

THE CRIMINAL JUSTICE SYSTEM AND COMMUNITY-BASED TREATMENT OF OFFENDERS IN THAILAND

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I. THE CRIMINAL JUSTICE SYSTEM IN THAILAND

A. Criminal Proceedings

Responsibility for the administration of criminal law in Thailand is shared by several organisations: the Royal Thai Police, Office of the Attorney General, the Courts of Justice, the Ministry of Justice (Department of Probation and the Central observation and Protection) and the Ministry of Interior (Department of Corrections).

After an arrest, law enforcement agencies present information about the case and about the accused to the prosecutor. According to the Criminal Procedure Code, investigation is conducted by the inquiry officials who are mainly the police. Thai prosecutors are not granted the power to initiate investigation nor institute the case themselves. Prosecutors begin their function after receiving investigation files from the inquiry officials. The only channel to involve with the investigation is to instruct the inquiry officials to conduct an additional investigation if the prosecutors deem that the facts or evidence as they appear in the file are not clear enough.

When the investigation is completed, a report is filed with the public prosecutor, who then prepares an indictment and gives a copy to the accused or his counsel, who enter a plea of guilty or not guilty. Based on the plea and evidence that had been gathered, the judge either accepts a case for trial or dismisses all charges.

Trials are normally held in open court, and the accused is presumed to be innocent until proven guilty. During trials, accused persons or their counsels can cross-examine prosecution witnesses and re-examine defence witnesses. After that, the judge decides the sentence. A sentencing hearing may be held at which evidence of aggravating or mitigating circumstances from an offender's background and the offender's criminal behaviour can be taken into account. Courts often rely on pre-sentence investigations by probation officers.

The sentencing choices that may be available to judges include one or more punishments of the following (the Penal Code Section 18):

1. Death Sentence: this type of punishment is carried out by means of shooting. However, there are guidelines in both the Thai laws and the United Nations code where safeguard measures for implementing the death sentence are provided. Despite its existence in the laws, the death sentence is infrequently carried out in Thailand. Most of the prisoners who receive the death sentence have their sentences commuted to life imprisonment. Throughout the history of modern corrections in Thailand, there have been 300 prisoners executed.

2. Sentence to Imprisonment: this is the major type of punishment to deal with criminal offenders in Thailand. The imprisonment terms range from one day to life imprisonment. Under the Thai laws, a term of imprisonment is a determinate sentence and must be carried out till its termination. The prison authority has no right to commute the sentence or to offer sentence reduction. Under this existing sentencing system, a large prison population is created which must rely, on the Royal King's Pardon as a means to control the number of inmates in the system.

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3. Sentence to Confinement: the punishment of confinement is less than imprisonment. If the court imposes a punishment of imprisonment not exceeding three months, and if it does not appear that such a person has received the punishment of imprisonment previously, the court may impose the punishment of confinement not exceeding three months in lieu of the punishment of imprisonment. Any person receiving the punishment of confinement shall be held in a place of confinement which is not a prison.

4. Fine: this type of sentence is applied to petty crime. Offenders are ordered to pay a certain amount of money to the authorities as punishment. Failure to pay the fine results in an order of confinement.

In reducing the punishment, if the punishment of imprisonment to be imposed upon the offender is only for a period of three months or less, the Court may determine a lesser punishment of imprisonment, or if the punishment of imprisonment to be imposed upon the offender is only for a period of three months or less, with a fine, the Court may determine a lesser period of imprisonment, or a fine only. (the Penal Code section 55)

5. Forfeiture of Property: this type of punishment is applied to items, weapons, and assets which offenders used or acquired to commit an offence.

1. The Legal Basis of Probation

If the court passes judgment that the offender is guilty, he/she may be put on probation. There are two types of court decision for probation, but the contents of probationary supervision are the same. The basic requirements of probation provided in the Thai Penal Code are as the follows:

Whenever any person commits an offence punishable with imprisonment and in such case the Court shall punish with imprisonment not exceeding two years, if it does not appear that such person has received the punishment of imprisonment previously, or it is the punishment for an offence committed by negligence or a petty offence, the Court may, when taking into consideration the age, past criminal record, behaviour, intelligence, education and training, health, condition of the mind, habit, occupation and environment of such person or the nature of the offence, or other extenuating circumstances and, pass judgment, if it thinks fit, that such person is guilty, but the determination of the punishment is to be suspended, or the punishment is determined, but the punishment is to be suspended, and then release such person with or without conditions for controlling his behaviour, so as to give such person an opportunity to reform himself within a period of time to be determined by the Court, but it shall not exceed five years as from the day on which the Court passes judgment. (the Penal Code section 56)

2. Conditions of Probation

Regarding the conditions for controlling the behaviour of the offender (probation conditions), the court may determine one or more conditions as follows to:

1. Report himself to the probation officer from time to time so that the official may make inquires, give advice, assistance or admonition on the behaviour and carrying on of an occupation, or arrange an activity to be done for community service or the public benefit, as the official and offender think fit;
2. Be trained or to carry on an occupation;
3. Refrain from keeping company with certain people or from any behaviour which may lead to the commission of a similar offence again;
4. Take the offender to have treatment for drug addiction, physical and mental illness, and other illness as determined by the court;
5. Have other conditions determined by the court in order to rehabilitate or prevent him from recommitting an offence.

B. Criminal Justice Organisations

1. Royal Thai Police

The Royal Thai Police are the National Law Enforcement Agency and one of the largest government ministerial offices of Thailand, responsible for crime prevention and suppression for the whole kingdom. The first step in a criminal case is a preliminary investigation carried out by a police officer; the investigation might include searches of suspects, their homes and others thought to be implicated. Arrested suspects are required to be taken promptly to a police station, where the arrest warrant is read and explained to them. They are then held or released on bail. The provisions for bail and security are defined by law.

The Royal Thai police emphasize protection more than suppression through including the participation of the community in support of police work, to have the greatest possible effect. They will increase activities in the areas of crimes and in the surveillance of places where criminals tend to associate.

Police Stations are the main organ of the Royal Thai Police. These offices need to develop personnel, systems of work, including efficient use of all administrative resources in order to carry out their functions of serving the people in justice, crime prevention and suppression.

2. Office of the Attorney General

A public prosecutor is an official under the office of the Attorney General and is governed by the Regulation of Public Prosecutor Officers Act 1978 (B.E. 2521). The Office of the Attorney-General, formerly called the Public Prosecution Department, was separated from the Ministry of Interior and became a state agency under the direct supervision of the Prime Minister in 1991 to make the Office free from outside influence and interference.

The public prosecutor is responsible for bringing a criminal prosecution on behalf of the government and represents the government in civil cases where the government is a party to the proceedings.

When the investigation is completed, a report is filed with the public prosecutor, who then prepares an indictment and gives a copy to the accused or his counsel, who enter a plea of guilty or not guilty. Based on the plea and the evidence that has been gathered, the judge either accepts a case for trial or dismisses all charges. Trials are normally held in open court, and the accused is presumed to be innocent until proven guilty. If the defendant has no counsel and wishes to be represented the court appoints a defence attorney. During trials, accused persons or their counsels can cross-examine prosecution witnesses and re-examine defence witnesses.

Authority and Functions

The authority and functions of the Office of the Attorney General can be classified into three main categories:

(i) Criminal Justice Administration

This is to conduct a criminal prosecution to protect the state and public as well as to defend innocent government officials who have been charged with criminal cases relating to the lawful performance of their duties. The Office also takes on an active role in international co-operation to suppress crime and for international mutual assistance in criminal matters because the Attorney General is the "Central Authority" under the "International Co-operation in Criminal Matters Acts of 1992 (B.E.2535)".

(ii) Government Interests Protection

This is to render legal opinions to government agencies and state enterprises as well as to review draft contracts both domestic and international, between private entities and government agencies of state enterprises. Furthermore, the Office is charged with the power to handle civil cases where the government agencies or state enterprises are parties.

(iii) *Public Interests Representation*

This is to disseminate legal knowledge to the public in the fields of democracy, human rights, environment and other laws. These functions have been carried out both by personal instruction method and through mass media such as television, radio and newspapers. In addition, the Office also renders legal aid to the poor and needy people, i.e. assisting them in lawsuits and the conciliation process.

The authority and functions of the Office of the Attorney General will be continuously developed in order to effectively fulfill the role of the guardian of the law and the protector of public interests, especially with a view to coping with this new era of globalisation and technological advance.

3. The Courts of Justice

The Constitution of the Kingdom of Thailand, 1997 (B.E.2540) has a substantial impact on the reorganisation of the judicial system in Thailand. The types of court recognized under the 1997 Constitution are: the Constitution Court, the Court of Justice, the Administrative Court and the Military Court. The Constitution Court and Administrative Court were recently established as a result of the provisions of such constitution. Although this change decreased the scope of the jurisdiction of the Courts of Justice, most cases fall under the jurisdiction of the Courts of Justice.

The structure of the Courts of Justice is divided into two parts: administration and adjudication. After August 20, 2000, the Courts were separated from the Ministry of Justice. The office of the Judiciary is the organisation responsible for the administration of the Courts of Justice.

The Courts of Justice are classified into three levels consisting of the Courts of First Instance, the Courts of Appeal and the Supreme Courts. The Courts of First Instance are categorized as general courts, juvenile and family courts and specialized courts. The general courts are ordinary courts which have authority to try and adjudicate criminal and civil cases. The Courts of Appeal handle an appeal against the judgment or order of the civil courts and the criminal courts. The Supreme Court is the final court of appeal in all civil and criminal cases in the whole kingdom.

Each court of appeal and the Supreme Court has a research division consisting of research judges. The primary function of the division is to assist justices by examining all relevant factual and legal issues of cases to ensure uniformity and fair results.

4. Department of Corrections

The Department of Corrections is the final agency of the criminal justice system. The responsibility of the Department of Corrections concerns the taking into custody of offenders being sentenced by the court and the rehabilitation of offenders; so that they will be able to reintegrate themselves into society as good citizens after release. The Department of Corrections is a preventive agency in terms of crime suppression and, at the same time, it plays an important role in the development of human resources of the country.

