

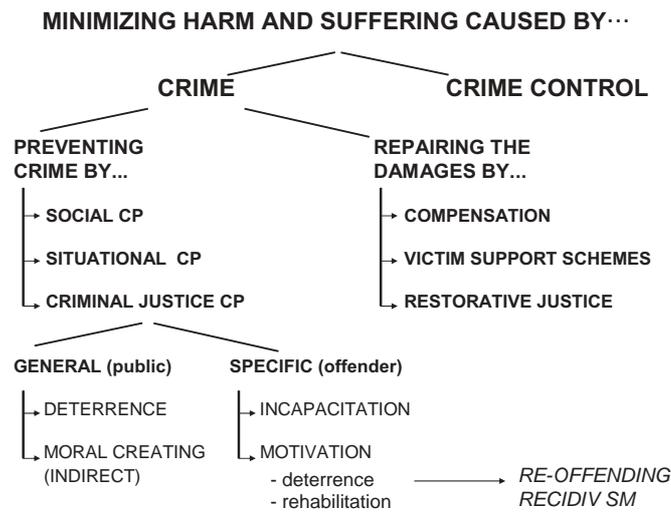
CRIME PREVENTION AND COMMUNITY SANCTIONS IN SCANDINAVIA

*Dr. Tapio Lappi-Seppälä**

I. INTRODUCTION

A. Punishment and the Scope of Criminal Policy

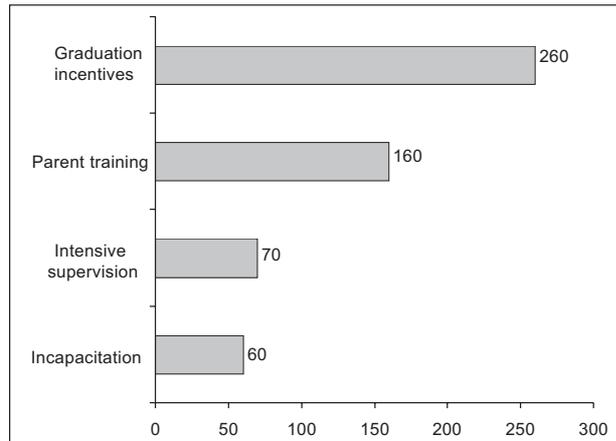
A balanced view of the role criminal justice as part of criminal policy needs a wider perspective than considerations of re-offending and protection of the public. Outlines for this wider framework have been briefly detailed in the previous paper. To summarize the main points:



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

* National Research Institute of Legal Policy, Finland.

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



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

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

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

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

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

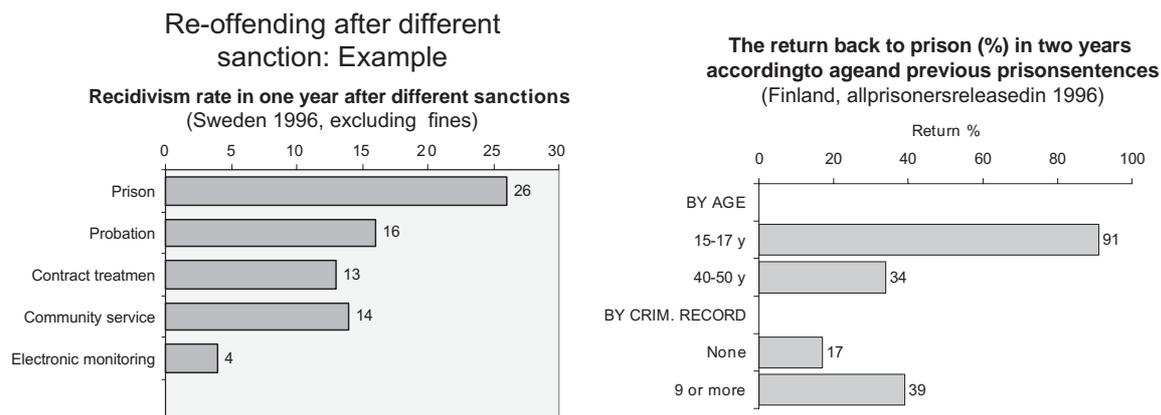
Up till recent years, recidivism data has been based on separate recidivism studies. Along with the increased international interest in the effectiveness of criminal justice interventions, several States have now established national reconviction statistics.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. SCANDINAVIAN SYSTEMS OF CRIMINAL JUSTICE

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

A. Sanctions

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

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

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

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

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

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

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

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

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

B. Sentencing Structure

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

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

C. Enforcement

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

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

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

D. Juvenile Justice

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

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

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

E. Restorative Justice and Mediation

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

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

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

F. Basics in Proceedings

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

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

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

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

III. OVERVIEW OF COMMUNITY SANCTIONS

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

In short community sanctions include the following:

