 percent, respectively (Audit Commission, 1989). In addition there has been an effort to increase the case-complexity of the target group and to decrease the case-load.

The risk estimates produced by the probation service for their reports to the courts carry with them both the possibility that the judge will impose a prison sentence and the possibility that he will impose a different sentence. The following figure provides a summary of the way in which certain recommendations are arrived at.

With regard to the issuing of probation reports, the English Audit Office points out the necessity of them being as detailed as possible. This enables the judge to make a more informed decision about the sanction conditions and it increases the judiciary's confidence in alternative sanctions.

However, the greatest difference in the way administrative authorities apply

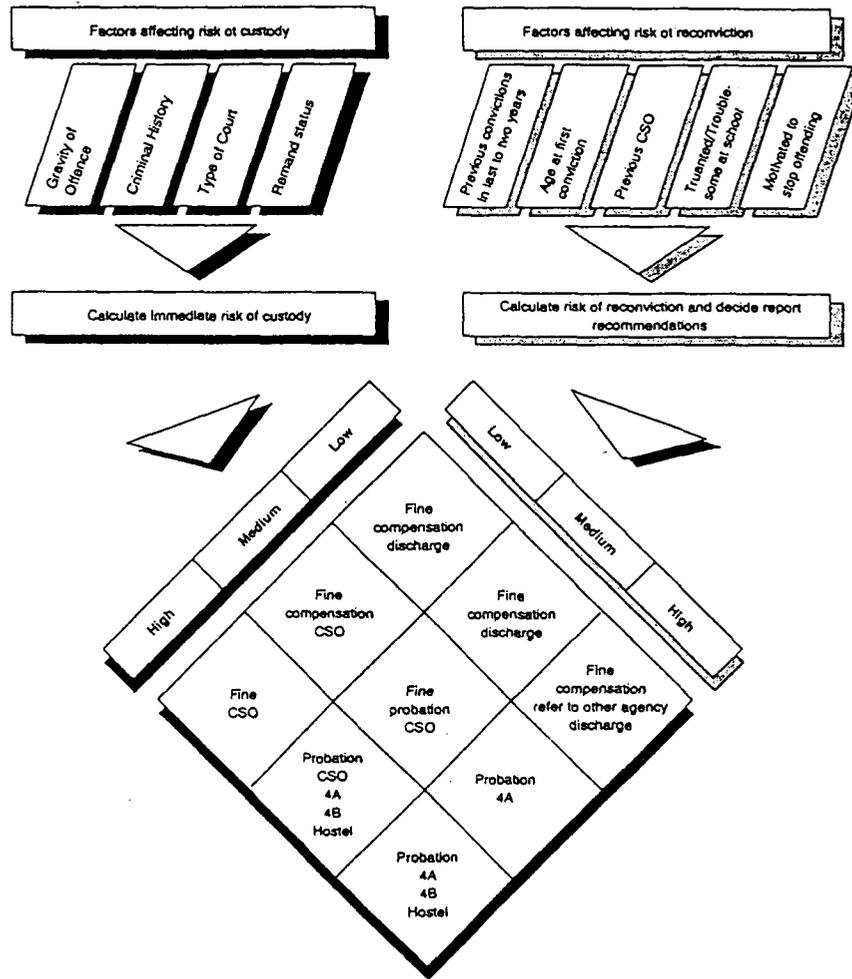


Fig. 1. Re-conviction scales – Cambridgeshire Probation Service.

alternative sanctions, concerns the breach procedures taken by supervisors when so-called technical violations occur. These include the violation of sanction conditions, such as coming home later than the imposed time, arriving late at work when doing community service, having positive drug-abuse tests, being late for work because of 'getting sloshed' the night before, and illegal absence because of problems at home. It is clear that the stronger the reactions to these violations, the greater the number of alternative sanctions that will be consid-

ered as failures. However, if many violations are overlooked, the success rate will be considerably higher insofar as completed sentences are concerned.

In this respect, there are two schools of thought. In the United States, in particular, very strong views are held on the subject. Petersilia (1992) states that the reason for this is not so much ensuring the credibility of these punishments with the judiciary, but the conviction that technical violations are equivalent ('proxies') to criminal behaviour. However, evaluation research done by Petersilia and her colleagues into a great number of ISP projects shows that there is no correlation between technical violations and crimes committed during or after completion of the sanction. Petersilia also points out that the supervision exercised on offenders in an ISP project is very intensive and therefore many violations are discovered that would not have been noticed under 'normal' probation supervision. If technical violations are perceived as criminal behaviour, there will be more failures and an increase in re-offending rates – measured by the number of offenders who are re-convicted – compared to a group of similar offenders who are not under such intensive supervision.

Illustrative of the practical difficulties probation workers may encounter – difficulties which may lead to considerable differences in the implementation of sanctions – is the development of English directives for community service (Eadie and Willis, 1989). The National Standards for Community Service Orders of 1988 were introduced partly to give the judiciary more confidence in community service. The first version stated that the sanctions should stop after two instances of unexplained absence. The only grounds for absence being: medical reasons, a serious emergency at home or demands made by the job centre. At a later stage, these regulations were made more flexible and 'circumstances beyond the offender's control' was added. In addition, each case should be assessed by the probation worker with an evaluation of the progress of the sanction and the presence of any exceptional circumstances. Termination of community service, therefore, no longer takes place automatically and this has restored the importance of the role of the probation worker. It does not entirely solve the problem, though, for making a fair assessment in such cases is not easy at all. Using a case study, Eadie and Willis (1989) illustrate the characteristics of the average offender who receives a community service order: modest housing conditions, unstable relationships with wife and children, poor health and frequent visits to the family doctor and/or hospital. His life-style is characterized by disorder, chaos and a lack of discipline. His social life often involves excessive drinking and drunken brawls which can result in the person being thrown out of his house, injuries and (temporary) incapacity for work. The unpredictability of the behaviour of such offenders means that the successful completion of community service is a difficult goal to accomplish, both for

the offender and for the probation worker, of whom much is demanded in terms of continuous guidance and supervision.

If the violation conditions are too severe, then community service often fails: in England 6600 out of 35,000 community service orders failed in 1987, that is to say, one out of five. Thirty-five percent of that group of convicted offenders were immediately detained again. A delicate balance is called for, because if there is a further tightening up of the sanction conditions community service is no longer an alternative to detention, and this in turn may lead to even more prison sentences. There is also the danger that those convicted will prefer passive imprisonment to a much more demanding alternative punishment. This often occurs in the US. In England it has led to a more or less fatalistic acceptance of the failure of community service and its consequences. One solution proposed for this dilemma is the application of certain disciplinary measures, such as the imposition of extra hours of community service or the payment of an additional fine, without the alternative sanction being terminated. Clearly, though, in that case some judicial control is required to prevent arbitrariness and to protect the legal position of the convicted offender.

In any case, two factors are important for the satisfactory implementation of alternative sanctions. First, both the conditions of implementation of the sanction and the conditions of breach procedures must be understood and perceived as reasonable by the offender. Second, probation workers should be empowered with definite discretionary authority in this respect: they work with the offender, they know the case best and they are also the best judge as to what extent circumstances really are beyond the offender's control or whether the person doing community service is cheating. Probation workers must in fact find a compromise between a too rigid application of breach procedures and a too lenient attitude towards alternative punishments. There is no perfect recipe for unequivocal action and the balance between the demand for justice and sensible supervision is a delicate one.

#### **4 Probation service: public service or private organization?**

Probation work can be organized in different ways. In some countries – such as the United States and Canada – the services are rendered by private organizations which are financed by the government on a contract basis. In other countries – such as England – the probation service is a public service<sup>9</sup>, whereas in The Netherlands the service, although set up by private initiative, is now completely financed by the government.

With a view to present tendencies in western countries towards privatization

of executive public services, the question as to whether the work is carried out differently depending on whether it is in a public or private organization, becomes relevant. In this connection, interesting comparative research has been carried out into the actual practice of community service in England and in Ontario, Canada (Vass and Menzies, 1989).

In England the choice of the probation service as the agent responsible for the execution of alternative punishments is based on two considerations. The first is the fact that the probation service had a national, well-organized network of local offices at its disposal; a new organization would therefore have been superfluous and the introduction of the measure was relatively simple and cheap. The second consideration is the fact that the probation service seemed particularly suited to the implementation of sanctions with both a distinctive punishment character and a rehabilitation nature. In Ontario financial and political arguments predominated. The private model was expected to be cheaper and there was also a desire to contribute in this way to the reduction of the government body.

The executive body in England has become strongly hierarchical. At the top there are probation officers who draw up the probation reports with recommendations for the court. They are also responsible for interviewing, disciplining and prosecuting offenders who have violated the sanction conditions. On the second level are the community service officers. They do not have qualifications for social work and they are responsible for the daily organization of the work. They must oversee the projects and the offenders, supervise the progress of the sanction and keep the records up to date. Apart from that they are also involved with interviewing and disciplining condition-violators and they supervise the sessional supervisors who usually exercise supervision in the work place in those cases where no such supervision is available at the project locale. They check the behaviour and the attendance of the community service worker and the hours he works. In fact the system is largely supported by non-professional workers.

As community service is regarded as a showpiece of the probation service in England, all sections of the organization feel the pressure to produce success figures. This can, depending on the authors, lead to a type of negotiation process with offenders in which technical violations tend to be overlooked in favour of the continuation of community service.

In Ontario the final responsibility for community service rests with the probation officers of the Ministry of Correctional Services. The administration is the responsibility of private non-profit organizations, more precisely of so-called co-ordinators, comparable with the English CS-officers. Most coordinators have a high school education certificate. Most of them hope, as is the case

in England, to reach the higher status of probation officer.

In both countries community service is mainly imposed on young adults who come into contact with the law for offences against property and traffic offences. But in England it is a sentence 'sui generis' which is often imposed on persistent offenders too, whereas in Ontario community service is part of a conditional sentence and is usually imposed on first offenders who have not committed a serious offence. This is why punitive aspects of community service in England are stressed more strongly than in Ontario and why in Ontario the emphasis is placed mainly on the rehabilitation nature of the sanction.

We come now to an interesting difference between both systems. When a sanction is implemented by a public service, a greater effort is made to optimize the sanction as a punishment and as an alternative to imprisonment than by private administrative organizations. The reason for this is that private organizations use the principle of 'minimum risk' in the criminal justice system. As they want to avoid unpredictable and undesirable calamities at all costs, and to show maximum efficiency, they accept only petty criminals. Such an approach is also common in the organization of private prisons (Ericson *et al.*, 1987). The easier the prisoners are to deal with, the less problems the imprisonment entails, and the better the results, the greater the success for the organization. This means good publicity and the renewal of an attractive contract with the government. One of the consequences is, however, that such practice does not contribute to the substitution of imprisonment by alternative punishments. On the contrary, there is the risk that community service as an extra to a conditional sentence will produce considerable net-widening. A second disadvantage is the fact that it is not easy to keep an effective check on private organizations: exact responsibilities are not clearly defined and there are no established means of assessing efficiency and effectiveness. It is in fact assumed that it is in the interests of the organization to do the job well.