Presently, the correctional system in Thailand comes under the administration of the Department of Corrections, Ministry of Interior. The Department's main responsibilities are to execute penal sentences imposed by the Courts and any lawful orders. The implementation of these responsibilities is carried out by means consistent with procedures, and measures stipulated in law. The Criminal Procedure Code B.E. 2477 (1934), the Penal Code B.E. 2499 (1956), the Penitentiary Act B.E. 2479 (1936) are a few of the laws which govern the Department. The Department has committed itself to fulfill the following functions:

- (i) To keep prisoners whose age ranges from 18 and above in custody and ensure their appearance in Court.
- (ii) To ensure that all the procedures for detaining prisoners in custody are consistent with laws, regulations, government policy, and the principle of criminology and penology, as well as the United Nations Standard Minimum Rules for the Treatment of Offenders and other recommendations.
- (iii) To manage prisoners according to individual background, risk factors, and individual needs.

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- (iv) To equip prisoners with lawful earning skills through various vocational training programmes.
- (v) To provide a safe, secure and humane environment whereby prisoners are able to have access to social services, recreation facilities, education, vocational training, religious, health care, and other forms of welfare.
- (vi) To coordinate and cooperate with other criminal justice agencies in order to achieve maximum protection of society.

Vision

1. Prisoners become good citizens and shall not recommit crime
2. Prisoners become skillful and are able to find good work after release
3. Prisoners have good physical and mental health
4. Society and community accept and support the rehabilitation of prisoners.

Mission

1. The efficiency of custodial and security systems
2. The rehabilitation of offenders.

The Thai Department of Corrections regulates remand detention, confinement, imprisonment, the execution of capital punishment, and several non-institutional treatments. At present there are 185 correctional facilities located throughout Thailand. The average daily population in 2002 is some 250,000 which is a substantial increase over the previous 10 years.

Table 1. Prisoners by Status, (February 2002)

Status	Number	Percentage
Convicted	154,018	62.05
Awaiting investigation	29,919	12.05
Awaiting trial	59,187	23.85
Others (juvenile delinquent, confined persons)	5,099	2.05
Total	248,223	100

Table 2. Convicted Prisoners by Types of Offences (February 2002)

Offences	Males	Females	Total	Percentage
Against Property	27,266	2,669	29,935	19.44
Against Narcotic Laws	74,847	26,504	101,351	65.80
Against Life	7,042	336	7,378	4.79
Against Person	3,670	142	3,812	2.47
Sex Offences	4,665	74	4,739	3.08
Against Public Safety	369	27	396	0.26
Others	5,642	765	6,407	4.16
Total	123,501	30,517	154,018	100

5. Department of Probation

The Thai Government agreed to provide probation services for adult offenders and gave the Ministry of Justice the authority to organise such services. The Central Probation Office began its operation on August 7, 1979 in Bangkok. Then the Central Probation Office was upgraded to be the Department of Probation, Ministry of Justice, on March 15, 1992.

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(i) *Duties and Responsibilities of the Department of Probation*

According to Royal Decree of the Division of the Department of Probation, Ministry of Justice 1992 (B.E.2535), the Department of Probation has the following duties and responsibilities under the Probation Procedure Act in accordance with the Penal Code 1979 (B.E.2522).

- a) To promote and encourage the process of the offender's corrections and rehabilitation under the Probation Procedure Act in accordance with the Penal Code 1979 (B.E.2522).
- b) To plan and develop the system of probation, the offender's treatment measures and to cooperate with the Ministerial Operation Plan, in setting up policies as well as to follow up and evaluate the administration and efficiency of the agencies under the department.
- c) To conduct the pre-sentence investigation, supervision, corrections and rehabilitation of the offenders who have been subjected to the Probation Procedure Act in accordance with the Penal Code 1979 (B.E. 2522).
- d) To operate other duties besides the above principal duties and responsibilities required by law or the cabinet.

(ii) *Vision*

By the year 2012, the Department of Probation will be the principal organisation in community corrections and drug addicts rehabilitation by means of a compulsory system. We will promote crime control and prevention through community networks; will demonstrate the leadership role of innovation and engage the community to get involved in participatory administration of justice and offender's treatment; in respect of staff; will assume the professional and service-minded roles through competence and capability; in respect of the Department, will assume the distinct cultures of learning organisation, appearance, work, ethics and honesty, transparency and accountability, and high standards recognized internationally.

(iii) *Mission (Strategic Plan and Operational Plan 2002 - 2006)*

- a) To provide offender services of preparing investigation reports, enforcing conditions of supervision, and supportive services conferred by virtue of the enactment concerning deferred prosecution of pre-trial release, parole, and probation both adult and juvenile.
- b) To provide drug treatment and rehabilitation of offenders by means of a compulsory system.
- c) To provide offenders with social welfare services after termination of probation and release on conditions.
- d) To advocate and mobilize community resources to provide better services for offenders and to enhance and develop community networks.
- e) To study and research, to develop the rehabilitation system, information technology, and legal rules as well as other related regulations.
- f) To develop the organisational structure, administration, and staff for providing better services through professionalism with competence and capability.
- g) To promote crime prevention and diversion services in the criminal justice process.

(iv) *Policies and Operational Directions for the Fiscal Year 2002*

(especially concerning community-based corrections)

- a) To prepare for the establishment of the drug addicts rehabilitation centre in accordance with the Drug Addicts Rehabilitation Act. B.E., which has been read by parliament, by working harmoniously with other related organisation, public and private, through fostering national cooperative efforts, however, it depends on the supportive resources from the government.

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- b) To put emphasis on studying, and research for the appropriate approaches for working to implement the July 10, 2001 resolutions of the council ministers. The Department of Probation will be the principal organisation in the probation service at the suspension of prosecution stage, trial and after the trial stage.
- c) To put emphasis on having offender classification used by all offices, including to create and develop programmes to support classification.
- d) To promote study and research in order to bring about innovation as well as alternatives on probation to probation services aimed at reducing the workload and increasing the effectiveness based on the resources in the community and social conditions.

At present there are 14 divisions and 88 probation offices throughout the country. Additionally, there are two new divisions namely the Drug Addicts Rehabilitation Center and the Office of the Secretary of the Drug Addicts Rehabilitation Center.

After the public administration reform and restructuring the Ministry of Justice (October, 2002), the organisational structure may change into 5 groups to conform with the mission as follows.

1. Probation and Treatment Development Group
2. Rehabilitation of Drug Addicts Group
3. Community Affairs and Community Service Group
4. Bangkok Probation Office Group
5. Probation Office Region 1-9 Group

Table 3. Manpower of Officials, Regular Employees and Temporary Employees from 1997-2001

Fiscal Year	Manpower		
	Officials (Probation officers)	Regular Employees	Temporary Employees (Probation officers)
1997	823 (528)	304	850 (490)
1998	961 (624)	333	914 (490)
1999	961 (624)	333	1,642* (493)
2000	961 (624)	333	1,642* (493)
2001	985** (625)	333***	992* (493)

Remarks: *includes temporary employees of the projects under the supplemental expense measures released by the government for encouraging the economic crisis. In the fiscal year 1999-2000 a total of 1,029 positions

** manpower's framework of government services were cancelled because of the early retirement of 2 positions and 1 shortage

*** permanent employees active placement and vacant positions.

**Table 4. Budget
Granted Budgets From 1997-2001**

Fiscal year	Budget (Baht) (April 26, 2002 100 yen = 33.69 baht)
1997	279,180,300
1998	251,126,800
1999	237,888,800
2000	385,154,700
2001	487,422,500*

* includes an amount for disseminating knowledge regarding mediation and the preliminary justice system to the general public 108,594,600 baht.

Requirements for Becoming a Thai Probation Officer

- Education: B.A. in Law, Criminology, Political Science (in Government or in Public Administration) Social Science, Psychology, Sociology, Social Work
M.A. in Criminology, Social Administration (in Criminal Justice), Sociology, Psychology
- Criminal record: Must not have served a sentence of imprisonment for committing a crime, unless it is for an offence committed by negligence or a petty offence

6. Juvenile Justice System

Thai law limits children's criminal responsibility by their age. Children under 7 years old are not liable to criminal punishment. Those between 7 and 14 are not liable to any punishment either, but the law gives the court the option to use juvenile procedures, depending on the children's behaviour and environment and other mitigating circumstances, thereby giving the children an opportunity to turn over a new leaf rather than punishing them severely as a deterrent. Above that age (15 years and older), youths may have to face criminal punishment, but the court may use its discretion to reduce the sentence.

In provinces where there are Juvenile and Family Courts or Juvenile and Family Sections, the juvenile justice system is applied including: rehabilitation, vocational training and family reunion. However, in provinces with no such structure, adult procedures will be applied according to the nature and the extent of the offences, with the exception of the sentencing stage when the juvenile justice standard is allowed by the law.

The death penalty and life imprisonment cannot be applied to children and youth and the punishment cannot be increased due to repeated offences.

The law gives the investigating officer the right to detain the child for not more than 24 hours and will then have to speedily send the child to an Observation and Protection Centre where the child will be provided with appropriate accommodation. Child offenders have a right to bail during the investigation or during the trial. The bail procedures or criteria for bail application are not as complicated as the ones applied to adult offenders.

Sentencing of a child offender. The Juvenile and Family Court or the regular court may exercise the following discretion in its decision:

- (i) If the child commits a minor offence and his or her conduct is not damaging, the court may admonish and then release the child unconditionally;
- (ii) If there are mitigating circumstances and the child's conduct is not too damaging, the court may consign the child to the care of his or her parents or legal guardian or the person with whom the child has been living on condition that they pledge a bond with security;
- (iii) If the circumstances of the offence are violent and the child's conduct is damaging, but the child does not deserve a sentence of criminal punishment, the court may consign the child to the care of parents, legal guardian or the person with whom the child has been living, subject to a bond with security and probation;
- (iv) If the circumstances of the offence are violent and the child's conduct requires correction, the court may order the child to be detained in an Observation and Protection Center for a certain period of time which must not last longer than the offender's twenty-fourth birthday. Alternatively, the court may order a maximum or minimum period of training at the Center;

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- (v) If the circumstances of the offence are as serious as an adult's and the child's conduct is very damaging and not conducive to the application of juvenile procedures, the court may sentence the child to prison but the sentence must be reduced proportionally.