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

Differences between the systems constitute from the following elements:

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

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

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

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

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

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

IV. FINES

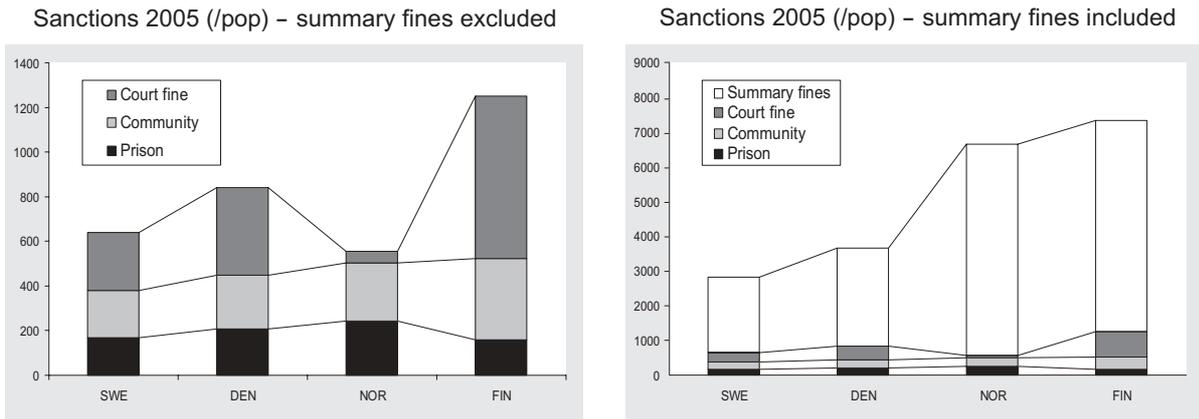
A. The Day-fine System

1. General Remarks.

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

Table 2. Fines in Scandinavian court practices

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



2. The Day-fine System

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

An example:

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

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

B. Fines in Finland

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

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

1. Proceedings and Summary Fines

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

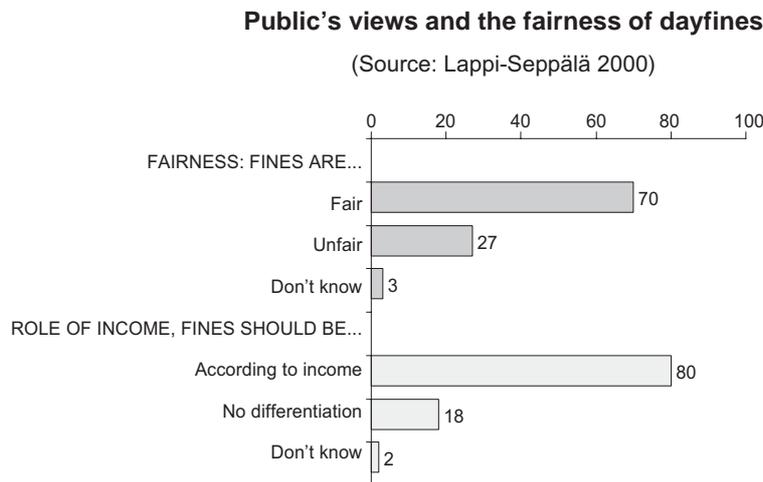
In addition, for minor traffic offences there is a summary penal fee that is set at a fixed amount (a petty fine). This fine is imposed by the police. In the case of non-payment, summary penal fees cannot be converted into imprisonment.

2. Practice

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

3. Public Acceptance of the Day-fine System

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



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

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

⁶ See Lappi-Seppälä 2002,b.

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

C. Effects on Recidivism

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

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

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

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

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

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

V. CONDITIONAL IMPRISONMENT/SUSPENDED SENTENCES

A. The Structure

1. Types and Terminology

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

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

Suspended sentence/conditional imprisonment in Scandinavia

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

2. Contents and Conditions

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

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

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

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

3. Combinations

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

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

Conditional imprisonment with different combinations in Scandinavia

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

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

4. Combinations

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

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

B. Conditional Imprisonment in Finland

1. Imprisonment and Conditional Imprisonment

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

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

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

2. Sentencing Criteria

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

3. Subsidiary Sanctions

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

4. The Probation Period and the Revocation of the Sentence

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

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

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

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

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

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

5. Supervision of Young Offenders

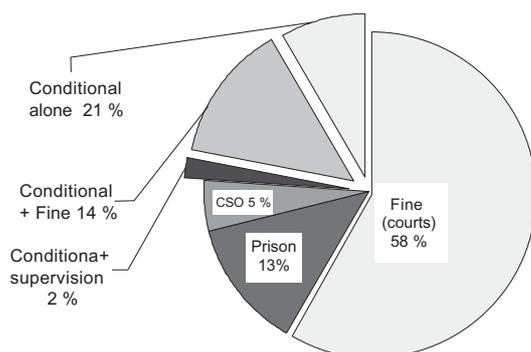
Conditionally sentenced young persons (who were 15 to 20 years old at the time of the offence) may be put under community supervision if this is considered “justified in view of the promotion of the social adjustment of the offender and of the prevention of new offences”). Such supervision is ordered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