Although the English system is not immune to this kind of striving for public success, community service is laid down in the law and the probation service is charged with its implementation. The probation service is explicitly responsible for the execution of community service according to legal regulations and its performance is checked every year. Therefore, in England community service is a 'real' punishment and an alternative which is used for more serious delinquents. All this implies that privatization of the execution of sanctions leads to lighter, rather than to more severe sentences! An additional question is whether in this case privatization is cheaper: if private organizations only take small risks and leave the more difficult cases to the authorities, any cost cutting seems an illusion.

An important conclusion from the research is the fact that in practice the

differences in implementation between both countries are not very great. The main objective of both forms of practice is the successful completion of the sanction and thus they allow some flexibility and avoid conflicts in their handling of technical violations of the sanction conditions.

The main differences concern the fact that community service in England is a considerably harsher sentence for more serious offenders than community service applied in Ontario, and the fact that the Canadian application entails more 'net-widening' and probably also higher costs than the English system.

## V

# THE EFFECTIVENESS OF ALTERNATIVE SANCTIONS

Alternative sentences can be studied from different angles. Firstly, there is the important question as to what extent different kinds of alternative punishments can actually be used as substitutes for imprisonment. After all, these sanctions have been developed to reduce the pressure on the prison system and to be a real substitute for the prison sentence. The answer to this question depends on the sentencing policy of the judiciary. Two models are often used: the 'front-door' variety by which the judge passes an alternative sentence at the time of conviction to prevent imprisonment, or approves an alternative punishment after screening by the prison authorities; or the 'back-door' variety, by which the prison board and/or the 'parole board' decide on early release from prison, usually under the condition of intensive supervision.

Secondly, an attempt will be made to gain some insight into the cost aspects of alternative sentences. The financial data provided by a number of research workers in this field, are sometimes too good to be true. A critical look at the costs and benefits of the new sanctions compared with imprisonment must give more insight into the financial and social 'balance sheet' of alternative sanctions.

Thirdly, the effectiveness in terms of re-offending must, of course, be dealt with. The main problem with this is the – not always explicit – expectation that with comparable offenders alternative punishments will result in producing less recidivism than imprisonment. Such expectations are often not very realistic. Therefore one should consider that:

“It is unnecessary to demonstrate, as most experimental projects appear pressured to do, that recidivism rates are lower when offenders are retained in the community. Given the fact that expensive and overcrowded institutions are not doing the job they are supposed to be doing, it is appropriate to expect that less costly, less personally damaging alternatives will be utilised whenever they are at least as effective as imprisonment.” (Klapmuts, cited in Jones, 1990).

However, the study of recidivism data produced as a result of similar offenders undergoing different sanctions, remains of great importance, although this is

not the only way effectiveness can be measured. As the Probation Service has maintained for a long time, there are variables which are influenced by assistance and treatment, which can have an indirect influence on the extent of pro-social behaviour by offenders. There is an increasing volume of research data which proves the positive effects of treatment (Andrews, Bonta and Hoge, 1990; Andrews *et al.*, 1990). In addition, long-term research has proved that a steady job and a marriage partner lead to the renouncement of criminal behaviour (Sampson and Laub, 1992).

Most evaluations have been done in the United States and they concern intensive supervision projects. The reason for this is that scientific evaluation of new policy has a much stronger tradition in the US than in most European countries. Besides, in the US, sanctions such as community service, electronic house arrest, restitution and fines, are usually part of intensive supervision projects and are not imposed independently. Up to now this has less often been the case in Europe, where community service, fines, 'probation day centres' and electronic house arrest are usually applied as independent sanctions. Such evaluation research as is available will be reported.

### **1 Substitution of the prison sentence**

It must be clear that in most countries not all 'new' sanctions aim at substituting the prison sentence. Some of these sanctions, particularly in juvenile criminal law, are seen expressly as educationally beneficial additions to the existing sanction package. By using these sanctions, the aim is to achieve more flexible and more effective penal intervention. This applies, for example, to mediation between offender and victim, to the payment of restitution, to training projects and to diversion projects which involve doing some reparative work over a short period of time. In many cases this involves an intervention, whereas previously the case was dismissed: this is what is known as the widening of the penal net (net-widening). Some think this is fundamentally objectionable. Others have a less radical attitude: they are of the opinion that with petty crime, too, (wilful damage, shoplifting, minor assaults), some kind of action brought by the criminal justice system is useful and necessary to show that society will not tolerate such behaviour.

However, there are some sentencing models which strive, to a greater or lesser extent, to eradicate overcrowding in prisons and to reduce imprisonment as such. These are, for example, the system of unit-fines, which has drastically reduced the imposition of imprisonment for driving under the influence in Finland (Törnudd, 1991), of community service, day centres, (electronic) house

arrest, the so-called 'boot-camps and intensive supervision projects. The main risk with these sanctions is that they are not used as substitutes for imprisonment but for other, existing ambulant sanctions.

This was very much the case with the use of *community service* in England, despite regulations which in principle made the use of community service instead of imprisonment compulsory (Pease, 1985) and in spite of the fact that offenders agree to community service because they fear the alternative of ending up in prison.

In England, an Act of Parliament of 1973 (the Powers of Criminal Courts Act) stipulated that community service could be imposed for offences which were 'imprisonable', in other words, for offences for which imprisonment would be an appropriate sentence. The press in countries where community service has been introduced, has also strongly emphasized the substitution aspect.

In this respect a parallel can be drawn with the application of the suspended sentence. This sanction, too, has only replaced imprisonment in approximately half the cases (40 to 55 percent) (Sparks, 1971). One of the reasons for this is the fact that the judge can only order community service if the probation service gives such a recommendation in its information report. From the very start of the experiments with community service, the probation service has however been divided on its use. In the first place, only 30 to 40 percent of probation officers were of the opinion that it should be a substitute for imprisonment. The rest thought that community service could also be used as an alternative to probation or a fine.

Pease and his colleagues (1977) measured, in four different ways, to what extent the use of community service was a substitute for imprisonment. Firstly, they asked probation officers to predict the sentence to be pronounced. This resulted in 49 percent of the cases being given a substitute sanction for imprisonment. Secondly, they studied those cases which had actually been recommended for community service, but in which a different sentence was imposed: 47 percent of those so convicted were sentenced to imprisonment and 53 percent to an other community punishment. Thirdly, they investigated what happened in the event that community service failed (when less than 20 percent of the imposed hours had been worked, but no new offence had been committed): 58 percent of the offenders were sentenced to prison. Finally, research was conducted into what sentences were imposed in cases where the judge had expressly asked for a probation report.

In Scotland it was estimated that the replacement percentage was 70 percent in the first year of the introduction of community service, and 60 percent in the second year (Duguid, 1982). Statistical research done later revealed that in 1986 only 38 percent of those people doing community service ran the risk of being

sentenced to prison. At present, community service is imposed more and more on offenders who, in all probability, would not be sentenced to prison (McIvor, 1990).

In Tasmania (Australia) Rook compared the number of prison detentions before and after the introduction of community service. He also compared the number of detentions plus the number of cases of community service after it had been introduced with the projection of the number of detentions before its introduction. These calculations resulted in a replacement percentage of 47 percent in the first year and 53 percent in the second year (Rook, 1987). In Victoria, similar percentages were found.

In Ontario (Canada) community service, as has been mentioned earlier, is only used for petty crime and as part of an other sanction. In practice, such an application does not lead to replacement of the prison sentence at all.

It can be said, therefore, that no matter how the question is researched, there is general consensus on the conclusion that, in 45 to 55 percent of the cases, community service is not a sanction that is used as a substitute for imprisonment.

The ambulatory *day centres* (day centres, attendance centres, day probation centres) in Great Britain also claim to be substitutes for prison. Yet they are extremely vague about their specific target group. It can be anything, as long as a risk of detention is involved (Mair, 1988a).

However, with the so-called '4(B)-orders', which are sentences where a maximum 60 days' stay in a probation day centre is imposed as a condition of probation, we can really speak of a prison substitute. In 1985, of the offenders who received a 4(B)-order, 51 percent had been imprisoned before, as opposed to only 26 percent of the other participants. Apart from that, 43 percent of the 4(B)-orders had six or more previous convictions, whereas this was only the case in 21 percent of the other participants. It therefore seems fair to conclude that, at least in some of the cases, the English day centres really do function as alternatives to detention (Mair, 1988b).

*Electronic monitoring* is used in various ways: as a means of preventing suspects being detained in remand centres, as a means of enabling an early release of prisoners (work-/study-release) and as a transition to conditional release. Both in the US and in England experiments have been conducted with electronic house arrest (Mair and Nee, 1990). The main goal was to try and alleviate the problem of custodial remand. In 1987 20 percent of those detained were on remand, with 540 suspects detained in cells at police stations. The hope was that with electronic monitoring (EM) at least some of these suspects could be detained at home.

The experiments were carried out in three different regions. They took a

year to prepare and six months to execute. During that period 50 suspects were sentenced to electronic monitoring, following detention in a remand centre or a police cell. This shows that, in the English experiments, EM was actually used as an alternative to detention. However, since 1989 the target group for EM has decreased, as release on bail has expanded enormously. There is an agreement that EM should be reserved for an extreme group of suspects who cannot be released on bail on the grounds that they are a danger to public safety.

As has been stated earlier, most EM projects in the US are part of other alternative sanctions, usually of intensive supervision projects. In Arizona, however, EM was used as an independent sanction and it has been evaluated (Palumbo *et al.*, 1992).

In Arizona EM is not imposed as a sentence, but is applied within the framework of parole. EM is then imposed on offenders, who:

- have not committed a violent or sexual offence;
- have not committed a serious crime recently;
- were re-imprisoned for technical violations of the 'parole' conditions and not for having committed a crime;
- on the basis of a special legal ruling (emergency release provisions) are eligible for parole and have served one year of their sentence.