Treatment of juvenile offenders after the sentence. When the Juvenile and Family Court or regular court has passed a judgment on the child, if the child's behaviour later improves, the court may reconsider the case and order a better treatment for the child or youth offender. On the contrary, if the child's behaviour deteriorates, the court may instigate new controls on the child.

In a case where the court hands over the child to his parents, guardian or to the person with whom the child resides, the court may determine the conditions for controlling behaviour of the child in the same manner as provided in the Penal Code section 56. In such case the court shall appoint a probation officer or any other official to control the behaviour of the child.

C. Situation, Problems and Solutions in the Criminal Justice Process

The crime rate in Thailand appears to have risen throughout the 1990s. The crime rate of the early 2000s is also predicted to increase. The cause of this is the influence of the impact of globalisation, technological development and economic and social modernization.

Table 5. Number of Reported Crimes in Thailand 1996-2000

Major Types of Crime	Arrested				
	1996	1997	1998	1999	2000
Crimes against the Person	18,711	19,109	20,717	21,481	22,099
Property Crimes	28,581	29,763	37,726	34,779	35,377
Narcotics	178,994	18,866	243,661	253,461	275,551
Prostitution	6,085	4,961	6,853	10,272	11,591
Cheating and Fraud	2,335	2,233	2,825	2,777	3,099

(Excerpt from <http://www.Police.go.th/stat43.htm>)

**Table 6. Number of Criminal Cases Prosecuted During 2000-2001
(The Courts of First Instance)**

Major Types of Cases	2000	2001
Offences of Bodily Harm	16,828	17,737
Offences of Theft	36,172	35,686
Offences of Cheating and Fraud	2,765	2,894
Narcotics	238,907	256,032
Controlling Firearms Act	17,451	18,519

Source: Annual Statistic Report 2000-2001 the Court of Justice.

1. Prison Overcrowding

The Thai correctional system, as elsewhere, is faced with a prison overcrowding problem, which is grave and most urgent. The prison authority in their report to the higher authority do not seem to have any immediate plan to cope with this problem. In 2002 there were 250,000 inmates being detained in correctional facilities throughout Thailand. Of these, 62.05 per cent were convicted prisoners, and 38 per cent were on remand. Prisoners convicted of offences against narcotic laws form the largest group in the prison population. Ninety-two per cent of prisoners had completed primary education while a small number had completed higher education. There were only 0.5 per cent of prisoners who had completed

university education. The prison population in Thailand has increased dramatically during the past ten years, creating problems for the Department in carrying out its tasks effectively.

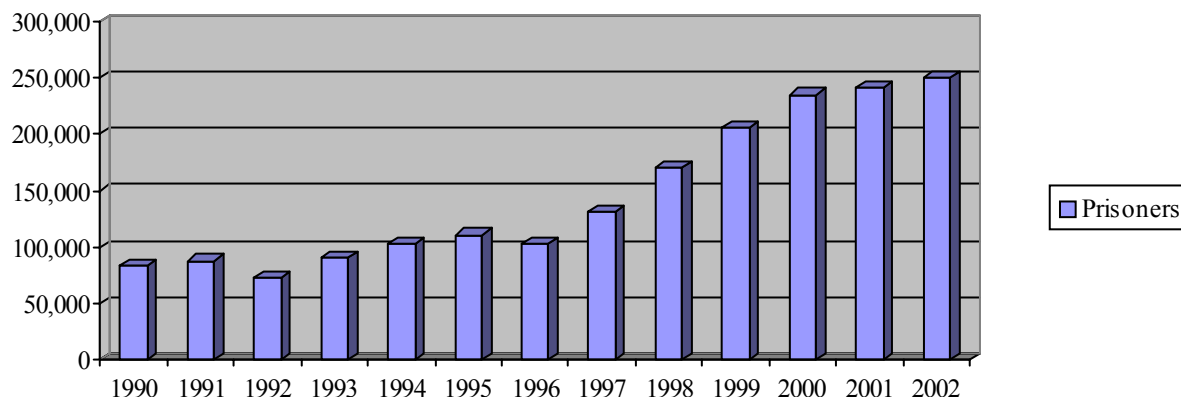


Figure 1. Prison Population 1990 - 2002

Overcrowding became a serious problem for correctional administrators in the 1990s. The increase in the prison population in Thailand during the last decade has created a crisis in the country's correctional system. With a maximum official capacity of 90,000, there are currently nearly 250,000 prisoners of all types incarcerated in prisons throughout Thailand. Although the Department was allocated more new prisons, these new spaces were filled up in a very short time. Despite having a Royal Decree of Pardon to relieve this overcrowding crisis from time to time, this is not a permanent solution to the problem. After a few years, the prison population starts to climb back to the same level, and continues to grow far beyond the overall capacity again. At present there are two measures that the Department has used to relieve overcrowding: Good Time Allowances and Parole. Although a certain number of prisoners are released on condition each year, that amount has generally remained the same even though there has been a large increase in the prison population, thereby doing little to help solve the overcrowded conditions within the Thai correctional system.

(i) *The Impact of Overcrowding*

The impacts of overcrowding are numerous. The first and most important is the improper implementation of the United Nations Standard Minimum Rules (UNSMR) for the Treatment of Prisoners. These rules require separation of prisoners taking into account factors such as sex, age, criminal record and that accommodation has to meet all health requirements, climatic conditions, cubic content of air, minimum floor space, lighting and ventilation.

Secondly, the uneven distribution of prison officers to prisoners make the task of a prison officer very difficult. These factors contribute to the maintenance of discipline, which eventually has the effect of deteriorating the relationship between correction officers and inmates hence, destroying the notion of 'corrections'.

Thirdly, overcrowding has hampered the rehabilitation programmes, due to limited resources, space, and materials, as well as being one of the causes of an increase in corruption within prisons.

(ii) *Causes of Overcrowding*

The causes of overcrowding in the prisons can be identified by examining the processes of the criminal justice agencies in the country with specific references to the criminal policy, police, public prosecutors, courts, and corrections. Each of these agencies has its own measures to divert incarceration, ranging from the pre-sentencing stage to the post-sentencing stage. However, the existing measures have never been used widely due to limitation of each particular agency. For example: the limitation in the laws; the amount of bail surety and restrictions; the lengthy trial; the lack of cooperation, the lack of ultimate goals, with a concentration on individual agency's goals only, and so on. These factors need a comprehensive plan at the national level, and such a plan must

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acknowledge the merit of diversion, and encourage all agencies concerned to be aware of the overcrowding and pain of imprisonment.

The major causes of overcrowding in Thailand can be summarized into a few reasons, which are: the harsh policy on drug use, long sentences, little use of non institutional treatment, greater reliance on imprisonment as a sentencing option, and a low rate of bail granted to accused persons. In coping with overcrowding, the prison authority may not be able to contain this problem by itself, but the entire criminal justice system must come to share this problem and endorse solutions, which every agency must carry out accordingly with the objective to minimize the use of incarceration.

The Limitation of Non-Institutional Treatment

Although non-institutional measures have existed within the Thai correctional system for a long time, the measures are yet to be implemented widely. There are reasons that contribute to this limitation as follows:

(iii) *Conflicting Policy*

The Thai criminal justice system values the use of non-institutional treatment, and efforts have been made to expand these measures as recommended by the United Nations. However, there is another policy that the Thai criminal justice system has to adhere to, which is the policy on narcotics. This policy stipulates guidelines for criminal justice agencies to implement in order to cope with the spread of narcotics in society. With regards to the correctional system, drug related inmates shall receive neither privileges nor early release in order to deter them from committing offences. As indicated previously, the majority of inmates (62 per cent) in the Thai correctional system are for drug-related offences, and thus they must be barred from receiving privileges such as parole and pardons. These conflicting policies have resulted in a lower number of inmates being released on conditions.

(iv) *Lack of New Initiatives*

Over the past 66 years, only three modifications have been made to the Prison Act B.E. 2479 (1936). The first was in 1977 whereby a Good Time Allowance System or remission was introduced in order to relieve overcrowding. The second modification, in 1979, enabled those who were being detained under lawful orders to earn the status of convicted prisoners under this Act. After that, there were changes in 1980 whereby the Public Works Allowance system was introduced so as to allow the Thai Department of Corrections to send selected convicts to engage in public work activities and earn sentence remissions. However, there has been no internal or independent external commission or committee appointed to look into the problems of prison conditions or prisoner's rights in Thailand. These few modifications, and the lack of government attention, indicate that ideas relating to prison law reform which directly address the issue of prison conditions as well as the non-institutional measures in Thailand have yet to be developed.

(v) *Shortage of Staff*

In the fiscal year 2002, the Department employed 11,295 correctional staff of all ranks and types. During the previous 10 years, the number of correctional officers has slightly increased when compared to the growth of the prison population. From 1986 to 1995 there was only a 1 per cent increase in staff numbers. The Department is short of specialist staff to carry out its rehabilitation function. Most of the staff were custodial officers whose duty was to carry out daily routine prison operations.

(vi) *Restrictions on Rules and Regulations*

The other reasons that hamper the expansion of non-institutional treatment in the Thai correctional system is the restriction on rules and regulations. As mentioned earlier, during the past 66 years of the Thai Prison Act BE 2479 (1936), there were only a few modifications in the laws. Thus, most of the rules and regulations have been in practice for more than 60 years. These obsolete rules and regulations are one of the main reasons that there are only 2 per cent of convicted inmates being treated in the community.

(vii) *Solutions*

There are several ways and means to contain prison overcrowding. There is for example the enhancement of understanding and co-operation between all agencies involved in the criminal justice system. The expansion of non-institutional measures to be implemented at all stages of the criminal justice system, by acknowledging that *“Imprisonment should only be considered as a last resort, taking into account the nature and gravity of the offence, victim's rights, personal circumstances of the offender and the impact on the community.”* (UNSMR, article 2, 3)

The solutions above are just some of the measures that can be considered and implemented to reduce the problem of overcrowding in prisons. However, the authorities must ensure that these measures cannot be achieved without full understanding and co-operation of all the agencies concerned. Moreover, prison authorities should invite other agencies to visit prisons in order to obtain first hand information such as statistics, existing prisoners and problems encountered.