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

C. Implementation and Effects

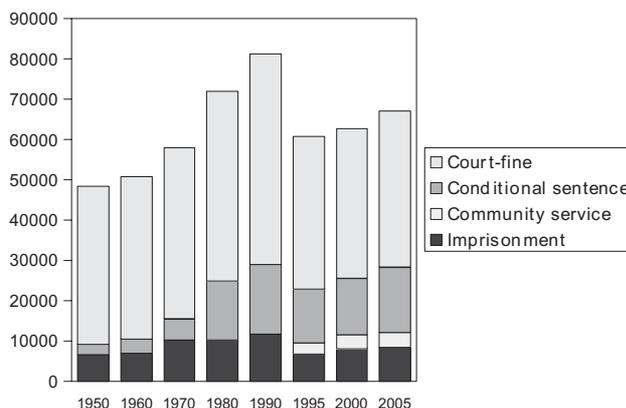
In Finland conditional imprisonment has a strong position as an alternative to incarceration. Conditional imprisonments correspond to roughly a quarter of all sanctions imposed by the courts. Two out of three prison sentences are imposed conditionally.

Conditional imprisonment and other sanctions in Finnish courts 2005

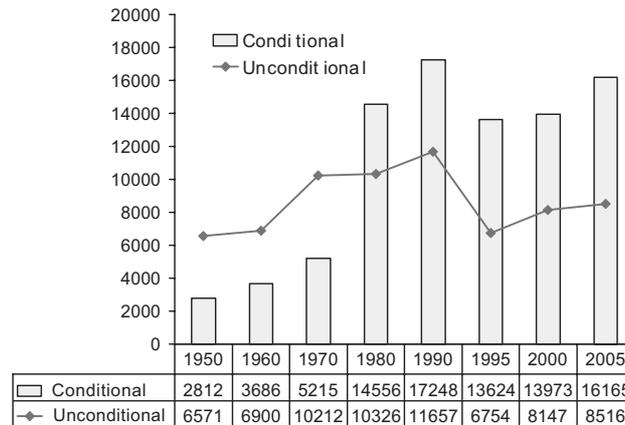


In 1950, 30% of sentences of imprisonment were imposed conditionally. In 1990 the rate was 60% and in 2000 63%. The use of conditional imprisonment increased significantly during the 1970s. A primary factor behind this was, above all, a reassessment of sentences for drunken driving. Conditional imprisonment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

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



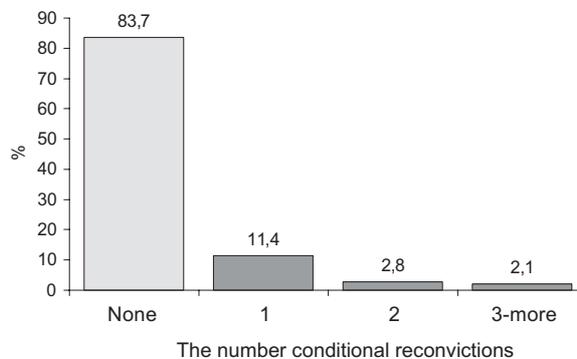
Conditional and unconditional prison sentence in Finland 1950-2005



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

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

(Lappi-Seppälä 1999)



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

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

⁹ On this see Lappi-Seppälä, 1999.