This ruling provides for an early release of prisoners who become eligible for 'parole', as soon as occupation of the prison has reached the level of 95 percent. The average EM client in Arizona is a 29-year old black person or Latin-American who has been sentenced for a drugs offence, burglary or theft. Fearful of the criticism of 'being soft on crime', candidates for EM are recruited from those offenders who, based on 'emergency release provisions' could get an early 'parole' anyway. This means that an actual alternative to imprisonment does not occur, but that an additional sanction is introduced for some of those on 'parole'. Some claim that this is the right procedure, because otherwise too many serious criminals would slip through the net. This implies assessment of the seriousness of the crime committed by these convicted criminals and assessment of the security risks for the population in the event of their release. The consequences of this approach are that the costs of the criminal justice system increase instead of decrease, even more so when the places made available are taken by new prisoners. It is clear however that this leads us to political and policy issues which cannot be solved by scientific research. The crux of the matter is to what extent we want explicitly to expand the net of formal control instead of diminishing it and in what way we want to do so. British Columbia (Canada) tried to avoid this dilemma by ensuring that EM is not the judge's option but the option of the executive authorities, whereby EM staff

screen and select those convicted for imprisonment (Mainprize, 1992). Selection criteria include: participation on a voluntary basis, definite sentence of 90 days or less, no violent offence. At the end of 1990, about 900 criminals had undergone the electronic monitoring programme. Recently the EM programme has been extended to criminals with longer sentences, in other words, to a greater-risk group. This means that EM must last longer – more than two months – and this demands more supervision and control and consequently more financial means.

With regard to intensive supervision, first the data of the best-known ISP projects in the US are presented and then some critical comments are given on conclusions drawn by the researchers.

Georgia initiated one of the first ISP projects. Started in 1982, it already involved 2322 criminals by 1985. The evaluation concerned all those selected by the ISP project between 1982 and 1985. Most of them had a previous prison record, had not committed a violent crime and were considered to be acceptable risks for society.

According to the researchers, ISP has kept a great number of offenders out of prison (Erwin and Bennett, 1987). They draw this conclusion, among other things, from a ten percent decrease in the number of those detained and a simultaneous ten percent increase in the number of those on probation. In those districts where an ISP programme had been introduced, this increase was as much as 15 to 27 percent. The target group consisted of serious, but non-violent offenders who, according to the law, would certainly have been sentenced to imprisonment. The evaluation showed that 59.5 percent of the ISP clients had the same characteristics as prisoners, whereas only about one quarter of prisoners resembled probationers. From this, too, the researchers draw the conclusion that most of those selected for ISP would qualify for imprisonment.

An other well-known ISP project is that in New Jersey. There, ISP clients must have served at least two months in prison before being allowed to participate in the project. The average detention length was three and a half months. Participants were non-violent small drug-dealers and burglars. The evaluation covered all those selected for ISP between 1983 and 1987 (Pearson, 1988, Pearson and Harper, 1990). One of the conditions was that any violation of the sanction conditions would immediately result in a return to prison. This meant in fact that about 40 percent of the clients participating in ISP were detained again. This high number of technical violations is a reflection of the frequent urine tests for drug abuse, checks not made on those who are under normal probation supervision. Pearson compares the average detention period of 109 days of ISP clients with the average of 308 days prison term and he concludes that ISP saves 200 detention days per participant. This calculation appears to be very idealistic

if we take into account the 40 percent of ISP participants who are re-detained for technical violations. It is clear that the sooner ISP clients are sent back to prison, the less cell capacity is replaced by ISP.

The ISP project in Texas is oriented towards prisoners given early release (parolees) who are at quite a high risk of being returned to prison. Like most ISP programmes, that project was mainly based on deterrence and incapacitation and much less on rehabilitation. The essence of these programmes is that they try to change the offender's view of the costs of criminality, with the assumption that offenders are able to weigh up losses and gains in a rational way. The evaluation was based on so-called 'random assignment', a method in which participants are assigned to the experimental and control groups at random. In this way an important factor which could obscure the final results is eliminated in advance. After one year, 30 percent of the ISP participants were back in prison compared to 18 percent of those who were released early from prison. The reason for this is that intensive supervision results in the detection of a large number of technical violations. In Houston, for example, 80 percent of ISP clients were reported to have made technical violations, whereas only one-third of those under traditional supervision had done so. In this respect the researchers found a contradiction between the aim of avoiding any security risk by using extremely strict criteria for ISP and the aim of replacing imprisonment by alternative sanctions (Turner and Petersilia, 1992). Between 1986 and 1990 the Rand corporation evaluated 14 ISP projects in nine states with over 2000 convicted offenders participating. These were all random experiments (Petersilia, 1991). There were three different kinds of projects: so-called 'front-door' projects to prevent detention, 'back-end' projects with extra supervision for convicted offenders on probation and projects with extra supervision for those prisoners who had been granted early release. The last two types of projects in particular resulted in a considerable increase in technical violations and, therefore, a return to prison for larger numbers of participants than is the case when traditional supervision is used.

A project comparable to the American ISP projects is the English 'Leeds Young Adult Offenders' project for young adults between the ages of 17 and 20 years (Brownlee and Joanes, 1993). The young people are referred to the project by the probation service because of their risk of incurring custody. In drawing up the information report, the probation officer calculates the ROC score (risk of custody score) of his clients. If they qualify for the project, a recommendation is forwarded to the judge together with an elaborate intervention programme. An indication of the substitutive value of the project can be deduced from the fact that in about half the cases a prison sentence averaging 18 months had been imposed, despite the recommendation. However, there are

certainly some differences between the two groups. It appears that armed robbers receive a prison sentence relatively more often than burglars, who are more often referred to the project. The detention group is also tried in the Crown Court more often, whereas the project group is more often tried in the Magistrates' Court. A magistrate's verdict resulted in a referral to the project two and a half times more often than a verdict of a Crown Court did. Another difference is age: 17- and 18-year-olds end up more often in the intensive probation group, 19- and 20-year-olds more often in prison. A precise analysis, however, revealed that the crime committed most recently explained the main difference between both groups (Brownlee and Joanes, 1993).

What conclusions can be drawn from all this? First, it must be said that experiments concerning alternatives to imprisonment are a fairly recent phenomenon and therefore nothing can be said about their long-term effects. This fact led Chan and Zdenkowski (1986) to state in a critical article that alternative sanctions have actually led to the expansion of the network of social control, considering the simultaneous enormous expansion of prison systems in countries such as the US, Great Britain and Canada. The authors are also pessimistic with regard to Australia, citing the views of Commonwealth prison authorities. The latter are of the opinion that existing alternatives at most influence the lowest section of those in detention, the short-term prisoners. Moreover, they think that in practice the law imposes alternatives only on those offenders who would not be sent to prison anyway.

The report of the American Audit Office (GAO, 1990), however, states that expectations of any effect on the prison population are illusionary because of the scope of most alternative projects. New Jersey, for example, had an ISP project with a capacity of a little over 400, whereas there are 12,000 prisoners in that state. New York's boot camp programme covered 450 prisoners out of a prison population of 40,000! But it must be acknowledged that even in a state such as Florida, where a house arrest project covers 6500 convicted offenders, the prison population continues to increase and is now larger than at the start of the programme. This kind of evaluation studies the effects at the prison system level. On this level it is, however, difficult to show effects, as the size of the prison population is also influenced by factors which have nothing to do with alternative projects. It is important to make a clear distinction between effects on the system itself and substitution effects. On the level of the individual offender, it can be said with some credibility that there is a real substitution for imprisonment, but effects on the system are more often connected with policy factors such as the existence of sentencing guidelines, judicial sentencing, and with the public and legal perception of the gravity of criminality.

Most studies, though, are based on a comparison of those serving alternative

sentences with those serving prison sentences according to a number of selected variables, such as the most recently committed offence and particularly the criminal record. In general, substitution is a little more certain in the case of 'back-end' programmes than in the case of 'front-door' programmes. With the former, we are certain that someone who was sentenced to prison is involved, whereas with the latter we will never know for certain that the judge actually had imprisonment in mind when he imposed an alternative sentence. This is not only true for community programmes but also for the so-called 'shock incarceration' in boot camps (MacKenzie and Parent, 1991). Indeed, we should not underestimate the inventiveness of judges. It has been suggested that some judges, in order to get certain offenders placed in an ISP project, imposed a prison sentence, although this was not a likely sentence at all in view of the offence committed (Pearson and Harper, 1990). However, such actions seem rather far-fetched and are hard to prove.

In view of the fact that most alternative projects are directed towards relatively non-serious offenders, it may be concluded that in many cases some net-widening occurs. Most projects get stuck at a substitute percentage of about 50 to 60 percent at most. Although this is probably unavoidable, it means in fact that an alternative sanction is for a considerable number of convicted offenders a much heavier sentence than they would have received before the introduction of these sanctions (Byrne, 1990). The only way to prevent some arbitrariness in this respect lies in the development of sentencing guidelines, which would give the judge some guidance in his sentencing decisions.

## **2 The cost of alternative sanctions**

There are only two ways in which real cost savings can occur: the first is by the complete or partial close-down of a prison and the second is to prevent new prisons being built. It is clear that such savings only relate to the future and have a somewhat symbolic nature (Clear and Hardyman, 1990).

There are a number of problems associated with the calculation of costs and possible savings. Firstly, the cost problem is directly related to the question of substitution of the prison sentence. Cost savings will be greater in the event that convicted offenders with an alternative sanction would in fact have been sent directly to prison had no alternative been available. If only one-half of all alternative punishments are substitutions for imprisonment, the savings are comparatively smaller. Certain forms of net-widening can of course be promoted, preferably on the basis of rational policy choices. However, one of the consequences of this is that the costs of such programmes will be relatively

higher (Byrne, 1990).

Another problem is the number of alternative sanctions which have failed. As the sanctions, such as electronic monitoring or intensive supervision are aimed at a target group of more serious offenders, the sanction conditions will become stricter and the supervision and control more intensive.

The simple truth is that the more we exercise control over someone's behaviour, the more violations we will find. That is the reason why in ISP projects so many more technical violations are reported than under traditional probation supervision. When all these cases are brought back to court again and the offenders returned to prison, the additional costs of the renewed prosecution, trial and imprisonment make eventual cost savings even more uncertain. These elementary factors were often neglected by optimistic evaluators.

Thus, Erwin and Bennett (1987) calculated that the placing of 2322 convicted offenders in ISP projects between 1982 and 1985, assuming each sentence was a substitution for detention, resulted in cost savings of \$13 million. Moreover, those authors point to the social benefits of work done in thousands of hours of community service. But this calculation only included detention and supervision costs and no net-widening was taken into account. In Georgia, however, the convicted offenders must fund the greater part of its ISP projects themselves. They are sentenced by the court to a monthly contribution of \$10 to \$50. During the four-year evaluation period, the total contributions to (traditional and ISP) probation supervision appeared to be even higher than the costs of the ISP projects. Any money left over was subsequently spent on other probation projects. The New Jersey evaluation was based on a figure of \$13,000 per ISP client. This involved an average period of an initial 109 days of 'shock incarceration', followed by an average of 449 ISP days. They compared this amount with the costs of a comparative group who had been sentenced to an average detention period of 308 days, followed by 896 days of traditional probation supervision (Pearson and Harper, 1990). In this way they arrived at a cost saving of \$7000 to \$8000 per ISP participant. Other considerable gains must be added to this. As a paid job is one of the sanction conditions, all offenders had a job and their average annual income amounted to \$10,000 (compared to \$5000 for the group of criminals in detention). In fact this meant more taxable income, a higher family income, more possibilities for other contributions such as restitution or ISP contributions. In addition, the community service yielded profits of up to \$200,000 a year.

