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The profile of offenders receiving suspended sentences

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Aim: *To determine whether the profile of those receiving suspended sentences (of any length) changed over the 10-year period from 2000 to 2009 and whether those receiving suspended sentences have different characteristics from those receiving a full-time custodial sentence of the same length (in this case six months).*

Method: *The first question was answered by analysing the distribution of certain characteristics of interest over the 10-year period from 2000 to 2009 amongst offenders who had been given a suspended sentence. The second question was examined by looking at the bivariate relationship between sentence type and offender characteristics and then building a logistic regression model comparing the characteristics of offenders receiving a suspended sentence to those receiving a full-time custodial sentence.*

Results: *Over the period 2000 to 2009, there has been a reduction in the proportion of suspended sentences imposed on property offenders and an increase in the proportion of suspended sentences imposed on persons convicted of driving and traffic and 'other' offences. Offenders are more likely to receive a suspended sentence (than a full-time custodial sentence of six months or less) if they are female, older than 35 years of age, have been convicted of an offence that does not involve serious violence, theft or breaching an order, do not have concurrent convictions, do not have prior convictions and are not legally represented.*

Conclusion: *Courts do not appear to reserve suspended sentences for offenders who would otherwise have gone to prison.*

Keywords: *suspended sentence, full-time imprisonment, alternatives to custody*

Introduction

Suspended sentences were repealed in 1974 and re-introduced in New South Wales (NSW) in April 2000. In his Second Reading Speech to the *Crimes (Sentencing Procedure) Bill* 1999 (*New South Wales Parliamentary Debates*, *Hansard*, Legislative Assembly, 28/10/99, p 2326), the then Attorney General, Mr Bob Debus MP said that:

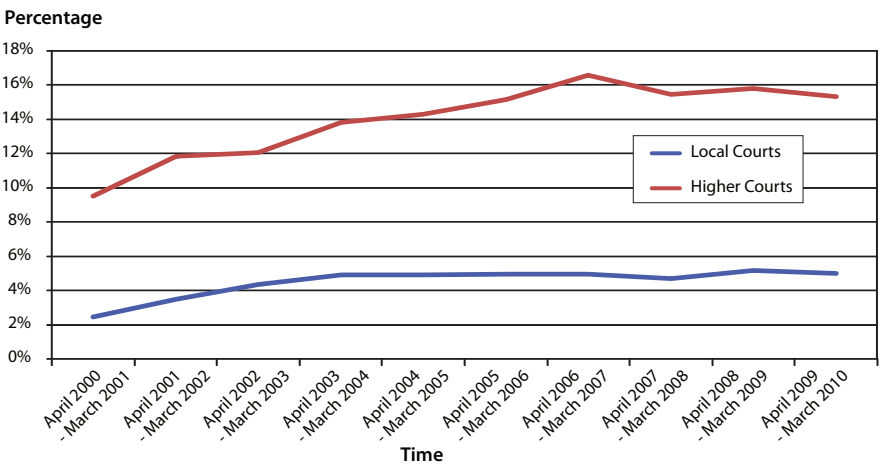
> "The primary purpose of suspended sentences is to denote the seriousness of the offence and the consequences of re-offending, whilst at the same time providing [offenders] an opportunity, by good behaviour, to avoid the consequences. Their impact on the offender is, however, weightier than that of a bond."

Since their re-introduction, their use has doubled in Local Courts and increased by 60 per cent in Higher Courts as can be seen in Figure 1.

Part of the motivation in re-introducing suspended sentences was to reduce the numbers of offenders receiving full-time custodial sentences. However McInnis and Jones (2010) have shown that suspended sentences have tended to increase largely at the expense of other sanctions, such as Community Service Orders (CSOs). On the 24th of September 2010, the former Attorney General, Mr John Hatzistergos asked the NSW Sentencing Council to examine the use of suspended sentences, having regard (among other things) to:

- whether the use of suspended sentences has had any direct effect on the use of other sentencing options, including custodial and non-custodial options; and
- whether the imposition of suspended sentences has exposed persons to the risk of imprisonment who would not otherwise have been sentenced to imprisonment.