2. The Policies of the Thai Government to Solve the Criminal Problem

Because of the increasing crime rate, the fact that incarceration has not succeeded in reducing the crime rate, the prison population increases every year and the badly organised agencies in the Thai criminal justice system, we have the problem of a huge caseload. Another grave concern is the shortage of staff and the lack of effective process. So the policy of the Thai Government (February 26, 2001) contained in the development of the Legal Process and Legal Reform, is a commitment to improving efficiency in the criminal justice system.

The Government will undertake the following:

- (i) Accelerate the process of restructuring the Ministry of Justice to provide it with a role and responsibility covering the legal process in a thorough and efficient manner.
- (ii) Encourage and support the use of settlement measures other than through court settlements in order that such measures can serve as a tool for consumers, the public, the under privileged and the disadvantaged to ensure that their rights are protected and safeguarded.
- (iii) Revise the system and procedures in which offenders are treated, making them more diverse and capable of providing for the rehabilitation of such offenders in an efficient manner.
- (iv) Encourage communities, members of the public, and people's organisations to be more involved in the legal process as well as in setting policy for the administration of justice.
- (v) Accelerate the reform of any outdated laws, rules and regulations in line with the country's present economic and social conditions, while making them flexible enough to cope with future variations.
- (vi) Promote more research and studies in law and other fields related to both public and private sectors. This will, in turn, lead to the amendment and revision of existing laws or the proposal of draft legislation that is significant to and necessary for the country's development.

In order to deal with the drug problem more efficiently, the Royal Thai Government issued the Prime Minister's Order No. 119/2001 (B.E. 2544) on 31st May 2001. This Order is a major plan by the Government to eliminate drugs from Thai society under the strategy on *“Concerted Efforts of the Nation to Overcome Drugs.”* Three solutions were offered: 1) control illicit drugs, 2) treat drug addicts, and 3) prevent drug abuse.

To control illicit drugs, chemicals and precursors used for producing drugs will be strictly controlled while suppression and interception of the drugs coming from outside the country will be systematically carried out. Suppression of drug trafficking will be focused mainly on major traffickers. The prosecution and punishment process will be improved to accelerate drug cases for punishing the drug offenders as quickly as possible.

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To treat drug addicts, treatment and rehabilitation programmes will be improved to serve all kinds of addicts sufficiently. This involves using military camps and governmental agencies that are well-equipped to be additional treatment centres.

To prevent drug abuse, the government will encourage public awareness on the dangers of narcotic drugs, which has threatened Thai people and the country as a whole for years. Local communities will be targeted in the implementation of the drug prevention measures which will make them strong enough to fight against drugs.

Besides, public administration reform and development which has been an important policy of the Thai Government and the Constitution of the Kingdom of Thailand, 1997 (B.E.2540) aims to guarantee greater rights and freedoms to the people. It would also set up new bodies to protect the public from abuses of power by the state and would ensure that the criminal justice system is more open and gives greater transparency and accountability.

II. COMMUNITY-BASED TREATMENT OF OFFENDERS

In Thailand, informal justice alternatives have been widely used for a long time. Personal relations and close-knitted social solidarity play a significant role in crime prevention. But formal criminal justice community solutions have only appeared recently in the legal system.

According to Penal Code 1956 (B.E.2499) there are 5 types of punishment that offenders may receive: capital punishment; imprisonment; confinement; fine and forfeiture of property. Of these punishments, imprisonment is preferable because of the penal concept of integrating retribution, deterrence and rehabilitation. So the prison population in Thailand has increased every year and the prison system is overcrowded and so the concepts of using non-custodial measures were developed.

A. Non-Institutional Treatment Except for Probation

The Thai correctional system recognizes the importance of non-institutional treatment, under which a few measures are available to convicted inmates as an incentive to motivate their good behaviour. The aims of non-institutional measures are to mobilize community resources to rehabilitate offenders, instead of relying solely on the authorities. The principle behind these aims is that offenders are members of society who will eventually return to society. Thus, community treatment should be available to some categories of offenders to suit their needs. Inmates serving their sentence in the community may have more time to readjust themselves towards the family and community. Non-institutional measures may also help to alleviate prison overcrowding to a certain extent.

Accordingly, the Thai Prisons Act BE 2479 (1936) Article 32 stipulates that "*Convicted inmates who demonstrate good conduct, diligence, progress in education or work, or support prison activities, may receive one or more privileges such as Parole, Good Time Allowance (ordinary) and Good Time Allowance accumulated by means of public works, etc.*" Convicted inmates who earn Parole or Good time Allowances may be released from prisons prior to the end of their sentences to serve the remainder of the sentence in the community, provided that they comply with regulations laid down by the prison authority. Breaching of such regulations may result in the termination of privileges resulting in the inmate being brought back to prison to serve the remainder of their sentence.

The Thai Department of Corrections is fully aware of the impact of the overcrowding situation, therefore non-institutional measures have been encouraged to alleviate the problems. In the year 1977, Volunteer Parole Officers were recruited to assist full time Parole Officers in supervising the inmates. Since then, there are nearly 12,000 Volunteer Parole Officers deployed in every Sub-district throughout Thailand. Moreover, these non-institutional treatment measures were endorsed by the National Economics and Social Development Board as a solution to the overcrowded prison problem, and as a part of the National Human Resource Development Plan.

1. Parole

Parole is a measure that encourages inmates to behave while incarcerated. Inmates in the Good class¹ and above who demonstrate their: good conduct; progress in education; diligence; and support

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prison activities, may be granted parole. Parole enables inmates to be on conditional release from prison, and undergo a supervision period till the end of their sentence. This measure does not affect judicial authority as the sentence is not shortened. It is considered an alternative treatment under which inmates are not necessarily detained in prisons to serve the sentence. Inmates who are on parole still retain prisoner status until the end of the supervision period. Parole is also a mechanism that foster inmates' s readjustment toward society, because there are conditions set out for them to comply to. Those who fail to comply with their conditions will be returned to prison to serve the remainder of their sentence.

Inmates will be eligible for parole when two thirds of their sentence has been served, provided that they are in the Good Class and above. The minimum time served shall be changed to 10 years if prisoners receive a life sentence. Accordingly, the maximum parole period that may be granted to eligible inmates is set out in accordance with prisoner class, and is as follows:

1. Excellent Class inmates may receive a parole period up to one-third of the sentence.
2. Very Good Class inmates may receive a parole period up to one-fourth of the sentence
3. Good Class inmates may receive a parole period up to one-fifth of the sentence

Parole Procedures

Parole is not a right of every inmate, but it is a privilege for well behaved ones. The Director General of Corrections has the authority to grant parole. However, since there are over 150,000 convicted inmates in the Thai correctional system, parole committees have been set up at each prison. These committees are responsible for considering and recommending any inmates to be paroled. The procedures state that every 6 months, duty officers shall carefully select inmates under their control who both meet the requirements, show their good conduct and progress in rehabilitation. They will then submit a recommendation to the parole committee of the prison. The committee shall investigate, as well as gather all information necessary to submit recommendations to the Director-General. The Director-General may grant parole to any prisoners recommended.

At the departmental level, there is also a committee appointed by the Director-General to double check all recommendations before passing them on to the Director-General. Examples of conditions for parolees to comply to are as follows:

- Report monthly to the prison authority or local police station or district office;
- Dwell at the approved address;
- Perform lawful occupations;
- Cooperate with volunteer parole officers who will regularly visit them;
- Remain within a designated area or province;
- Refrain from consuming drugs and alcohol, and so on.

Failure to comply with such regulations may result in their return to prison to serve the remainder of their sentence.

Table 7. Prisoners Released on Parole (1987-2002)

Year	No. of Convicted Prisoners	Parole Recommended	Parole Granted	Percentage of Convicts on Parole	Failure Cases
1987	37,729	2,981	2,778	7.36	46
1988	41,276	1,226	787	1.91	6
1989	23,899	1,644	1,220	5.10	8
1990	27,794	1,830	1,768	6.36	7

¹ Convicted inmates are classified into 6 classes, which are Excellent, Very Good, Good, Fair, Bad and Very Bad. Each class is entitled to different privileges.

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Year	No. of Convicted Prisoners	Parole Recommended	Parole Granted	Percentage of Convicts on Parole	Failure Cases
1991	31,754	1,251	956	3.01	1
1992	33,454	950	945	2.82	12
1993	36,944	1,720	1,282	3.47	4
1994	30,892	2,367	2,088	6.76	40
1995	64,746	2,572	2,114	3.27	52
1996	65,366	1,325	805	1.23	36
1997	75,320	1,731	1,114	1.48	7
1998	97,027	1,607	1,016	1.05	24
1999	125,258	1,440	1,071	0.86	29
2000	219,716	655	504	0.23	8
2001	247,865	2,447	1,832	0.74	9
2002	248,223	1,606	1,369	0.53	10

The reason why the number of parolees in Thailand is considerably low is because:

1. The Ministry of Interior Regulations concerning this issue contradicts the Prison Act. According to the Prison Act, convicted inmates may be eligible for parole after one-third of the sentence has been served. However, the Ministry Regulations narrow this down by stating that excellent class inmates may receive parole for a period of not more than one-third of the sentence.
2. The inmates configuration in Thailand consist of 38% of remands and they are therefore unable to receive parole.
3. Among convicted inmates in Thailand more than 65% are imprisoned on narcotics charges for which they are not eligible for parole.
4. Parole is not a right of every inmate, but it is a privilege for the well behaved ones.
5. Certain types of offences by convicted inmates may not receive parole even though they meet the requirements. These offences include, for example, gunmen or professional killers.