Taking into account the caution we expressed at the beginning of this paragraph, these calculations are very global and present too rosy a picture. Others have made considerable corrections to this method of calculation. Thus, Musheno and colleagues (1990) in their evaluation of the application of alter-

native sanctions in Oregon, Colorado and Connecticut have pointed out that in Oregon and Colorado the introduction of legally stipulated stricter sentencing guidelines in some districts has led to a steady increase in the number of prison sentences. They concluded that the introduction of alternative sanctions did result in more control over a greater number of (non-violent) criminals, but did not result in cost savings. In the state of Colorado as a whole, alternative sanctions have actually contributed to the prevention, or at least to the postponement, of the construction of a new open (minimum risk) prison: this would indeed mean an important cost saving. The evaluation shows that when we talk about costs, we must look at the state as a whole and not at individual criminals.

Researchers of an ISP project for minors in Michigan concluded that the costs of an ISP day are about 31 percent of the costs of a day's detention (Barton and Butts, 1990). This statement has, however, been corrected by Wiebush, who evaluated a similar project in Ohio. He pointed out that the day costs are arrived at by dividing the total budget of the institution by the number of minors placed there. But this budget also includes costs of staff and maintenance, costs which would not decrease if some of the beds were unoccupied (Wiebush, 1993). In other words, most institution costs include overhead costs which are hardly influenced by fluctuations in the number of resident criminals. If we add to this the continuously (too) high occupancy rate in most institutions and prisons, it appears that many researchers of alternative programmes have overestimated its monetary profits. Moreover, we often tend to forget that ISP projects are extremely labour-intensive, not only because of the strict and frequent supervision, but also because of the low case-load associated with it. In some cases, the costs may even increase as was the case in Vermont where, to diminish the security risks of the population, traditional probation supervision was replaced, for those on probationary release, by intensive supervision (Bagdon, 1993). Similarly, Texas has started up an ISP project for those on parole who run a high risk of recidivism and re-detention. Based on the total costs spent on this group of ex-prisoners during a follow-up period of one year, the researchers concluded that the decrease in the numbers of re-imprisonments had unfortunately not been realized and that detention costs were even increasing: the total costs amounted to 1.7 times the costs of traditional probation supervision, while ISP offenders spent more days in prison during the follow-up year than other offenders did (Turner and Petersilia, 1992). The Rand evaluation of 14 ISP programmes simply concluded that ISP projects are more expensive than most people realize. Although they are less expensive *per convicted offender*, ISP projects led to higher total costs. All ISP projects resulted in more technical violations, more court appearances and more returns to prison, resulting in total costs that were twice as high as those of routine probation supervision. Variation

in costs depended on policy decisions taken if sanction conditions were violated: if the decision was lenient, the costs decreased, if it was strict they increased (Petersilia, 1991). We must conclude therefore that ISP projects do not lead to cost savings.

The English Home Office has compared the costs of electronic monitoring with those of remand in custody. In this case, too, the costs of preparation, police, the public prosecutor's office and the court must be calculated, apart from the costs of the equipment and its installation, supervision and the consequences of condition violation. Although the experimental costs were high (£500,000 for the three projects), the police and the public prosecution were of the opinion that the claim on their time and manpower was not too great. The conclusion was that in the English system there is a place for electronic monitoring, be it a limited one (Mair and Nee, 1990). The costs of the ISP project in Leeds were also calculated (Brownlee and Joanes, 1993). Each ISP order, which lasts two years, costs £4268, whereas a similar detention period costs £7840 per prisoner. But again this reasoning is rather misleading because it does not take into account either the rates of substitution and failure, or the marginal detention costs.

A much more interesting approach was that of Knapp and his colleagues (Knapp *et al.*, 1992), who set the costs of community service against those of detention and fines.

They based their calculations on four categories of costs referring to: 1 determining potential clients' suitability for community service and their individual needs; 2 matching clients with community service places; 3 guidance, support and supervision in the implementation; 4 enforcing sanction conditions and, if necessary, bringing the client to court again. They also measured the workload of all personnel involved in the process. Similar calculations were made for detention, taking into account the nature of the substituted sanction. Community service then is only relevant for young, non-serious offenders with a minor criminal record, who receive a short-term prison sentence in a 'cheaper' (open) institution. The detention conditions for different types of institutions were assessed in this way. In short, the conclusion of these detailed calculations comes down to the fact that community service is more expensive than we think and what the authorities lead us to believe. However, it can be concluded that community service involves less costs than detention, but higher costs than a fine.

Nothing appears to be more difficult than the precise calculation of the costs for the execution of alternative sanctions compared to the costs of imprisonment. Judging from a great deal of research, it is evident that the more precise the calculations, the smaller the differences. Variables with a decisive influence

on the results are: the number of substitutions of imprisonment, the duration of the substituted detention, the type of institution where detention would have taken place, the number of trial cases which lead to return to prison (in particular the policy relating to condition violations), the marginal costs of detention, changes in the group of convicted offenders serving an alternative punishment, the scope of the case-load, costs of probation personnel, the intensity of the supervision and the number and scope of additional rehabilitating programmes.

### **3 Effects on the behaviour of offenders**

‘The proof of the pudding is in the eating’ is a well-known English saying and so the most important ‘proof’ of alternative sanctions should be a distinct decrease in recidivism. As if it were not sufficient that recidivism is not unfavourable compared to the results of more drastic punishments. And as if there were no other success criteria, such as a non-problematic execution of the sentence, the satisfaction of the courts, a better socio-economic integration of the offender and a number of other social advantages.

Yet recidivism remains an extremely important success criterion. After all, it should not be forgotten that it is exactly the criminal behaviour which is both the cause of and the justification for intervention by the authorities. Considering the disintegrating and destabilizing influence criminality has on society, the authorities will only stop their efforts at intervention when criminal behaviour is abandoned. Regardless of all other sentence objectives and effects, a decrease in recidivism will always be the main criterion for successful penal action.

This is also the reason why we cannot resign ourselves to a concept of punishment implying that the only objectives of imposing a sanction are ‘retribution’ or ‘just deserts’. And therefore, the striving for rehabilitation will never die: without minimal participation and integration in society, a life without crime is unattainable!

Seen in this light, it is not at all surprising that most evaluations pay much attention to the effects of alternative punishments in terms of recidivism, where in most cases recidivism of criminals serving a traditional sentence is compared to the recidivism of those who are serving a substitute alternative sentence. However, recidivism can be measured in different ways: by new arrests, new convictions and self-report data. Sometimes, violations of the sanction conditions leading to renewed detention are included as well.

That these kinds of studies do have their own problems will become clear later on.

From my review of the evaluation studies, it appears that most effect evalu-

ations are done in the United States. With the exception of some European countries (England, Germany and our own country) effect evaluations are extremely scarce. Also, with respect to applied research methods, American research usually scores higher than European studies.

### *3.1 Mediation projects*

As has been said before, a number of very minor interventions have been developed for offences which before were hardly, if ever, dealt with by the court and which often led to the case being dismissed. This clearly goes together with some 'net-widening', but it is based on distinct policy choices. The basic philosophy is that even small offences, which are often committed by juveniles, demand a social reaction. Doing nothing only re-enforces the behaviour, whereas a clear reaction makes the young person aware that there are limits to the social tolerance of behaviour that inflicts harm on other people. Although this has nothing to do with alternatives to imprisonment, it still deserves some attention. The reason for this is that these sanctions are part of the shift to other types of punishment.

One of these reactions is 'mediation', a sanction which has been quite successful in European countries. In England, according to a Home Office evaluation of 1990, 57 percent of the mediation agreements consisted of a declaration by the offender of the reasons for his offence and his offering of apologies. In a little over a quarter of these cases, financial compensation or labour is added to this. With juvenile offenders 80 percent of the victims agreed to mediation and with adult offenders 50 percent agreed. 90 percent of the offenders responded positively to such a mediation proposal. In general the results appear to be favourable for the victims: the procedure enables them to come to terms with the event emotionally. The fact that the offender had the courage to face them and that they had the opportunity to grant forgiveness gave them a certain amount of satisfaction. With regard to the offenders, the figures taken over a follow-up period of one year showed a decrease in delinquency compared to a control group. According to a (moderate) estimate, ten to 20 percent of the offenders participating in mediation actually change their behaviour in a positive way (Marshall, 1991).

In Germany, where mediation projects were introduced in the early eighties, 81 to 92 percent of the victims approached agreed to such a procedure. Demographic factors played no part in the decision. It appeared that victims of minor offences were more willing to accept mediation than victims of serious offences. Also, the fact that the offender and the victim did *not* know each other made them more willing to participate. Follow-up interviews with victims in

Cologne reported that two-thirds of those interviewed were satisfied with the compensation awarded through the project (Kerner *et al.*, 1992). Moreover, a large-scale study carried out in judicial circles showed that there is wide support for these programmes.

A study of two projects in Bavaria (Hartman, 1992) indicated that the following offences were dealt with by a mediation project: simple assault, wilful damage, theft, burglary and robbery. Those occurring most frequently were assault, theft and vandalism. This study made it very clear that mediation was never a substitute for imprisonment. When mediation failed the judge imposed a fine in over half the cases. In the remaining cases financial compensation to the victim was often imposed.

American research further showed that mediation projects result in greater satisfaction for victims and offenders, in an increased perception of justice and in a more frequent and reliable compliance with the compulsory compensation payments (Umbreit, 1992).

### 3.2 *Community service*

The first important fact is the number of community punishments that fail. In a country such as Scotland this amounts to 11 percent (McIvor, 1991). Offenders who were placed with a group of other offenders in community service failed more often (14.4 percent) than those placed individually (6.1 percent), but a more detailed study pointed out that this was essentially due to the fact that the former group had had more experience with probation than the latter. Similarly, offenders placed in groups were more often absent without a valid reason (54 percent to 30 percent). Here also, projects differed greatly when it came to tolerance or action when sentence conditions were breached. Finally, it appeared that the more contacts those doing community service had with the people they worked for, the more useful they found the work, the more interesting and pleasant the work environment, the more valuable the experience (McIvor, 1991).

In England failures are generally the result of absences from the workplace rather than bad performance (Pease, 1985). It is remarkable that, although there was a large number of unjustified absences, this did not usually lead to 'breach proceedings' being initiated. This is related to the fact that probation officers often take into account the personal circumstances of the offenders, such as family conflicts, depression and work problems, and therefore tend to overlook the absences caused by them. A renewed prosecution is only used as a final resort, which is evident, for example, in the finding that about half of all the renewed sentences were the result of offenders re-committing new crimes (Vass, 1980).