Figure 1. Percentage of principal penalties that were suspended sentences in NSW Local and Higher Courts, April 2000 to March 2010



The purpose of this study is to assist the Council in its deliberations. It addresses two research questions:

1. Have the characteristics of offenders receiving suspended sentences changed over time?
2. What factors are associated with an increased likelihood of an offender receiving a suspended sentence as opposed to a full-time custodial sentence?

Method

The first question is answered through analysing the distribution of certain characteristics of interest over the 10-year period from 2000 to 2009 amongst offenders who had been given a suspended sentence of any length. The second question is examined by looking at the bivariate relationship between sentence type and offender characteristics and then building a logistic regression model comparing the characteristics of offenders receiving a suspended sentence to those receiving a full-time custodial sentence. The logistic regression model allows us to determine what factors are associated with an increased risk of receiving a suspended sentence when other factors are controlled (i.e. held constant).

Data

The data were drawn from the Bureau's Reoffending Database (ROD). Two datasets were constructed. Dataset A was used for the first part of the analysis outlined below and contained all offenders who received a suspended sentence for their principal penalty in a cases that were finalised between April 2000 and December 2009. If an offender received multiple suspended sentences over the period they would be in the dataset multiple times. This dataset contained 45,253 court appearances.

Dataset B was used for the second part of the analysis and contained all offenders who received a suspended or a full-time custodial sentence of 6 months between January 2007 and December 2009. If an offender received more than one of these sentences over the period only their first appearance was retained. This dataset contained 6,290 offenders, of whom 2,221 (35.5 per cent) received a suspended sentence.

Analysis

Using dataset A, the characteristics of offenders receiving suspended sentences were examined over time (2000 to 2009) to assess whether there had been a significant change. The following offender characteristics were examined:

- age at the time of finalisation;
- sex ;
- Indigenous status;
- whether the offender appeared before a local or higher court;
- location of the court;
- principal offence type; and
- number of prior appearances (with at least one recorded conviction).

The second part of the analysis used dataset B to first analyse the bivariate relationship between a suspended sentence and variables of interest and secondly to develop a logistic regression model examining factors associated with a likelihood of receiving a suspended sentence rather than a full-time custodial sentence. The sentence length was limited to six months. The following variables were included in the modelling:

- age at the time of finalisation;
- sex;
- Indigenous status;
- principal offence type;

- number of concurrent offences;
- number of prior appearances (with at least one recorded conviction); and
- legal representation.

The year of finalisation was also included to control for possible temporal changes in the profile of offenders. Only variables that were significant (at the 5% level of significance) were included in the final model.

Results

Table 1 gives the results for the first part of the analysis, looking at the characteristics of offenders receiving suspended sentence over the period from 2000 to 2009.

From the table we can see that over the period:

- Indigenous offenders made up a lower percentage of offenders receiving suspended sentences in 2009 than in 2000. The percentage of non-Indigenous offenders did not increase; instead the increase occurred in offenders whose status was 'unknown'.
- The percentage of offenders in older age groups grew at the expense of offenders in younger age groups.
- The gender distribution changed slightly, with more women receiving suspended sentences in later years.
- There was little difference in the distribution of offenders between the two court jurisdictions.

Table 1. Characteristics of offenders receiving suspended sentences (%), 2000 to 2009