2. Good Time Allowances

Good Time Allowances are another measure that enable inmates to be released prior to the termination of their sentence. It was introduced to the Thai correctional system in 1978 as a result of overcrowding. Inmates in the Good class and above who demonstrate their: good conduct; progress in education; diligence; and support prison activities, may receive Good Time Allowances. This means, inmates are to be on conditional release from prisons, and undergo a supervision period until the end of their sentence. This measure does not affect judicial authority and the sentence is not shortened. Inmates released by this measure still retain prisoner status until the end of the supervision period. This measure is considered as an alternative treatment under which inmates are not necessarily detained in prisons to serve their sentence. Inmates who fail to comply with supervision conditions will be returned to prison to serve the remaining sentence.

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Inmates in the Good Class and above may receive Good Conduct Allowances of no more than 5 days a month, that accumulate until the amount of days they received is equivalent to the remaining sentence. Then, they will be released under conditions for supervision till the termination of their sentences. The Ministerial Regulations state the number of days that prisoners may earn in accordance with their class as follows:

1. Inmates in Excellent Class may earn 5 days a month
2. Inmates in Very Good Class may earn 4 days a month
3. Inmates in Good Class may earn 3 days a month

Procedures

Good Time Allowances are not a right granted to every inmate, but only to those who are well behaved. Despite having accumulated as much as a few years, inmates may not be released on this measure if they are not well behaved or breach rules and regulations. Deprivation of Good Time Allowances may be imposed on inmates as a punishment.

The procedure begins when prison officials submit the report of each inmate whose earning of good conduct allowance is equivalent to the remaining sentence. The report is submitted to the Committee for Considering Granting Good Time Allowances to Inmates. The committee is comprised of representatives from the Department of Social Welfare, Police Department, Psychiatry Department; and the Director General of the Corrections Department as the chairperson, and has the authority to grant or withhold the allowances that inmates have earned. Generally speaking, most of the cases brought to the committee are likely to be granted, except under unusual circumstances.

Conditions for inmates released on Good Time Allowances are set the same as those on parole. For example: report monthly to prison authority or local police station or district office; dwell at the approved address; perform a lawful occupation; cooperate with volunteer parole officers who will regularly visit them; restricted to a designated areas or province; shall not consume drug and alcohol, and so on. Failure to comply with such regulations may result in their return to prison to serve the remainder of their sentence.

Table 8. Convicted Inmates Released on Good Time Allowance (1996-2001)

Years	Earned GTA	Number of Convicted Inmates	Rule Violations
1996	17,543	70,857	10
1997	18,670	74,974	11
1998	17,671	88,476	9
1999	23,056	113,258	8
2000	18,618	143,329	16
2001	25,981	147,049	13

3. Public Work Allowances

This measure was subsequently introduced to the Thai correctional system in 1980 to provide an employment opportunity for inmates, and utilise prison labour for community interests. This measure enables prison officials to send convicted inmates whose remaining sentence is less than 2 years to engage in public works outside the prisons. The numbers of days they work are recorded as remission days. The work is for example: construction, cleaning public areas, sewerage cleaning and so on. Once the number of accumulated remission days is equivalent to the remaining sentence, such inmates will be released on supervision. Moreover, inmates who engage in these public work projects are entitled to 80 per cent of the net profits earned from their work.

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There are conditions set out for considering sending any inmates to work outside prisons on public work projects. For example, inmates under narcotic charges; internal and external security charges; and charges against the monarch, are not allowed to partake. The work shall be limited to government, local authority, or state enterprises only. Inmates to be sent out must be fit both mentally and physically, and have a remaining sentence of no more than 2 years, as well as have the minimum time served according to their classes as follows:

1. One-fifth for Excellent class prisoners
2. One-fourth for Very Good class prisoners
3. One-third for Good class prisoners
4. Half for Fair class prisoners

Procedure

The procedure begins when prison officials submit a proposal to send inmates to work on public projects to the Department of Corrections. The proposal must provide details, like: the number of days to work, source of funds, project owner and so on. Once the proposal is approved as a public work project, inmates who engage in this project are entitled to earn a sentence remission, and share 80 per cent of the net profit gained from the projects. A sentence remission earned from the public work can be combined on top of the remission days earned from good conduct allowances.

Inmates will be qualified for release under this measure when their accumulated remission days are equivalent to the remaining sentence. Prison officials shall submit a report of each inmate to the same committee for considering granting good time allowances. The numbers of remission days may be revoked as a punishment if they are not well behaved or breach rules and regulations.

Conditions for supervision are set the same as those on good time allowance. Failure to comply with such conditions may result in the prisoner being returned to serve the remainder of their sentence.

In 2001, there were 5,520 prisoners engaged in 301 projects throughout Thailand. The total budget involved in these projects was 300,000,000 baht.

4. The Royal King's Pardons

The Royal King's Pardon is part of the sovereignty that the King as the head of state may grant to anyone. With a long history of an absolute monarchy, the King of Thailand retains the right to pardon. Under the Constitution, The King has power to grant pardon to commute, reduce or terminate sentences with or without conditions. Such pardons would overrule all previous convictions.

The Royal King's pardon serves several purposes such as: to solve a miscarriage of justice; to restore equal justice to offenders; to restore the country's unity; to provide opportunity for offenders; to mark important national occasions; to foster international relations and so on. There are two types of the Royal King's Pardon, which are: collective pardon and individual pardon.

The Collective Pardon

Whenever there is an important event in the country, such as: to mark their Majesties 60th Anniversary, the Golden Jubilee and so on, the Cabinet may submit a recommendation to His Majesty the King to consider granting the Royal King's pardon to commemorate these important events.

Conditions to which inmates can benefit under the Royal Decree of Pardon are laid down by an ad hoc drafting committee. Such a committee is comprised of representatives from various government departments such as: Ministry of Interior, Police Department, Office of the Attorney General, Ministry of Justice, Office of His Majesty's Principle Private Secretary, Department of Corrections, and so on. Conditions written in each Decree vary from one to another depending upon: situations, crime trends, government penal policy, etc. Generally, each of the Decrees stipulates three main conditions as follows:

1. Conditions for those who are eligible for release. This may include: those who have less than 6 months to be served; disabled persons with total blindness, loss of both hands or feet; those who are suffering with a serious illness; pregnant inmates who have less than 1 year to be served; those who

are over 60 years old and have served more than 5 years; those who are under 20 years old and have served more than half of their sentence, and those who are on conditional release, and so on.

The Royal Decree of Pardon may also stipulate conditions for those to be released to adhere to for a certain period after release. These conditions are for example: refrain from using drugs, report regularly to a designated authority, etc.

2. Conditions for those who are eligible for sentence commutations. Those who are not qualified under the above said conditions may have their sentence commuted according to their class. The reduction of each Decree varies from one to another.

The following is an example of how the Decree commutes prisoner sentences:

- (i) Death Sentence inmates shall have their sentence commuted to life imprisonment.
- (ii) Life sentence inmates shall have their sentence commuted to 40 year imprisonment.
- (iii) Those who are on definite imprisonment terms shall have their sentence reduced according to their classes. The reduction terms range from half for inmates in Excellent class to one-seventh for those who are in Very Bad class.

3. Conditions for those who do not benefit under the Decree. Prisoners who receive neither release nor sentence reduction are for example, those who committed: serious drug offences, serious crimes or any other crimes stipulated in the Decree.

Throughout the history of the Thai correctional system, there have been a number of Royal King's Pardons granted to inmates to commemorate important national events. Each of the pardons enables thousands of inmates to be released from prisons. This in turn helps to temporarily solve prison overcrowding.

Table 9. Royal King's Pardons Granted Between 1977-1999

Occasions	Year	Unconditional Release	Sentence Remission
Royal Marriage of HRH Crown Prince	1977	13,359	22,319
His Majesty the King's 50 th Anniversary Birthday	1977	17,539	23,010
Royal Ordination of HRH Crown Prince	1979	12,033	32,158
Her Majesty the Queen's Birthday	1980	16,164	29,661
Bangkok Bicentennial	1982	18,438	36,188
His Majesty the King's 60 th Anniversary Birthday	1987	37,400	46,603
His Majesty Longest Accession to the Throne	1988	22,922	34,215
90 th Anniversary of the Princess Mother	1990	20,133	32,697
Her Majesty the Queen's 60 th Anniversary	1992	30,620	35,861
His Majesty the King's 50 Year Accession to the Throne	1996	24,751	57,815
His Majesty the King's 6 th Cycle Birthday	1999	23,940	30,681

Individual King's Pardon

Any convicted inmate or their relatives has the right to submit a petition to His Majesty the King for royal clemency. This is stipulated in the Penal Code and the Penitentiary Act. Prison officials, upon receiving such a petition, shall forward it to His Majesty the King through a designated channel. The channel begins at prison where all the information on prisoners is filed. It is then forwarded to the Department Headquarters, to the Minister of Interior, to the Prime Minister, to the Office of His Majesty Principle Privy Secretary, to the Privy Council and to His Majesty the King. However, once the petition is denied, a prisoner has to wait for two years to re-submit his/her petition.

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Death sentence inmates shall not be executed once they have submitted a petition to His Majesty the King for royal pardon. As long as there is no further notice whether or not the Royal King's pardon is granted or denied, such prisoners remain on death row.

5. Boot Camp

Boot camp is a military regime for drug offenders. Under this regime offenders are treated in military style whereby conditions and the daily routine are strict just like in a military camp. Boot camp was introduced into the prison system after several modes of treatment regime had been tried, such as punitive, rehabilitative, medical and the desert model. In Thailand, the boot camp was introduced into the Thai justice system in 2001 because the Department of Corrections is suffering from a severe overcrowding crisis, under which drug-related inmates are the majority. The Thai authorities believe that the military should participate in helping in such a crisis. Accordingly, military barracks were transformed into treatment centres for drug addicted inmates.

Drug-addicted inmates whose sentence is less than 1 year may be sent to these camps for rehabilitation under a strict military regime for a period of 3 months. Apart from the training, they will be educated on the harm of drugs as well as counselling. Once they complete the training at the boot camp they will be released on condition and be supervised until the end of their original sentence. Since 2001, 5,000 inmates have participated in the boot camp programme.

B. Probation in Thailand

Probation as an alternative to imprisonment has been accepted as a possible solution to prison overcrowding. These measures are considered to be more useful to society rather than a traditional term of imprisonment. There are two agencies responsible for offenders to be placed on probation. The Observation and Protection Center is responsible for juvenile offenders and the Department of Probation is responsible for adult offenders.