In a somewhat earlier study on recidivism, Pease *et al.* (1977) compared a group of convicted offenders doing community service with a group who had been refused community service, some of whom had received a prison sentence and some an alternative punishment. During a follow-up period of one year, 44.2 percent of those in community service, and 33.3 percent of the comparable group became recidivists. There was an age difference between the groups (those in community service were younger) and after this difference had been taken into account, the difference in the recidivism rate was no longer statistically significant. There was in fact no difference in the gravity of the offences between the groups. A Home Office statistics survey from 1983 reported that 36 percent of those in community service are convicted again within one year. Within two years, this figure rises to 51 percent and within three years to 59 percent.

### 3.3 *Electronic monitoring*

An English experiment with electronic monitoring as an alternative to pre-trial detention was carried out in three districts and involved 50 remand prisoners (Mair and Nee, 1990). Two-thirds of the group were younger than 25 and more than 50 percent had been in prison before. Over the six-month experimental period, 18 suspects violated the sentence conditions and 11 of them committed new offences. Two-thirds of the violations concerned the infringement of time-limits, in most cases transgressions of less than one hour. They were mostly the results of poor time keeping and of testing the system. Although most suspects preferred EM to prison, some of them thought that the system was too restrictive and too demanding. It was a big drawback that the time spent in house-arrest would not be deducted from the subsequent sentence. Guidance given by the probation service was essential and many spontaneously said how very important the help and support given to them had been. In this respect, there seems to be a limit to the amount of time people can spend in such a situation. The reason for this is that electronic monitoring has been applied exclusively as a controlling and incapacitating punishment. In Canada too it appears that nothing is done about rehabilitation or assistance and that the emphasis lies firmly on supervision of the sentence conditions (Mainprize, 1992). According to others, however, this was particularly characteristic of the initial phase of the introduction of EM. Later EM projects added resocializing activities (Jolin and Stipak, 1992). Generally, the way in which EM is experienced is related to the nature of the EM project. The English experiment was a pre-trial detention project but there are also EM programmes which are imposed as a sentence. In the US, where in 1990 12,000 offenders had already been sentenced to electronic

monitoring, Maxfield and Baumer (1992) studied a pre-trial EM project in Indiana and compared some differences in the results of both kinds of application. For example, the success rate of EM as a punishment was 81 percent and as a preventive project 73 percent. Although both kinds of sanctions had the same number of technical violations (13 percent and 14 percent, respectively), the main difference was found in the escape rate: five percent in the EM project after conviction and 14 percent in EM within the framework of remand detention. The authors blame this on the fact that in the case of remand detention the prospects of the suspect are bleak, whereas with EM as a sentence there is an end in sight and the prospect of liberty. That is why the latter group can cope with EM, but why the former find it very oppressive: some see escape as the only choice left. This hypothesis is supported by the conclusion that 86 percent of those who were not imprisoned *after* EM completed the EM sentence, whereas of those who were later imprisoned only two-thirds managed to do so. In addition other factors, such as being married or living together with a partner or one's parents, appeared to influence the successful completion (92 percent) of the project. Of the others, only 60 percent finished the project successfully.

With regard to the security risks which are obviously greater with EM than with preventive detention in a prison, it was pointed out that only three of 224 clients, *i.e.*, 1.3 percent, were arrested for another offence during the EM project (two for drug offences and one for drunken driving). This does seem an acceptable risk.

Regarding the addition of a treatment element to an EM project, Petersilia and Turner (1990) claim that an increase in the control of offenders has little effect on recidivism, but that a combination of supervision with assistance, work, restitution and community service results in lower recidivism figures.

Research in Oregon into a project which combines EM with drugs therapy gives interesting data in this connection. The experimental group was compared with a group who had received exclusively EM and a group who was released from prison on early work-release and was staying in a residential day centre (Jolin and Stipak, 1992). There were, however, differences between the groups: comparisons between the groups revealed that the experimental group was younger, had committed more serious offences and all of them used drugs. Of this drugs group, more participants failed than in both other groups and their recidivism rate was considerably higher. However, if we compare those who completed the programme, no difference in the results is found between these three groups. Those who completed the programme in the drug group were older, married and had jobs. Another interesting result is the fact that clients who had committed more serious offences, had attained higher success rates than clients who had committed less serious offences. These conclusions are

supported by Andrews *et al.* (1990) who, on the basis of an extensive survey of treatment programmes, concluded that their effects are greater in the group of high-risk offenders than in the group of low-risk offenders. In conclusion, the researchers noted that failure is always the result of technical violations and never of an offence being committed. A strict enforcement of the conditions strengthens the punishment nature of the programme, but it hinders treatment. As the completion of the programme is accompanied by a decrease in recidivism, they plead for some flexibility in the enforcement of the sanction conditions.

### *3.4 Day centres*

Ambulatory day centres, under different names (day centres, day probation centres, attendance centres), with different types of offenders, staff and programmes, have become very popular, particularly in England. In the first Home Office study, it is stated that "it is difficult to determine the success of the centres in the prevention of criminality; there is little guidance on this point and the main purpose of the centres is to provide an alternative to detention." (Mair, 1988a).

A later publication, however, reported research carried out on this specific success criterion (Mair and Nee, 1992). Almost 1000 cases from 38 day centres were analyzed and the two year follow-up period started from the moment the offenders were sentenced and lasted through probation with placement in a day centre.

Half of those involved in the sample survey were younger than 21 and just over a quarter of them were between 21 and 25 years of age. Two-thirds of them had been sentenced for burglary and theft, whereas 20 percent had been sentenced for car theft, traffic offences and violence. More than half had been in prison before, one-fifth having previously received probation or community service. Only two percent of them did not have a criminal record and more than half had had six or more previous convictions.

Within a period of two years, 63 percent were convicted once again, 31 percent twice again and 15 percent as many as three times. There is a marked relationship with age; about two-thirds of those younger than 25 were recidivists, as against 49 percent of those who were 36 or older. There is also a relationship with previous convictions: those who had been sentenced to imprisonment re-offended more often (73 percent) than those who had previously received an ambulant sentence (60 percent). This confirms the fact that the younger the offender, the more previous convictions and previous detentions he has, the bigger the risk of new convictions. However, the day centres

appeared to be capable of keeping recidivism within limits during the required supervision period: during those six months only 23 percent of those convicted received a further sentence.

There were considerable differences in recidivism rates between day centres. In the first place, the rates reflect the nature of the groups of offenders, especially with respect to their offences and criminal records. Other variables, such as staff composition, the kind of treatment and police activities in the region, could also be important, according to the authors. They finally compared the gravity of the offences leading to the day-centre sentence with the gravity of offences committed afterwards. On this broad level it appeared that in the follow-up period the number of serious offences committed was no greater than before that time and that, even at group level, the gravity of the offences had decreased slightly. But this result can hardly be called spectacular. It may be an effect of what statisticians call a tendency towards the mean and it may also have been due to the fact that the group as such has become two years older. That the sanction actually had a deterrent effect seems in any case to be doubtful.

All in all and despite the somewhat apologetic tone of the evaluators, the conclusion must be that day centres do not seem to have much influence on the future behaviour of their clients. In this they do not differ much from the prison for which they are a substitute.

### *3.5 Intensive Supervision (ISP) projects*

It is obvious that ISP projects are eminently suitable for the (compulsory) treatment of alcoholics and drug addicts who come into conflict with the law for a serious offence and are marked down for imprisonment. This kind of programme actually contains both punishment and rehabilitation elements.

Thus, Australia has a special legal regulation, stipulating that such addicts should receive probation supervision instead of detention, with treatment being obligatory. In the event that the conditions (no use of alcohol or drugs) are violated, detention is imposed. The Victorian Association of Alcohol and Drug Agencies researched the effect of this regulation in 1983. The 377 clients convicted in that year were divided into groups of alcoholics, drug addicts and those addicted to both alcohol and drugs. The majority of the clients were unmarried, poorly educated and unemployed. One-third of the group of alcoholics and two-thirds of the drug addicts group had drinking problems before they were 18 and a considerable number of them had been treated for addiction before. The drug addicts group had mainly committed offences against property (theft, burglary), the alcoholics group mainly traffic offences. One-fifth had

been convicted for assault; 60 percent had six previous convictions for offences related to their addiction. Failure during the ISP period was measured according to the following variables: non-attendance at therapy, renewed use of alcohol and drugs, and re-offending. The success rate of the project was 71 percent for the group of alcoholics, 38 percent for the group of drug addicts and 26 percent for the group addicted to both. Stable personal relationships had some bearing on a higher success rate in the group of alcoholics, but this was not the case with the other groups. The reason for this, as medical reports confirm, is that partners of drug addicts are usually also drug addicts themselves. So, in this respect, they cannot exercise any rehabilitative influence on their addicted partners.

The main results from the evaluation were (Skene, 1987):

- twice as many drug addicts as alcoholics were unable to finish the programme;
- alcoholic traffic offenders had relatively high success scores;
- alcoholics with only one previous offence had better results than those with two or more previous offences.

A similar programme was set up in Georgia in the US, where a five-year probation period was combined with a relatively short-term treatment of 12 sessions and compulsory medication (Antibuse), which produces negative physical reactions if taken with alcohol, over a four-month period. The evaluation study (Green and Philips, 1990) produced high recidivism figures; within two years 66 percent of the participants had been re-arrested and after five years this figure had risen even higher to 80 percent. Recidivism appeared to be strongly related to the criminal record; one-third of those who did not have a previous conviction re-offended, while 50 percent of those with one previous conviction did so. It is an interesting fact, though, that those with the longest criminal record did not have the highest recidivism rates. It can be assumed that this fact also depends on age (the younger they are, the more the recidivism). The authors are rather critical about the project. They claim that better results could not be expected from such a superficial and short-term programme. There may have been some improvement in attitude but this is insufficient to exert any real influence on the behaviour of addicts.

Finally, seven projects in five states, subsidized by the Bureau of Justice Assistance, were evaluated by Petersilia and her colleagues. The programmes were aimed at serious drug offenders with regard to their criminal records and addiction problems, who were sentenced to 'probation' or 'parole'. Participants were randomly allocated to either the experimental or the control group. This evaluation with a one-year follow-up, showed that these seven projects pro-

duced large differences in recidivism figures, although *within* the projects there was hardly any difference in recidivism between the experimental group and the control group. The programmes mainly consisted of a great deal of control, frequent drug tests, job provision, sometimes also community service, and a few hours a week of counselling or group therapy (Petersilia *et al.*, 1992). In some cases electronic monitoring was applied as well. The control was very intensive indeed, but the drug treatment was inconsistent. This aspect varied widely between the different projects, mainly because there were too few facilities for treatment.