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

D. Conclusions

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

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

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

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

VI. PROBATION AND TREATMENT ORDERS

A. The Structure

1. Terminology

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

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

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

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

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

2. Swedish Treatment Orders

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

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

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

3. Danish Treatment Orders

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

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

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

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

B. Contract Treatment (Sweden)

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

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

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

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

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

C. Assessing Effectiveness

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

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

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

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

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

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

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

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

D. Conclusion

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

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

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

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

VII. COMMUNITY SERVICE

A. The Structure

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

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

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

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

Community service in Scandinavia

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

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

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

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

B. Community Service in Finland

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

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

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

2. The Number of Hours of Community Service

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

3. Contents

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

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

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

4. Supervision and the Violation of the Conditions

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

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

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

5. The Number of Community Service Orders

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

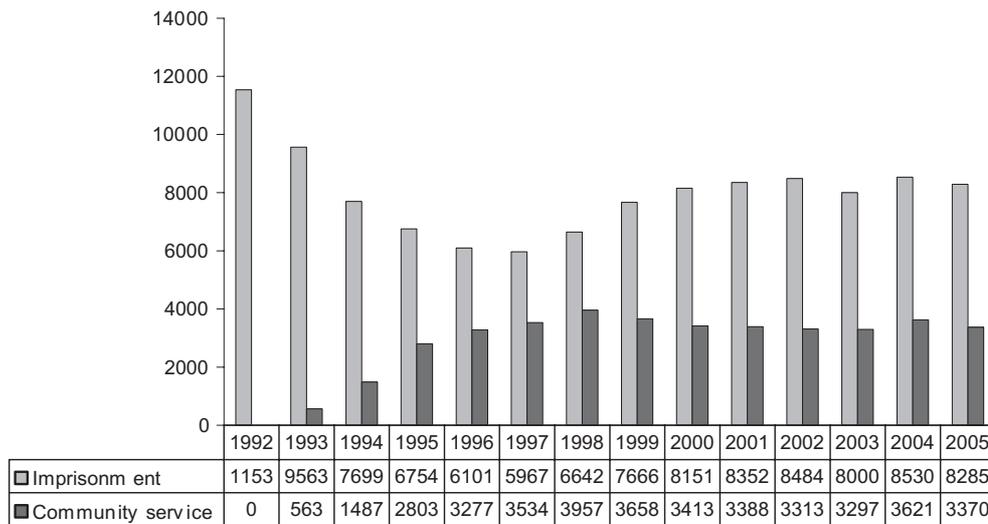


Figure: Imprisonment and community service in Finland 1992-2005 (court statistics)

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

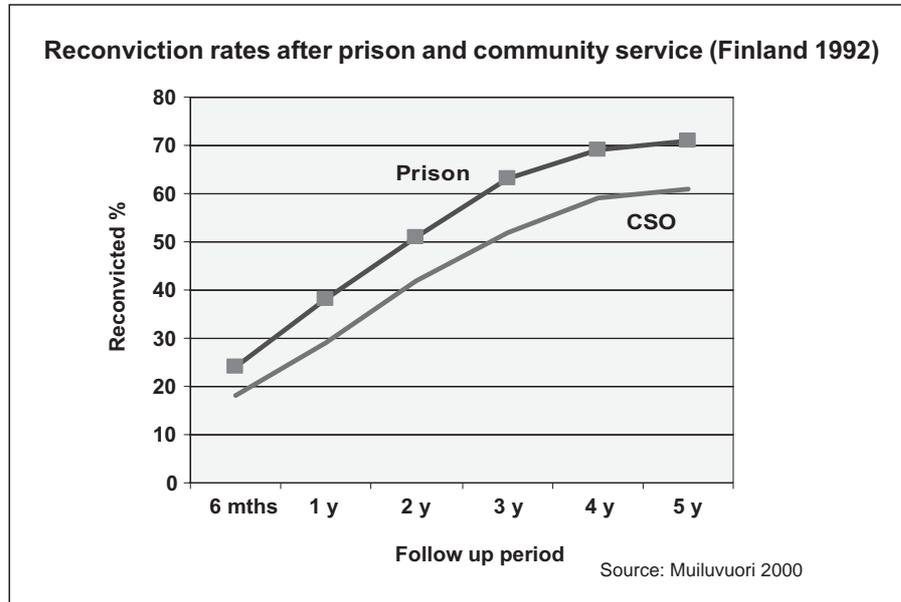
Some 3,500 community service orders are imposed annually by the courts. This represents around 35–40% of the sentences of imprisonment which could have been converted (sentences of imprisonment of at most eight months). Over one half of the community service orders are imposed for drunken driving. Annually,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

C. Assessing Effectiveness

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

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

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



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

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

D. Conclusion

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

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

VIII. ELECTRONIC MONITORING

A. Introduction

1. Different Forms of Electronic Monitoring

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

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

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

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

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

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

2. EM in Scandinavia: General Structure

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

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

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

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

1. Sweden

(i) *The structure*

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

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

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

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

(ii) Practical experience

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

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

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

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

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

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

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

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

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

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

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

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

2. Other Countries

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

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

C. EM Release as a Back-door Alternative

1. Sweden

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

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

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

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

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

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

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

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

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

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

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

2. EM-Release with Mobile-Control in Finland

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

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

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

IX. CONCLUDING REMARKS

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

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

A. Community Sanctions as Alternatives to Imprisonment?

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

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

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

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

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

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

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

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

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

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

B. Punishment and Public Opinion?

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

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

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

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

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

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

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

In other words:

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

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

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

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

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

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

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