1. The Observation and Protection Center

The juvenile system in Thailand aims at rehabilitation and has special judicial proceeding for children and youth as is evident from the adoption of the Act Instituting the Juvenile and Family Courts and the Juvenile and Family Procedures of 1991. This Act covers children and youths charged with criminal offences. They must not be confined with adults nor in cells as part of the child rights protection measures.

At the juvenile and family Court, where the child is formally charged, the court will not strictly follow regular criminal court proceedings and cannot condemn a child to imprisonment. But the system of Juvenile and Family Courts is limited and does not yet cover all parts of the country. The number of children in the Observation and Protection Centers is on the rise.

Reasons for the Overcrowding of Juvenile Institutions

(i) *Juveniles awaiting trial*

The rapid increase in the juvenile crime rate especially the increase of juvenile drug abusers since 1996. In general, a case will take 90 days before it is tried, excessive requirements for bail or inadequate use of bail provisions, these have also increased the untried juveniles population.

(ii) *Trainees after adjudication*

A training institution which is a minimum security detention facility is a preferable or an alternative place. Diversion from juvenile justice to non-institutional treatment is not preferable. Other reasons are long treatment sentence and the large numbers admitted to juvenile training school for juvenile drug offences also the increase of juvenile populations.

Measures to Reduce Overcrowding of Juvenile Institutions

In order to reduce the number of untried juveniles in remand homes, the following measures would be effective at the pre-trial stage such as warning, summons, application of voluntary investigation, suspended prosecution and bail.

Institution treatment should not be a routine recommendation or adjudication process but should be a measure imposed as a last resort and for the minimum necessary period. Moreover, implementation for non-institutional treatment (such as diversion, probation, restitution, community service, temporary release, pre-release) and semi-institutional arrangements (such as half-way houses, educational homes, day-time training centers) should be taken to reduce the judiciary's heavy caseload, juvenile institutional overcrowding and the high financial cost of maintaining the institutional system.

Participation of Citizens in Rehabilitation of Juvenile Offenders

For the successful treatment and rehabilitation of juvenile offenders in the community, the citizens' positive attitude to and involvement in programmes are indispensable factors. In Thailand, it is officially organised and mobilized by Volunteer Probation Officers and Para-Probation Officers (*the temporary employees probation officer of the Observation and Protection Center*) who assist probation officers in helping rehabilitation of probationers. Furthermore, voluntary organisations, local institutions and other community resources shall be called upon on to contribute effectively to the rehabilitation of juveniles in a community setting and as far as possible, within the family unit. There can also be found a variety of activities for citizens, voluntary organisation, local institutions and other community resources to be involved in the prevention of juvenile crime and the rehabilitation of juvenile offenders.

2. The Procedure for Adult Probation

Pre-Sentence Investigation

It begins when the criminal court orders probation officers to investigate the offenders (who have been found guilty of the criminal acts) and to submit pre-sentence reports to the courts within 15 days. The matter of age, previous records, behaviour, intellect, education, physical and mental health, habit, occupation and environment of the offenders together with the nature of their offences and other extenuating circumstances are investigated and scrutinized. In the pre-sentence reports, probation officers give their opinions concerning the offenders under investigation, for instance,

- (i) What kind of people they really are;
- (ii) Whether or not they want probation;
- (iii) Whether or not they will be dangerous to society if they are placed under probation; and
- (iv) What type of treatment will be suitable for them, considering the safety of society and the benefit to the offender.

The probation officers also give their suggestions concerning appropriate treatment measures to the courts in their recommendations. However, the courts need not follow their recommendations.

Supervision

It begins after the offenders have been placed under probation. In this case some probation conditions are provided by the courts and the probation officers are authorized to supervise the offenders in accordance with the conditions laid down by the courts.

Supervision consists of three important elements, namely,

(i) Surveillance

The probationers must report periodically to the probation officers and the probation officers must also visit their homes or their places of work at least once a month to see whether they behave themselves and whether they have any problems adjusting themselves at home or at work.

(ii) Service

Probation officers check to see whether the probationers need any help in terms of needs, i.e. food, shelter, academic, vocational skills, employment or medicine, and whether they can be provided or referred to any community organisations for help.

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(iii) Counselling

The probation officers should help the probationers and their family members to understand the problems they are facing, and how they can help in solving the problems.

Operating Results of Pre-Sentence Investigation and Supervision

In 2001, all probation offices under the Department of Probation were authorized by the courts to conduct pre-sentence investigation and supervision of offenders under the Probation Procedure Act in accordance with the Penal Code 1979 (B.E. 2522), 42,898 cases and 94,962 cases, respectively. In addition, there were 128,928 cases that have been supervised continuously from 2000. The total amount of supervision cases in 2001 was 223,890, including new cases, while in the past one year terminations accounted for 100,101 cases from which 69,417 (69.35%) completed the probation terms well and 30,684 (30.65%) cases violated the conditions of probation. Presently, there are 123,789 probationers.

Community Affairs

Probation services involving community based corrections have been widely recognized as an alternative treatment to terms of imprisonment. The alternatives have proved themselves to be an effective means of reducing crime rates. Realizing the value of the community based corrections' approach, the Department of Probation has aimed to encourage and to promote the general public's awareness of communities participation in the processes of the probationers' rehabilitation by creating project work plans and activities that could be useful for the probationer's rehabilitation. Furthermore, the Department has also developed volunteer probation projects in order to gather, recruit and select suitable persons to be volunteer probation officers and to deal with probationers (currently there are 6,691 VPOs).

The project work plans and activities to be given to the probationers in order to modify their behaviour as mentioned before are, for example:

- Religious group study and group therapy;
- Counselling programme;
- Ordination programme;
- Basic educational programme;
- Job placement programme;
- Bail project for the accused;
- Community service programme;
- Other suitable training courses.

Progression of Community Affairs of All Probation Offices in 2001

Table 10. Treatment Tasks

Activities	No. of probationers
Orientation	19,801
Religious group therapy	22,738
• Morality group study	2,447
• Ordination programme	8
Psychological counselling program	318
Total	45,312

Table 11. Community Service

Activities	No. of Probationers
<ul style="list-style-type: none"> • Probationers ordered by courts • Probationers who completed the community service's condition in accordance with court's orders • Probationers who voluntarily participated in community service's activities 	<p>68,814</p> <p>47,105</p> <p>66,778</p>

Table 12. Social Welfare Tasks

Activities	No. of Probationers
<ul style="list-style-type: none"> • Basic education programme • Job placement programme • Vocational training • To lend money for making a living • Food welfare • Vehicle Welfare • Hospital's fees • Bail project for defendants • Others 	<p>22</p> <p>400</p> <p>1,426</p> <p>69</p> <p>34,211</p> <p>4,893</p> <p>481</p> <p>81</p> <p>14</p>
Total	14,597

Volunteer Probation Officer

The role of the citizen in crime prevention and the criminal justice system is due to the growing belief among criminal justice officials that they cannot or should not carry the full burden of crime control without public participation. In addition, there has been a tremendous increase in the caseload of probation services, and the probation officer has been unable to devote enough time to rehabilitate and assist probationers effectively. The main point of Volunteer Probation Officers is to convince the public to participate in probation services and to ease the heavy caseload caused by the lack of probation officers.

According to the Regulations of the Ministry of Justice 1985 (B.E.2528), volunteers are to pursue the tasks of supervising and assisting both juvenile and adults probationer. Upon receiving the cases, assigned on the basis of job placement, volunteer probation officer are expected to do as follows to:

- (i) Examine the probationer's background, habits, social interactions, probation conditions, etc. in order to understand his or her basic problems and needs which will be useful in planning suitable approaches in dealing with him or her;
- (ii) Make a home or working place visit on a regular basis at least once a month;
- (iii) Provide the client counselling and assistance in order to help him or her to be able to maintain probation conditions, handle and manage daily problems and crises, and lead a normal life as a law-abiding citizen;
- (iv) Report the performance to the supervising probation officer on a regular basis, as evaluations and suggestions are considered to be a real benefit to the rehabilitation of probationers;
- (v) Support the probationers by: finding jobs, providing education funds to the probationer, donating money to the Foundation for the Rehabilitation of and After Care Services for Offenders, etc.

Qualifications to be a volunteer include:

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1. Must be at least 20 years of age
2. Live in a permanent residence
3. Must be literate
4. Honest and moral
5. Have suitable income
6. Maintain law-abiding behaviour
7. Complete required training course, provided by the Ministry of Justice
8. Have no criminal record except for petty offences or negligence.

Progression of the volunteer probation officer project in the fiscal year 2001, volunteer probation officers were responsible for 16,661 cases and finished 5,127 cases.

Other Significant Projects

(i) *The Narcotics Camp for Probationers and Family Project (A New Step Camp)*

The Department of Probation has set up the Narcotics Camp for Probationers and the Family Project (A New Step Camp). Its purpose is to promote the understanding of narcotics and the way to treat drug addicts correctly, including making probationers respect themselves and other people, and live their lives peacefully and develop their potential. And promote cooperation amongst the related agencies in the field of the prevention of narcotics and to create a network to deal with narcotics problems effectively. The Project also required the cooperation of many agencies such as the Ministry of Defence the Ministry of Public Health, and the Royal Thai Police. Fiscal year 2001 is the first year for running this project, and according to the plan, the probation offices under the Department have to set up the narcotics camp and carry out 57 camps for 1,857 probationers and 1,523 persons from their families participating in the family project.

(ii) *Project on Disseminating Knowledge Regarding Mediation and the Preliminary Justice System to the General Public*

The objectives are:

1. Promote and disseminate the mediation system and arbitration to the general public
2. Disseminate the knowledge of mediation and the preliminary justice system to the general public such as sub-districts, administration's member and community leaders
3. Reinforce understanding and a good relationship among civilians, the bureaucracy and government agencies.

This project is a one-day training course conducted by the probation offices throughout the country, this training is held twice a month. In the fiscal year 2001, there were 292,617 people who completed the training.