Variable	Category	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Sex	Male	83.5	84.2	83.1	83.0	84.0	83.2	83.0	82.7	82.0	80.5
	Female	16.5	15.8	16.9	17.0	16.0	16.8	17.0	17.3	18.0	19.5
Age	18-24	29.3	29.1	27.0	25.9	24.7	23.1	23.4	22.9	22.6	22.9
	25-34	39.2	37.7	38.4	37.4	37.2	36.0	34.3	34.3	34.0	33.5
	35-44	20.9	23.3	23.4	24.4	24.3	25.8	26.1	26.8	26.3	27.5
	45 and over	10.7	9.9	11.2	12.2	13.8	15.1	16.3	16.0	17.1	16.1
Indigenous status	Non-Indigenous	72.8	73.2	75.6	74.0	74.1	74.5	73.1	74.5	75.3	72.9
	Indigenous	25.7	25.2	22.5	23.3	22.8	21.5	22.1	20.8	20.7	21.3
	Unknown	1.5	1.6	1.9	2.7	3.1	4.0	4.8	4.7	4.1	5.8
Jurisdiction	Local	89.2	90.9	91.8	92.0	92.3	92.1	90.7	91.5	91.1	91.1
	Higher	10.8	9.1	8.2	8.0	7.7	7.9	9.3	8.5	8.9	8.9
Location	Inner metropolitan	54.3	50.1	55.5	53.7	55.6	55.6	56.2	56.0	55.7	57.3
	Inner regional	17.4	18.4	17.6	17.8	16.9	16.8	15.7	16.4	17.2	16.9
	Outer regional	23.0	26.9	22.7	23.5	23.0	23.1	23.5	23.0	23.1	20.8
	Remote or very remote	5.3	4.6	4.2	5.0	4.5	4.6	4.7	4.6	4.1	5.0
Principal offence type	Non-aggravated and other violence	13.5	14.2	13.9	12.8	13.4	12.7	12.9	13.3	13.2	13.0
	Aggravated violence	11.0	11.8	11.0	12.5	11.9	12.0	12.6	13.1	13.3	13.1
	Property	28.1	26.1	26.3	24.6	22.8	19.4	18.4	17.8	17.6	18.0
	Drugs	8.3	7.8	6.7	7.4	6.8	7.1	7.1	6.7	6.7	7.3
	Driving & traffic	20.4	24.3	24.4	23.8	25.7	29.3	29.4	27.9	28.5	27.3
	Breach of judicial procedures	12.3	9.1	10.6	11.4	12.0	12.3	12.3	12.3	11.1	10.6
	Other	6.4	6.9	7.2	7.6	7.4	7.3	7.3	9.0	9.7	10.9
Prior appearances with at least one conviction	None	15.3	13.0	13.9	15.3	14.4	15.8	16.4	15.6	14.6	16.9
	1-2	23.7	22.0	20.9	22.0	22.3	22.8	24.3	23.2	24.3	22.8
	3-5	22.6	24.0	24.0	22.8	23.5	23.5	23.2	23.6	23.8	23.3
	6-8	12.0	13.8	13.2	12.8	13.2	11.8	11.4	12.8	12.6	12.4
	8+	26.4	27.2	27.9	27.1	26.7	26.1	24.8	24.8	24.7	24.7

- In terms of location, there was a slight increase in offenders in inner metropolitan areas and a decrease in offenders in outer regional areas.
- There was a considerable decrease in the proportion of property offenders and an increase in driving and traffic offenders. There was also a slight increase in aggravated violence offenders and 'other' offenders and a slight decrease in breach offenders.
- There was very little difference in the composition of offenders with particular numbers of prior offences.

Table 2 gives the results of the bivariate analysis, looking at the rates of receiving a six month suspended sentence (as opposed to a full-time custodial sentence) across the variables of interest. It suggests that:

- Women are more likely to receive a suspended sentence than men.
- Younger offenders are more likely to receive a suspended sentence.
- Indigenous offenders are more likely to receive a full-time custodial sentence.

Table 2. Likelihood of receiving a suspended sentence, as opposed to full-time custody, by offender characteristic (%)

Variable	Category	Rate of suspended sentence
Sex	Female	49.6
	Male	33.2
Age	35 or over	33.0
	Under 35	38.4
Indigenous status	Non-Indigenous or Unknown	39.3
	Indigenous	25.9
Principal offence	Other	43.1
	Aggravated violence	28.2
	Property	25.3
	Breach	29.5
Concurrent offences	None	45.7
	1-2	39.6
	3-4	26.9
	5 or more	16.3
Prior appearances	Less than 3	57.2
	3-5	45.0
	6-8	30.6
	9 or more	19.3
Legal representation	No	58.3
	Yes	34.2

- Property offenders are the least likely to receive a suspended sentence, whereas aggravated violence and breach have slightly higher rates of suspended sentences. All other offenders are considerably more likely to receive a suspended sentence.
- An offender with no concurrent offences is almost three times more likely to receive a suspended sentence than one with five or more concurrent offences.
- Similarly an offender with two or less prior appearances is three times more likely to receive a suspended sentence than one with nine or more prior appearances.
- Legal representation is associated with higher rates of full-time custodial sentences.