There appeared to be no difference, in terms of re-offending, between the participants in the projects and those under traditional probation supervision. The use of electronic monitoring did not make any difference either. However, the authors do point out that the recidivism criterion is dubious, as ISP clients are known to the local police and for them the risk of an arrest will probably be higher than for offenders in the control groups. In some cases the police were even asked to carry out extra checks on the participants in the programme.

Two ISP projects for minors deserve attention. In the first project in Detroit (Michigan), 500 minors were, after being sentenced to a youth custody centre, randomly allocated to either an ambulant ISP project or an institutional control group. The minors were followed for two years, during which period officially recorded criminality and self-report data were compared (Barton and Butts, 1990). In those two years the official recidivism of both groups appeared to be almost the same. The ISP minors did commit significantly *less violent offences* than the institutional minors. With regard to the self-report figures, the ISP minors reported somewhat less criminal behaviour and the institutional minors a little more: 70 percent of the ISP group reported a decrease of delinquency compared to 60 percent of the control group.

The second project, in Toledo (Ohio), followed an ISP group and two comparative groups over an 18-month period (Wiebush, 1993). The ISP group included minors with a youth custody sentence, was compared with, on the one hand, institutional minors who received parole after a few months and, on the other, a group of minors with 'normal' probation supervision. The ISP group showed many similarities with the parole group, but very little similarity with the probation group. Apart from a high control level, the ISP project also provided extra services and assistance. This study did not show any difference in recidivism between the groups, either in extent of delinquency or in seriousness of the offences, although the probation group had lower scores than both other groups. Of the former group, only 20 percent were sent (back) to an institution in the follow-up period, compared with half of the other two groups. In other words, the differences in results are mainly those between the ISP group and

the parole group, on the one hand, and the probation group on the other. As expected, the difference in both the criminal and prison records gives the best explanation of these results.

The evaluation of the ISP project in Georgia was based on a comparison between the ISP group, a group of prison detainees and a probation group. This showed that the recidivism of the ISP group was lower than that of the prison detainees, but higher than that of the probation group. Most new offences were connected with drug and alcohol abuse (Erwin and Bennett, 1987). In the 1988 New Jersey project, three years after the start of the programme 40 percent had been re-imprisoned, mainly because of technical violations. This was due to the very frequent drug tests which were part of the programme. Of those who completed the programme, only three percent had been re-convicted for a new offence in a period of three years. Of those who did not complete the programme, this figure was 22 percent. Half of those convictions took place after they had served a further term of imprisonment. In this connection we should refer to the fact that participants of the New Jersey project had committed relatively non-serious offences against property, and had a low recidivism risk (Pearson and Harper, 1992). Similar data were given in an ISP experiment in Vermont, which was specifically directed at detainees on probationary release. The experiment was set up because, while wishing to maintain the system of probationary releases, there was at the same time a need to accommodate public fears about the releases. Two groups were compared with each other: the experimental ISP group selected from those offenders who had committed crimes against property and a control group consisting of more serious offenders. The results were surprising: of the control group only one-fifth of the probationary releases were withdrawn, whereas in the ISP group half were withdrawn. In almost all cases the withdrawal was the result of a violation of the conditions of the probationary release. One year after the release there was, however, remarkably little difference in recidivism between the groups (19 percent of the ISP group and 15 percent of the control group), and also very little difference in violent offences. The author draws the conclusion that, although ISP seems to have hardly any influence on the behaviour of criminals during their probationary release and afterwards, it is useful to maintain ISP for the sake of public relations, especially because the pressure on the prison system means that more and more prisoners will be sent on probationary leave (Bagdon, 1993).

Iowa has four ISP projects for violent offenders, who are sent to the project directly after conviction, or are directed from traditional probation towards the project, by the probation service. The ISP clients were followed for 21 months and they were compared with an arbitrary cross-section of criminals on probation from districts without an ISP project. This means that the ISP group was

of a considerably more serious nature than the group it was compared with. The break-off percentage was the same for both groups (40 percent). However, a large difference is that out of the control group twice as many had to go back to prison because of an offence (24 percent versus 12 percent), whereas three times as many ISP clients were sent back because of a technical violation (17 percent versus six percent). Offenders from the control group were often returned to prison for a drug offence, ISP clients for a violent offence. The conclusion was that ISP is reasonably successful: ISP clients committed fewer offences, although the offences were more serious. The researchers hypothesized that the smaller number of offences was the result of the larger number of break-offs caused by violations of the conditions: in this way dangerous offenders were spotted at an early stage and could be rendered harmless by a return to prison (Iowa Department of Corrections, 1988). This hypothesis is however incorrect: Petersilia and Turner have made an extensive study on the relation between technical violations and the committing of offences and have found that no such relation exists. So it is absolutely untrue that technical violations are an indication of future criminal behaviour (Petersilia and Turner, 1992).

The ISP project in Texas which was evaluated by the same authors, was oriented towards serious offenders who are on parole. Eighty-five percent of them had been in prison at least twice and they had had six to eight previous convictions. The ISP project provided more services to the participants than traditional probation, in particular more drugs counselling and more vocational training. ISP clients and the control group had, after one year of follow-up, the same number of arrests for offences, which were also similar in seriousness. The only difference concerned the larger number of technical violations by the ISP group: 30 percent of the ISP clients were re-detained (compared to 18 percent of the control group) and in half of the cases this was the result of a violation of the conditions. Turner and Petersilia (1992) noted that officially recorded criminality does not give a true picture of the offences that were actually committed. It should not be forgotten that official records do not only reflect the offender's activities, but also the activities of the police. When these activities are more intensive as in the case of ISP clients, the recidivism figures will also be higher.

Finally, two evaluation studies elucidate a dimension of ISP projects which is extremely important with regard to reducing recidivism: the treatment component. The former is the evaluation of three ISP projects in California (Petersilia and Turner, 1992); the latter is an evaluation of a project in Massachusetts (Byrne, 1990).

Firstly, it appears that ISP clients in California have higher recidivism rates

than ISP clients in other states. The authors blame this on the fact that the Californian target groups consisted of serious offenders with a high recidivism risk. Secondly, they found little difference in recidivism between the ISP groups and the control groups who were under normal probation supervision. From this they draw the conclusion that more intensive supervision and a higher risk of being found out, do not have a deterrent effect and do not lead to a reduction in recidivism, as measured by re-arrests for committing an offence. More supervision alone without substantial treatment does not have an impact on the underlying criminal behaviour tendencies. In all three projects, there was *less recidivism* among ISP clients who received assistance, had a job, paid restitution and did community service. Adequate drug-therapy was extremely important because almost half the clients had serious drug problems. Drug addicts cannot conquer their addiction just because they know that they will be checked for the use of drugs: treatment is essential.

Byrne and Kelly (1989) come to the same conclusion on the basis of their evaluation of an ISP project in Massachusetts. They present a clear explanation for this conclusion. ISP projects can effect a reduction in recidivism through a combination of deterrence and rehabilitation. The threat of imprisonment results in a greater willingness to cooperate with treatment. In other words, deterrence by means of strict supervision and control has an indirect effect on recidivism as it makes actual treatment possible. Supervision by itself has no effect on recidivism. If we consider a reduction in recidivism as one of the objectives of punishment, treatment is an important punishment component. The study shows that in this respect three fields are particularly relevant; treatment of *drug addiction*, guidance to *employment* and treatment of *family/relationship problems*. Improvement in these fields strengthens the links with society and with other significant people and therefore has a special, preventive effect.

#### **4 Some conclusions based on the evaluation research**

Before any conclusions are drawn, based on the many evaluation studies into the effects of alternative punishments on the behaviour of those so sentenced, we would like to pay some attention to the problems inherent in this type of evaluation study. This is important with respect to the interpretation of the study results, but also with a view to future evaluation studies.

The main problem which arose is the construction of definitely comparable control groups. In nearly all European studies, and also in many American studies, there was no random allocation of subjects to the experimental and control

groups. This is particularly important because only by randomization do both groups reflect the same cross-section of the population. In all other cases the experimental group is compared with groups consisting of less serious offenders (who, for example, have been sentenced to probation or to a fine) or of more serious offenders (who have been sentenced to imprisonment).

There are various reasons for this shortcoming: in a number of cases evaluation takes place after the experiment has started, which makes random allocation impossible. The solution which is usually chosen is the forming of comparative groups from earlier periods (before the introduction of the experiment), by matching groups on the basis of certain characteristics or on the basis of constructed seriousness scores. In some countries, including ours, the judiciary turns down random allocation because of (misunderstood) ethical motives. The problem is of course that judges do *not* pass random sentences and although they will say that they impose a specific sentence on offenders as an alternative to detention, nothing is less certain. Non-equivalent research groups make it very difficult to ascribe results to the project. If, for example, ISP clients have higher recidivism rates than a group on probation, but the average age of the ISP group is lower, the high recidivism may be the result of either the ISP programme or the age difference (GOA, 1990).

The only solution to this dilemma is the action of the American Bureau of Justice in subsidizing 14 ISP projects. It stated the following conditions for funding the projects:

- the experiments had to be directed towards adults and had to exclude violent offenders;
- the projects had to be part of an independent evaluation;
- the projects had to co-operate with *random allocation* of test subjects and to the collection of certain fundamental data.

A second problem is the measurement of recidivism, particularly when it is done solely through official registration. Officially recorded criminality is actually a bad measure of real criminality. Moreover, when it comes to intensive supervision projects, there is the risk that many facts are reported (especially when the police are involved in the supervision), which will go unnoticed in the control group. This is even more true when all kinds of technical violations are concerned! The best solution to this would be to gather self-report data as well. Together with police figures this would enable us to make a better comparison between the experimental group and the control group.

Another problem is the fact that ISP projects in particular consist of so many different components. When the effects are reported, what must they be ascribed to: to all the components or to only one part of the programme?

In addition, the follow-up period is often limited to only one year. This is extremely short and it does not enable us to judge whether the effects stated are long-lasting or will be maintained only for a short time.

Finally, there are problems with the criteria on which the projects will be judged and with the ability to generalize on the basis of the different evaluations.

If we compare, for example, the results of ISP projects with those of normal probation supervision on offenders who were released on parole, they are distinctly positive: ISP clients have lower recidivism rates than parolees. However, if we compare them with a group of offenders with a probation sentence, they perform badly. It just depends on one's frame of reference. A final problem concerns the generalizations which we might wish to make. There are enormous differences in the nature of the projects, in the target groups of offenders and sometimes also in objectives. Moreover, in almost all projects violent offenders are excluded. All this makes generalization dubious at worst and premature at best.