(iii) *The Adjustment of the Department of Probation's Framework*

The Department of Probation is currently in the process of adjusting its framework in accordance with the government's policy. After the Court of Justice separated from the Ministry of Justice, the Resolution of the Council of Ministers dated July 10, 2001 authorized the Department of Probation to be the principal organisation of probation at all stages of the criminal justice process, and of social work of offenders who are released from probation and aftercare process from the Department of Corrections. They are also responsible for the Drug Addicts Rehabilitation Center in accordance with the Drug Addicts Rehabilitation Act 2002 (B.E. 2545).

It had the effect of increasing the responsibilities of the Department of Probation while there is a manpower shortage, and probation officers have to work overloads more than the standard required by the Office of the Civil Service Commission. The Committee of Adjustment of the Department of Probations was set up to adjust the framework in order to comply with the new responsibilities.

The Committee is now drafting the Department's framework, shown by the organisation chart attached, and the draft has already been submitted to the Ministry of Justice and the Office of the Civil Service Commission. The details of the adjusted framework show that the practitioners or lines functions could work as a one-stop service and could respond to the general public's demands

immediately and effectively, including the evaluation of on-the-job performance focusing on the profession of practitioners and their career progression.

Problems of Probation Administration and Practice

(i) *Shortage of Professional Probation Officers*

While the Department of Probation conducts the Probation Offices Opening Project to promote the implementation of the probation service toward the general public, emphasising justice and other advantages equally, the Civil Servant Commission has limited the increase in government officials.

Employing temporary probation officers and volunteer probation officers to assist professional probation officers has been the solution, however, there are limits to the amount they can do and their capability.

(ii) *Lack of Training*

There are a few training courses and outdated training programmes. Employee probation officers do not get enough training.

(iii) *Moderate Salaries and Low Morale*

Probation officers receive moderate salaries compared to other officers (judges and prosecutors) while they have a high caseload. Many probation officers have low morale and leave the service for better paid jobs or easier jobs.

(iv) *High Caseload*

The high caseload is brought about by a shortage of probation officers and probation officers have many roles (pre-sentence investigation, supervision, community affairs project and policy projects, etc.). This problem makes probation officers do routine and documentary work more than active work, playing the role of law enforcement workers instead of that of social workers or counsellors.

Solutions

In fact, all the problems above are chronic problems in the Thai Probation System and this situation is common in other countries. The attempt to solve these problems in the past was not serious because some executives thought that these were anomalous and instead they paid more attention to operational duties required by the Ministry of Justice or the cabinet.

However, at the present the policies of the government to restructure the Ministry of Justice impact on the reorganisation of the Department of Probation. The Administration must improve and the Strategic Plan and Operational Plan 2002-2006 should be carried out seriously. Research and Evaluation should be the important instruments for policy makers and executives for using information in decision and planning. The policy should apply to real implementation and must improve the staffing situation in order to provide efficient services for probationers and other community-based alternative measures to incarceration.

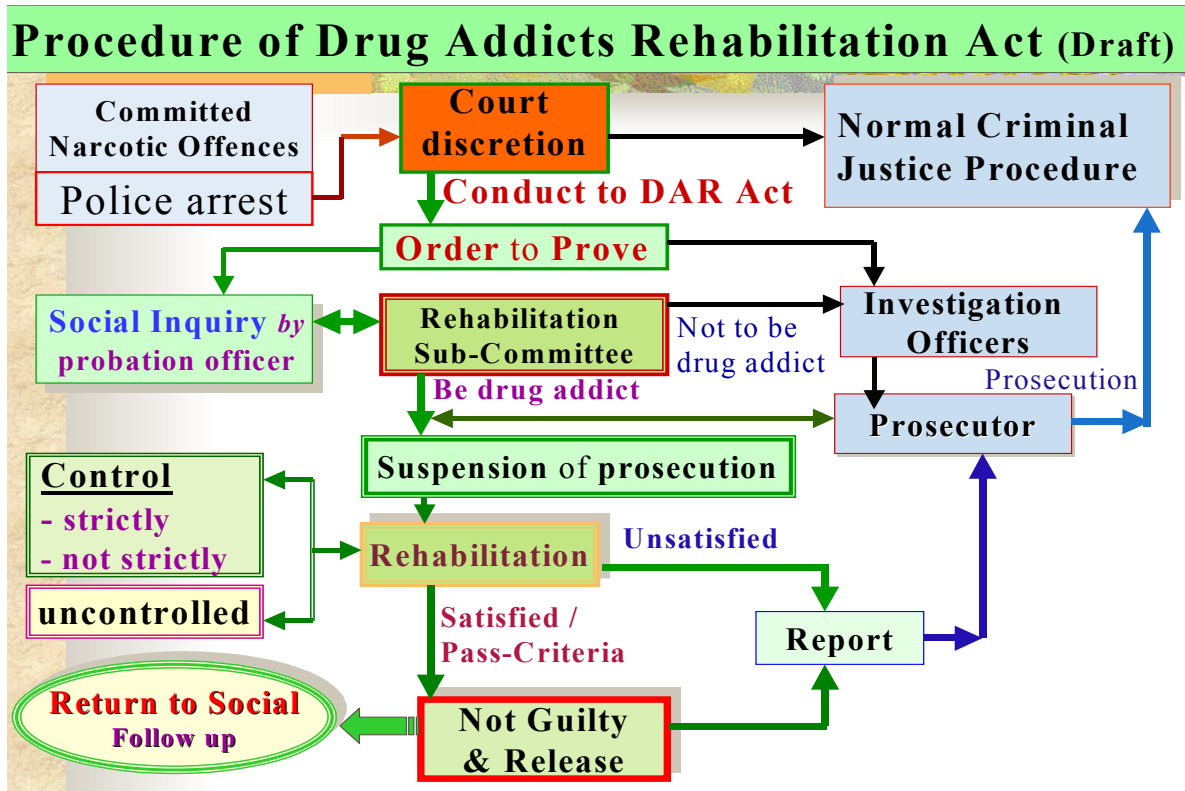
Future Plans and Innovation of the Probation System in Thailand

(i) *New missions resulting from the Cabinet Resolution on July 10, 2001*

The cabinet resolution concerning probation, agreed that the Department of Probation will be the principal probation organisation in regard to suspension of prosecution at the pre-trial stage, in juvenile probation at the court trial stage and in the supervision of prisoners who are released on conditions at the corrections stage. New missions will run after the results of a public hearing to approve the use of suspension of prosecution and the completeness of the new structure of the Ministry of Justice on October 2002. Furthermore, according to the draft of the Drug Addicts Rehabilitation Act, the Department of Probation will provide drug treatment and rehabilitation of offenders by means of a compulsory system after this Act is promulgated.

The main idea of this act is to introduce a compulsory drug treatment system for drug addicts so they won't commit further offences and should be considered as "a patient" not as "a criminal," and this act aims to divert the caseload in the criminal justice process, especially to reduce the number of prisoners and to provide for assessment and treatment of the illicit drug user. Therefore, if the results

of treatment are satisfied they will not have criminal records. The target is the person who is apprehended for use or possession of small quantities of illicit drugs. The benefit of the compulsory drug treatment system is to provide an opportunity to divert offenders out of the criminal justice system into treatment, reducing the population of prisoners and decreasing social problems.



(ii) *Introducing Restorative Justice in the Probation Services*

Some countries, including Thailand, are seeking a coherent conceptual basis for developing a probation system. Restorative justice is the approach that is clearly identified. It also seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist the recovery of the victim and enable all parties with a stake in the criminal process to participate fruitfully in it. The examples of restorative justice include mediation, conferencing and sentencing circles.

Restorative justice has been drawn from ancient concepts and practices in western and Thai societies. In the old days the victim had to lodge his complaint to the ruler and may institute his own criminal prosecution. Under the principals, restorative justice should be encouraged at all stages of the criminal justice process. In the Thai probation system, the Department of Probation has a policy to enhance the role of the probation officer as a mediator by holding moderated meeting with offenders, crime victims and others affected by crime. The probation officer tells the victim and the offender that they have the chance to settle their conflict in a different way. The mediator arranges for them to meet with the aim of settling the dispute which has arisen between them.

This meeting helps to harmonize relations between the parties and alleviate the consequences of the crime. It helps to settle the dispute and reach an agreement or compensation for damages which is also acceptable from society's point of view. The facts of the case meeting will be passed to the prosecutor or the court. On the basis of these facts the prosecutor or the court may decide to suspend prosecution or to pass a suspended sentence. However it will take time to try the pilot project, the operation of restorative justice programmes should be established by legislation with standards and guidelines. There are referral, handling and qualification of personnel, administration and ethical rules governing the operation of restorative justice.

(iii) *Preparing for the Suspension of Prosecution*

Suspension of prosecution will be implemented as an alternative to a criminal trial in order to reduce the caseload of the court, if the results of a public hearing by the office of the Attorney General are approved. Probation will be used as a measure at this stage to investigate and supervise the offenders whom the prosecutor has discretion to suspend prosecution.

The prosecutor should be informed of information about alternative treatment facilities and programmes in the community to be able to make a rational determination. The Department of Probation can provide social inquiry reports and supervision work for the suspension of prosecution carried out at the public prosecution stage.

(iv) *Using the Community Service Order as an Alternative to Imprisonment, Confinement and Fine*

At present the court of justice has offered to reform the law in regard to confinement to community service in cases where the offender was ordered to pay a fine but does not have enough money to pay. The court may order such a person to be confined in lieu of a fine and, in the future, such confinement shall not exceed two years.

The idea of the community service order is based on one of the conditions of probation that the probation officer may arrange an activity for the offender that is for the public benefit. In order to reform the probationer's behaviour and to meet acceptance. Since community service has achieved its goal, it is accepted to be one of the alternatives to imprisonment, confinement and fine that can solve the overcrowding situation in prisons.