Table 3 gives the results of the logistic regression modelling, where the outcome being modelled is whether the sentence was suspended (as opposed to full-time custodial).

From the results we can see that the following characteristics are associated with a reduced likelihood of a suspended sentence (that is, an increased likelihood of a full-time custodial sentence):

- being male;
- being younger than 35 years of age;
- committing a serious violence, property or breach offence;
- having concurrent convictions;
- having prior convictions;
- being legally represented;
- being sentenced in 2007 rather than 2008 or 2009

The strongest negative effects are having three or more concurrent convictions and/or six or more prior convictions. The offence variables also all exert strong negative effects on the probability of a suspended sentence. The higher likelihood of a prison sentence when legally represented is probably a selection effect arising from the fact that those who are likely to go to prison are more likely to seek and obtain legal representation. The lower likelihood of a suspended sentence in 2007 compared with 2008 or 2009 reflects the growth in the use of suspended sentences.

Discussion

This study was motivated by an interest in the profile of offenders receiving suspended sentences since their re-introduction in NSW in 2000. It sought to answer two research questions: whether the profile of those receiving suspended sentences (of any length) had changed over the 10-year period from 2000 to 2009; and whether those receiving suspended sentences have different characteristics from those receiving a full-time custodial sentence of the same length (in this case six months).

Table 3. Results of logistic regression modelling the probability of receiving a suspended sentence

Variable	Category	Odds ratio (with 95% CI)		p-value
Sex	Female	1.00		
	Male	0.43	(0.36 - 0.51)	<.001
Age	35 or over	1.00		
	Under 35	0.85	(0.75 - 0.95)	.005
Indigenous status	Non-Indigenous or unknown	1.00		
	Indigenous	0.73	(0.64 - 0.84)	<.001
Principal offence	Other	1.00		
	Aggravated violence	0.48	(0.39 - 0.59)	<.001
	Property	0.46	(0.40 - 0.54)	<.001
	Breach	0.54	(0.46 - 0.64)	<.001
Concurrent offences	None	1.00		
	1-2	0.81	(0.71 - 0.93)	.003
	3-4	0.45	(0.38 - 0.54)	<.001
	5 or more	0.24	(0.19 - 0.29)	<.001
Prior appearances	Less than 3	1.00		
	3-5	0.63	(0.53 - 0.74)	<.001
	6-8	0.35	(0.29 - 0.42)	<.001
	9 or more	0.20	(0.17 - 0.23)	<.001
Legal representation	No legal representation	1.00		
	Legal representation	0.63	(0.52 - 0.76)	<.001
Year	2007	1.00		
	2008	1.81	(1.57 - 2.08)	<.001
	2009	1.48	(1.29 - 1.71)	<.001

It found some differences in the profile of offenders receiving suspended sentences over time - notably the reduction in the proportion of property offenders and increase in driving and traffic and 'other' offences. In the second part of the analysis, significant differences were found in the characteristics of those receiving suspended sentences as opposed to full-time custodial sentences. Demographic factors, offence type, concurrent convictions and prior appearances were all related to the probability of a suspended sentence with large numbers of concurrent convictions and prior appearances having the largest odds ratios.

These findings, particularly the latter, are important to consider in light of the legislation surrounding suspended sentences. While there is little guidance on which factors to consider (and what weight to give them) when deciding whether to suspend a custodial sentence, it is clear that judicial officers need first to make the decision to impose a full-time custodial term. This would suggest that few systematic differences should be found between offenders who receive a prison sentence and those who receive a sentence of comparable length that has been suspended. In practice there are systematic differences of a kind which suggest that suspended sentences are viewed by courts as more lenient than full-time prison sentences of a comparable length.

References

McInnis, L. & Jones, C. (2010). Trends in the use of suspended sentences in NSW. *Bureau Brief,* (No. 47), NSW Bureau of Crime Statistics and Research, Sydney.

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