Does this mean that we cannot say anything about the effectiveness of alternatives for imprisonment? Fortunately this is not the case. The following conclusions are supported by studies:

- differences in recidivism between projects are related to the criminal record and the prison record of the target groups concerned;
- differences in recidivism within projects, between experimental groups and control groups, can be explained by a number of factors:
  - as a result of more intensive supervision and control on the experimental group, some distortion (an artefact) may occur in the figures relating to violations of the sentence conditions and of new offences;
  - failures in the programmes are often strongly related to the (probation) policy followed with respect to violations of sanction conditions. A strict policy results in lower success scores because of the many returns to prison; a flexible policy, where prosecution is not an immediate reaction, results in high success scores;
  - deterrence by means of intensive supervision and control, combined with treatment programmes, has a distinct effect on criminal behaviour: it results in a reduction in recidivism;
  - with this in mind, such treatment should preferably be aimed at drug addiction, provision of employment, and family/relationship problems.

Finally, the conclusions of the U.S. General Accounting Office, based on ISP projects' evaluations, are important (GAO, 1990).

First, between five and 44 per cent of ISP clients are recidivists: this means

that ISP projects cannot guarantee that all recidivism will be prevented.

Secondly, more ISP clients re-offend than criminals with a probation sentence. However, the Accounting Office states that this higher recidivism rate is probably in part an artefact, as it reflects the much more intensive supervision on ISP clients than on those on probation.

Thirdly, recidivism of ISP clients seems to be considerably lower than that of offenders on parole. In some states, one-third to half of those on parole were arrested for new offences within two years. These figures are 23 to 45 percent higher than those for ISP clients. The Accounting Office draws the conclusion that prison apparently does not inhibit further criminality. Moreover, ex-prisoners commit considerably more offences than both probationers and ISP clients.

# VI

## CONCLUDING REMARKS: CONCLUSIONS AND RECOMMENDATIONS

In this report, most of the alternative sentences used in the western world today have been described, from mediation projects to sanctions with a detention component.

Some of these, such as mediation with restitution and community service, are already in use in The Netherlands. Others, however, are new to the country. A question which immediately arises is whether it would be sensible to expand the range of alternative punishments. Although in some respects the Dutch situation cannot be compared with other countries (take for example the US or England), the answer to this question should be a positive one. As far as this matter is concerned, The Netherlands is lagging a bit behind a considerable number of other western countries, and for a country which has long been considered a 'guiding light' in the field of criminal justice, this may seem rather surprising.

There are, however, more convincing reasons for such an expansion of the criminal justice system. Firstly, the opportunities for penal intervention are still limited in The Netherlands. If we want to achieve a more flexible and varied system, in which punishments are both 'deserved' and 'tailored' to the individual offender, an expansion of punishment options is certainly desirable. In particular, there is a need for more sanction options ranging between probation and imprisonment, that is to say, between almost 'nothing' and 'everything'. In other words: expansion of punishment options may in itself result in an improvement of the system.

Secondly, alternative punishments are per *individually sentenced* offender certainly cheaper than imprisonment. As stated before, the still – relatively – limited expansion has thus far only resulted in a minor reduction in the number of prisoners (with the exception of the state of Georgia where there has been a 10 percent reduction) and thus hardly any decrease in costs, but if the use of alternative punishments takes place on a larger scale in the future, this will eventually result in a decrease in the number of prisoners and a decrease in the

total costs of the prison system.

Finally, the most important argument may be that alternative punishments are in principle better able to realize the various objectives of punishment – *retribution, deterrence, incapacitation and rehabilitation* – than imprisonment. Imprisonment primarily achieves goals like retribution and incapacitation. No empirical study has proved that imprisonment has either a deterrent or rehabilitation effect. The best one can hope for is that the damage will be limited. Alternative punishments can accomplish the goals of retribution and deterrence, while at the same time enhancing considerably the chances of rehabilitation.

This report has mentioned several times that alternative punishments can be drastic and demanding and that, in some cases, particularly where ISP projects are concerned, offenders prefer imprisonment to an alternative sentence. Although it is clear that incapacitation is better guaranteed by imprisonment than by alternative sanctions, it is clear that day centres, (electronic) monitoring and ISP projects can greatly enhance the level of supervision and control on offenders and they do so in a way that has no longer any relation with traditional probation supervision.

Finally, it is evident from the many evaluation studies that if a treatment component is added to supervision, rehabilitation becomes a realizable objective. Treatment, directed at *employment, addiction problems and family/relationship problems*, appears to have a significant effect on recidivism reduction. In this, *supervision and control* play a intermediary and facilitating role. They are, so to speak, conditional if treatment is to be effective.

Buried deep in our common code of values is the conviction that punishment and rehabilitation are inextricably bound together. The research carried out into ISP projects, in which treatment is one of the components, has firmly re-established this principle.

The Netherlands has certainly developed some so-called 'task punishments'. However, the problem is that most of them are used for minor offences: traffic offences, minor crimes against property (see, among others, Spaans, 1993). Moreover, some of the public prosecutors and judges consider these punishments to be 'soft options', unsuitable for offenders of more serious crimes and more often than not implemented in a lax manner. However, it is true that some initiatives have been developed for the treatment of more serious offenders, such as the Day Training Centre in Eindhoven (modelled on the English intermediate treatment programmes) and, for example, community service for those who are difficult to place. Also, with a view to the rapid increase in the prison population of The Netherlands, there seems to be a need for more alternative punishment options. This, of course, immediately raises the second question: what kinds of punishment should they be and how should they be used?

The obvious answer is that this is above all a matter of political choice, whereby the primary considerations will be what it is hoped the new punishments will accomplish and what the expectations are. Subsequently, various policy options will come up for discussion, whereby application models will have to be studied to assess their merits.

In the following pages, several options will be proposed for consideration and tested against the punishment objectives mentioned earlier.

## **1 Some useful punishment options for The Netherlands**

In the first place, there are some kinds of sanctions which seem to be less interesting for The Netherlands, either because they are already being applied in one form or another on a greater or lesser scale, or because they can add very little to already existing models. Thus, there has been a relatively extensive experiment with *mediation projects* through penal law and civil law, *restitution payments* have been recently introduced in law for adults, while in juvenile justice, where possible, some *compensation* for the victim is also required. The introduction of 'mediation' as an independent sanction therefore seems to be outdated. Moreover, in that case it can hardly be seen as a substitute for imprisonment.

The English '*probation day centres*', are more or less equivalent projects to the Day Training Centre (DTC) in Eindhoven, where a highly structured daily programme has been set up consisting of job training, work experience and social skills training. Although the DTC is still at an experimental stage and there is room for improvement in some respects, particularly with regard to the right target group and the way in which violations of the conditions are dealt with, this kind of project is a promising sanction option for relatively serious offenders.

Finally, *community service* is a much used sanction in The Netherlands, although it has to be questioned whether community service is used as a real alternative to short-term imprisonment (see, Spaans, 1993). Associated with this, the usefulness of guidelines should be referred to again, specifying the imposition of community service as a sentence for certain specific offences. They could clarify to what extent community service may be used as a sanction *sui generis* or as a substitute for the (conditional) prison sentence.

Apart from these sanctions, whose usefulness cannot be doubted, but whose place in our sanction system is (still) not clear, some other sanctions are used abroad which are definitely not 'soft options' and which amply meet the demand for stiffer sentences and the need to stress the punishment nature of the

new sanctions.

The alternative punishments which have already been introduced in The Netherlands are, in fact, at the bottom of the punishment scale. With the exception of the day centre, it is practically a matter of supplementary sanctions which benefit the victim *and* the offender. However, the Public Prosecution Service is only interested in new alternatives if they have a distinct punishment element. Supervision and control must come first, rehabilitation is seen as a secondary objective. From American evaluation studies it would appear, however, that the degrading and deterrent effects of punishments are insufficient to affect a reduction in criminal behaviour. If a reduction in recidivism is regarded as an objective of punishment, besides retribution and deterrence, we must continue to pay attention to rehabilitation. In my opinion, if our sanction system is to be expanded sensibly, the following punishments should come up for serious consideration.

### *1.1 The day-fine*

The advantages of the day-fine have been dealt with extensively in this report. In short, these come down to the following: the day-fine has a distinctly retaliative nature and it affects the offender in a (very) painful way: through his pocket. Professional criminals in particular are very sensitive to this punishment, often more sensitive to it than to imprisonment, which they consider to be a professional risk. The day-fine can also be geared completely to the seriousness of the offence and to the financial position of the offender. By imposing a day-fine, the judge satisfies the principles of 'just deserts' and of proportionality, while at the same time taking into account the offender's personal circumstances. The present inflexible fine system, which judges often consider to be inadequate, especially with respect to poor and unemployed offenders, can thus be replaced by a much more effective system of individual fines. It is true that the collection of day-fines must be guaranteed. The best solution would be cash transactions through the treasury. Other solutions are also conceivable and possible. Experience abroad has taught us that the day-fine is both an effective and an efficient sanction, presenting few problems in its execution. In some cases the fines may be paid in instalments and the payment period can be extended. These are exceptions, however.

The day-fine is generally used as a sensible substitute for a short-term prison sentence (up to six months). In this respect, this sentence can compete with community service. In the event that the offender could not possibly pay the day-fine, community service is often imposed instead of substituting imprisonment.

### *1.2 Electronic monitoring*

A judicial work group has already studied the possibility of introducing electronic monitoring in The Netherlands. At the time, the work group gave a negative response to its eventual introduction. Since then, authorities in the US in particular, but also in England, have gained more experience with this kind of sanction. EM is in fact seldom used as an independent punishment. It is often a – temporary – support of a more comprehensive sanction. It can be used as pre-trial custody, mainly to save space in remand institutions and also to spare the suspect (pre-trial) detention while at the same time ensuring that the suspect is no longer at liberty and remains at the court's disposal. Electronic monitoring can also be used during a transitional stage to early release, whether or not within the framework of an intensive supervision project. It is this particular application which is recommended. EM being used with remand prisoners has caused considerable problems, as the prospect of a probable prison sentence has quite often led to the monitoring equipment being put out of action and/or the suspect making a run for it.

EM as a supportive sanction *after* sentencing appears to be more acceptable and moreover it has many advantages. When EM is used as an *independent sanction*, the 'house arrest' conditions can be dealt with in a flexible way: for example, at first complete detention and then gradually introducing more opportunities for leaving the house, getting a job, education, therapy and physical exercise. Within the framework of *an ISP project*, EM can form a good transition stage between detention and absolute freedom, and in the meantime the ISP programme can commence.

Electronic monitoring should be used primarily as a supportive and temporary measure of limited duration. In that sense EM is very useful, as it provides more control over the offender than in other types of supervision, although it is a measure that should not last too long (a few months at most). There are, however, some conditions attached to the use of EM. The offender must have a permanent home or address and he must have a telephone. Studies have also shown that living in a more or less traditional family relationship – with a partner, a steady girl-friend or one's parents – has a positive influence on the way the sanction is carried out and consequently enhances its effectiveness. In this respect, no indications have been found in the literature of complaints from others living in the house about the compulsory 'house arrest' of their family member.