III. CONCLUSION

Criminal Justice in Thailand including the Probation System is at this time restructuring and reforming. During the past decade Thailand, like other countries throughout the world, has been influenced by the impact of globalisation and technological development. Social and economic considerations are becoming even more complex. Crime and drug problems are critical and related to the overcrowding situation in prisons and juvenile institutions. The correctional facilities are overcrowded, the living conditions are poor, occupational vocational and educational opportunities are insufficient. Consequently, the country's correctional problems and policies, in all their dimensions, should be re-examined. Therefore alternatives to imprisonment have been accepted as a possible solution to prison overcrowding. An effective alternative that is widely used is suspension of imprisonment with probation. In the correctional system, they have sentence remission and parole but they have rigid criteria, and the number of inmates released on parole has been few. In addition, at other stages of the criminal justice process there is less use of community-based alternatives to incarceration.

However the Thai Government realizes the problem and has policies to reform the legal and criminal justice system to guarantee greater rights and freedom for the people. Furthermore, to reduce the crime rate and the number of inmates in prison, finding new measures of non-custodial treatment and the development of the present measures is very important.

REFERENCES

Adult Probation in Thailand (1998). Department of Probation, Thailand.

Annual Report 2000. Department of Corrections, Thailand.

Prathan Watanavanich, "Cooperation in Community-Based Correction in 2000", <http://www.acpf.org/wc8th/Agendaitem5>.

Prathan Watanavanich, "Restorative Justice in the Thai Social and Culture Settings", <http://www.acpf.org/wc8th/Agendaitem5>.

Suchart Jivachart (1993). "The Penal Code of Thailand".

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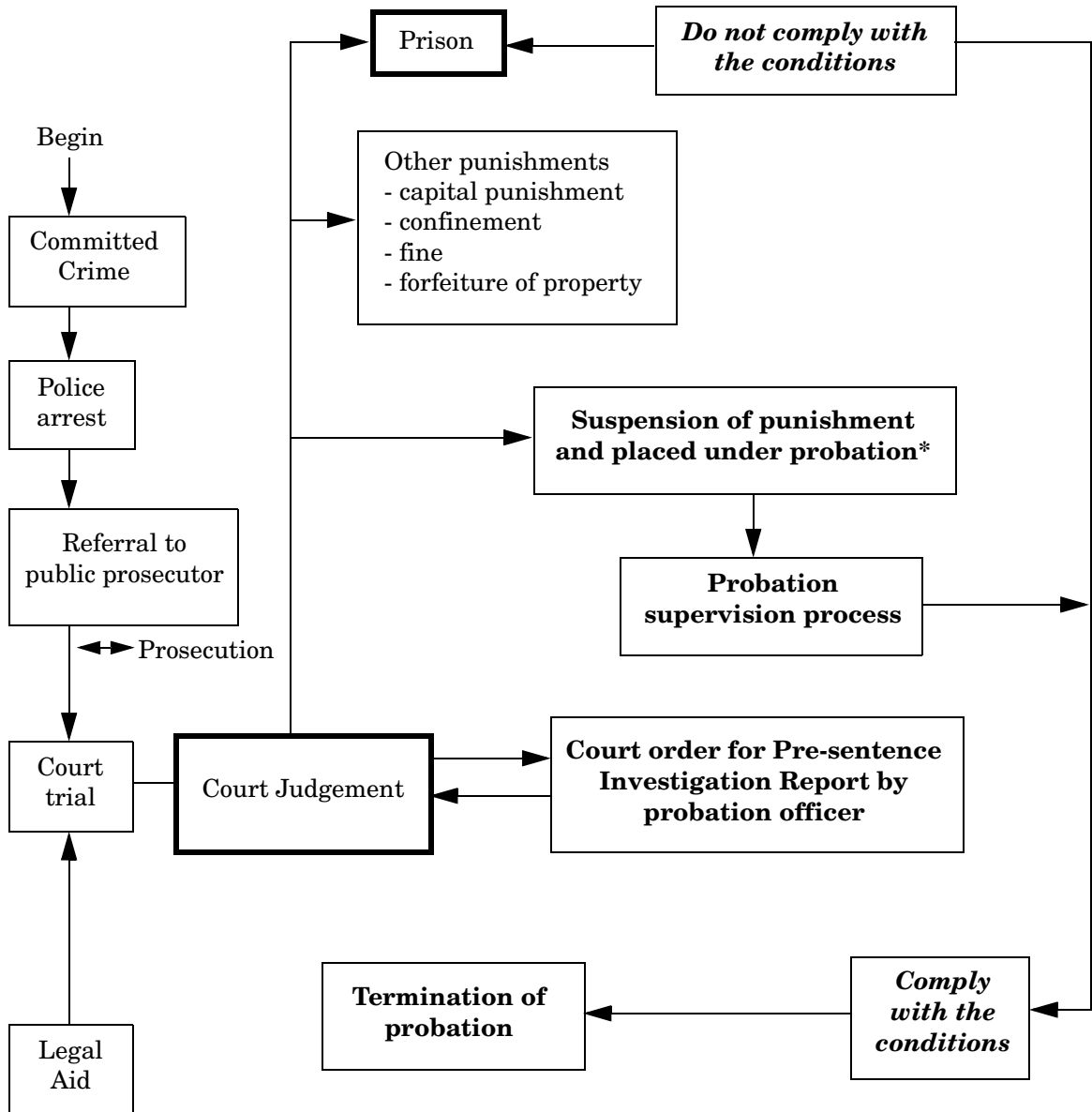
Suchart Triprasit. "Prosecution and Effective Crime Control",
<http://www.acpf.org/wc7th/Paperitem2>.

Sudjit Jaenopakarn. "Judicial proceedings and the child",
<http://www.asem.org/Documents/UN-Docs/CRC/Thailand.htm>.

Vitaya Suriyawong, "The Ways and Means to Enhance the Rehabilitation Function of Corrections",
<http://www.acpf.org/WC8th/Agendaitem5>.

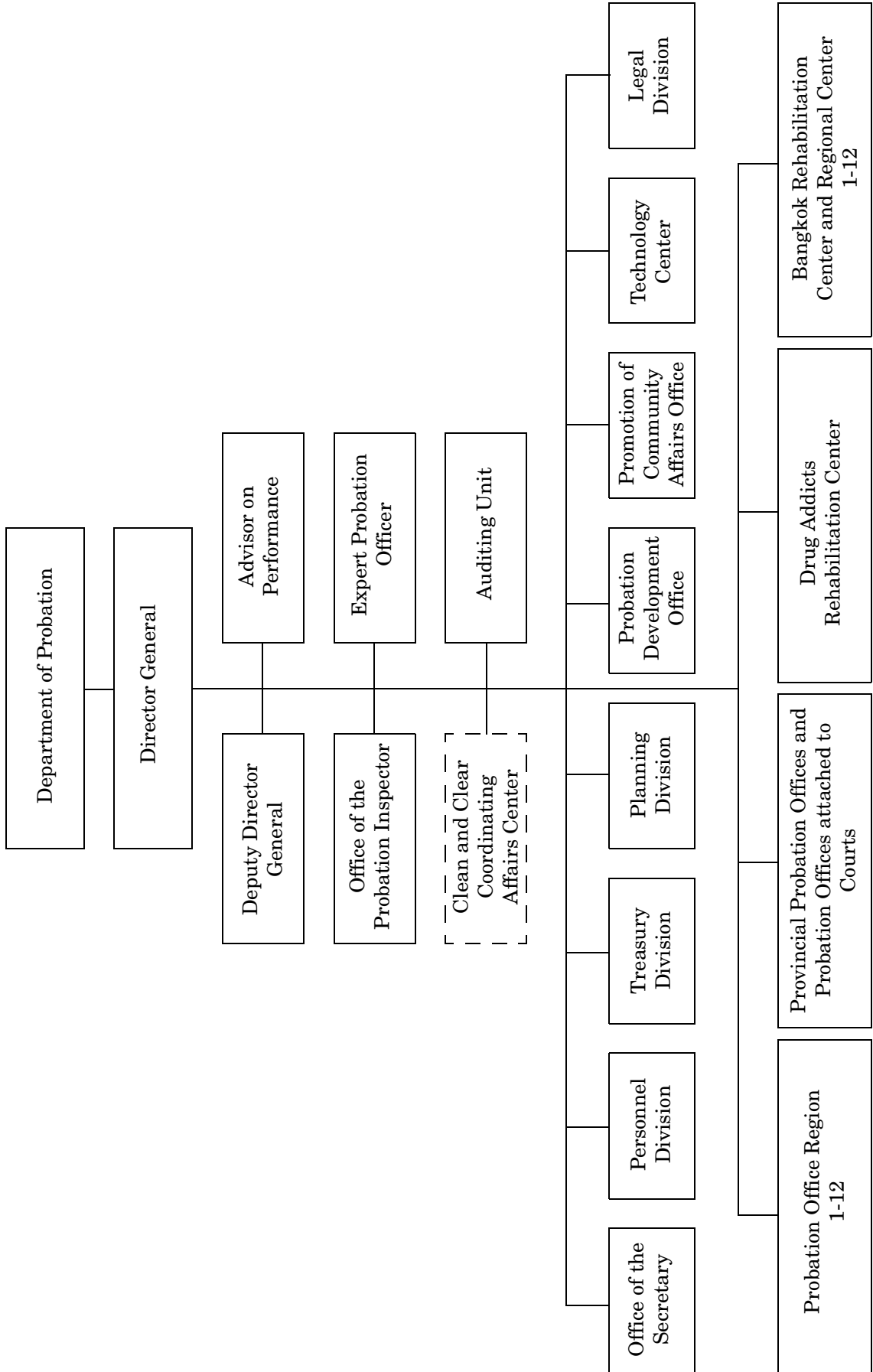
APPENDIX A

Flow Chart of Criminal Proceedings for Adults Showing the Position of Probation Services within the Criminal Justice System.



- Police → The Royal Thai Police (Independent Public Agency)
- Public-Prosecutor → Office of the Attorney-General (Independent Public Agency)
- Court → The Criminal Court → The Court of Justice (Independent Public Agency)
- Prison → Department of Corrections → Ministry of Interior (Ministry of Justice on October, 2002)
- *Probation → Department of Probation → Ministry of Justice

APPENDIX B
The Future Framework of the Department of Probation



(This chart is not final, the structures of the Department of Probation and other departments are still being considered by the Ministry of Justice Committee)