### *1.3 Intensive supervision projects*

ISP programmes<sup>10</sup> are actually cocktail punishments. As well as the great number of contacts, by telephone, in person, at home, in the probation office and

possibly also at the place of work or the education centre, other components are added. Thus, in the US, clients are regularly and randomly checked for the use of drugs and their houses are searched. In addition, in most cases community service is imposed and offenders are obliged to work and/or follow a job training programme. Furthermore, the paying of a fine or reparation for damages and some sort of therapy or assistance can be imposed. Finally, the offender must often pay a weekly or monthly contribution to the project. All this is too demanding and it is therefore not surprising that a considerable number of convicted offenders (between a quarter and a third) who are given the choice, prefer a straightforward detention to the – sometimes long-term – regime of an ISP project. Moreover, such an over-burdened punishment programme provokes failure. It is almost impossible to comply satisfactorily with all the sentence conditions: violation is, so to speak, incorporated into the sanction. The main reason for the so-called ‘stacking’ of programme components in the same ISP project is the fear Americans have that the punishment would otherwise not be painful enough, nor be a sufficient deterrent, and therefore would not be accepted by the court and by the public.

In spite of this typically American attitude towards of ISP projects, the principle of the sanction is appealing. It is based on an elaborate programme of sanction requirements and the control thereof, which must be a balanced mixture of punishment and rehabilitation. Thus, it could be imagined, for example, that an offender who has committed a few burglaries would have to pay damages to the victim, follow a three-month DTC course and also pay a financial contribution. Another offender might receive a day-fine, combined with social skills training to steer his aggressive behaviour in the right direction. For somebody who breaks into cars, a combination of community service, job training and drug therapy might be considered. All this under the strict supervision and control of the probation service.

In fact, ISP projects provide, as is illustrated by these random examples, unlimited combination options for sensible punishments and treatment. The main condition for the success of this kind of punishment is the willingness of the probation service to dedicate themselves to the task, both by executing strict control and by offering assistance and guidance. Only then will the sanction gain credibility with the public and only then will the judiciary be ready to apply it.

## **2 Sentencing**

As we have seen, in many countries the acceptance of neo-classical principles such as ‘just deserts’, ‘proportionality’ and ‘equality before the law’ has run

parallel to striving for more harmonization and less disparities in sentencing. Apart from this, there has been some pressure from the authorities to arrive at a more rational guidance of sentencing. That pressure originated directly from the special responsibility the authorities have for the execution of punishments. They must after all take care of the costly infrastructure required to guarantee this execution. And so, in many western countries we see the development of sentencing guidelines, which can be enforced legally to a greater or lesser extent. The development of alternative sanctions has made the necessity for laying down certain guidelines even more urgent. Both with regard to the substitution of imprisonment and to sanctions *sui generis*, a definite tariff system is essential. Moreover, the new punishments must be incorporated into the sanction package and the place of each punishment in relation to other punishments must be laid down in a coherent way. Finally, it is recommended that, with a view to justice and equality before the law, the discretionary powers of the judge be placed, rather more clearly than is the case at present, in a well-defined framework.

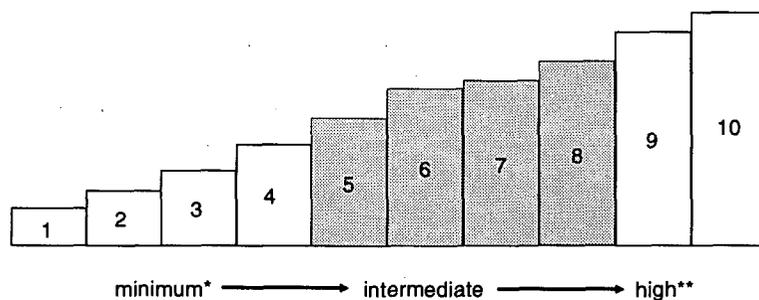
From the relevant literature, it has become clear that expansion of the sanction package into a consistent and comprehensive sanction system cannot be realized without the simultaneous development of sentencing guidelines, sentencing standards, or points of reference.

This could be done, for example, analogous to punishment maxima as they now are, in the application of prison sentences, fines and community service. But it is of even greater importance that guidelines are produced on sentence equivalents and sentence combinations.

Should it be decided that in The Netherlands there will be an expansion of the range of punishments available, it would indeed be advisable to develop parallel sentencing guidelines. This could be done, for example, by setting up a committee consisting of members of the Nederlandse Vereniging voor Rechtspraak (the Dutch Society for Jurisdiction) and of officials from the Ministry of Justice. Their task would be to develop, within a set time limit, a coherent framework of sentencing guidelines, as well as to make proposals on the extent to which these guidelines should be legally enforced. In so doing, the Research and Documentation Centre could be of assistance to the committee by providing it with an inventory of the existing sentencing guidelines and their applications.

In this respect, it must again be stressed that it is *not* a matter of producing an exact definition of the sentence the judge should impose, but of presenting a number of options with wide margins within which an independent judge can pronounce a verdict geared to the offence and the offender.

The big advantage of guidelines is that at least some direction can be given



*Fig. 2.* Sentencing options ranked by the level of punishment. 1. restitution; 2. day-fine (plus restitution); 3. community service; 4. conditional sentence; 5. intensive supervision; 6. (electronic) monitoring; 7. (probation) day centre; 8. split sentence; 9. open prison; 10. prison.

to the sentencing process and that alternative punishments can be incorporated into the system in a sensible way. This system should consist of a certain rank ordering of punishments, in much the same way as shown in Fig. 2 (Byrne, 1990, p. 29).

What needs to be done is to develop clear guidelines, so that judges can make well-structured decisions. In doing this, factors such as seriousness of the offence and breach of legal order, criminal record, circumstances at the time of the offence, risk of recidivism and safety of citizens, need for retribution, necessity of deterrence, and the offender's need for specific treatment, must all be considered.

Naturally this is only a single example of the way in which the problem of sentencing can be approached. It goes without saying that The Netherlands will have to find its own way of doing things.

### 3 Financial contributions

Asking the offender for a financial contribution could be considered in those cases where extra efforts are made to give him assistance and treatment. The amount of this contribution could best be fixed by the judge, in the same way as the day-fine is determined. It goes without saying that this must be done in a reasonable way: it would be unfair to impose restitution, a day-fine and a financial contribution simultaneously, without considering the total financial burden. On the other hand, it seems justifiable to me that the offender should also contribute to the rehabilitation activities for his benefit.

#### 4 Establishment of a 'parole-board'?

Finally, the possible need for setting up a kind of Dutch 'parole board' should be considered. A number of developments plead in favour of such a board. Firstly, in the future, parole will no longer be granted automatically after two-thirds of the sentence has been served in prison, but it will depend on the prisoner's behaviour inside prison. When these plans are eventually realized, there will be a need for some organization to decide on these matters. Secondly, the development of so-called 'back-end' alternatives, whereby prisoners may be released early or when short-term imprisonment is combined with, for example, an ISP project, may also result in the need of a judging and/or screening authority which will take decisions in these cases. As the problem of the lack of prison cells becomes more urgent, this question might well arise. In this respect, the appointment of an executive judge could also be considered. This person should be especially empowered to coordinate the restriction of liberty sentences and to decide on any disciplinary measures to be taken during their execution (Kelk, 1992). The objective of the executive judge would be to protect the legal position of the convicted offender.

#### 5 In conclusion

The main conclusions of this report can be summarized as follows:

- there is good reason for the expansion of the penal options in The Netherlands with 'intermediate' mandatory sanctions. As to their severity, this should range between conditional sentence and imprisonment, or between 'everything' and 'almost nothing';
- it is proposed that experiments should be conducted with the *day-fine, with electronic monitoring and with intensive supervision programmes*;
- some alternative punishments might be used as sanctions 'sui generis' (for example community service, day-fines, training sentences, vocational training), or as substitutes for short-term imprisonment;
- drastic alternative punishments or combinations of punishments (for example within the framework of intensive supervision), can be used as 'front-door' variants, *i.e.*, as substitutes for pre-trial custody, or as 'back-end' variants, *i.e.*, as substitutes for or reductions of imprisonment;
- however, with a view to the disadvantages connected with the 'front-door' model (more failures and net-widening), it is worth considering experimentation with the 'back-end' variants, either as independent sentences or as substitutes for (part of) the detention; to this end, intensive supervision pro-

jects provide particularly good opportunities;

- within this framework, it could be considered that the convicted offender has to make a financial contribution towards the implementation of the alternative sentence;
- if we would wish to promote the use of alternative sentences by the judiciary, the design of sentencing guidelines, as we have learnt from experience abroad, is virtually indispensable. These indicative guidelines should denote specifically for what categories of offences (according to the seriousness of the offence, prison record, individual circumstances of the offence and the offender), what particular sentences and/or combinations of sentences can be imposed and within which margins.

## ENDNOTES

- 1 An example of this development is the State of California, where the most ambitious prison building programme in the United States was carried out. Now, however, the *California Blue Ribbon Commission on Inmate Management* has come to the conclusion that "states cannot 'build their way out' of the crowding crisis". (Clear and Byrne, 1992)
- 2 Minister of Justice of Canada: *Directions for Reform – Sentencing*. Minister of Justice and the Solicitor General of Canada: *Directions for Reform – a Framework for Sentencing, Corrections and Conditional Release*
- 3 The English Criminal Justice Act 1991 also speaks repeatedly of 'rehabilitation' as an objective of the sentence
- 4 France, Germany, England, Greece, Cyprus, Iceland, The Netherlands, Portugal, Malta, Spain, Sweden, Turkey, and later Finland and Hungary, joined the Commission. The United States and Canada were represented by an observer
- 5 Finally, in order to prevent such undesired discrepancies in the imposition of fines, the courts – often informally – laid down guidelines or reference points
- 6 Since 1975 the Public Prosecutor may dismiss non-serious crimes against property and vandalism without referring to the judge (par. 153c of the Code for Criminal Procedures) and for more serious crimes the PP can – after referring to the judge – impose a conditional discharge with special conditions including community service, compensation or the payment of some money to a non-profit making organization or to the state (par. 153a of the penal code.)
- 7 There are also attendance centres for minors
- 8 A disadvantage of these types of techniques is that they are not usually validated and that they are not used to determine which offenders are suitable for ISP, either as a recommendation for the court or as a guidance for the probation service
- 9 Although a private organization such as NACRO has also set up a considerable number of alternative projects
- 10 In The Netherlands, the first experiment with such a project is under way in the district of Dordrecht

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