

## TRENDS IN THE USE OF SUSPENDED SENTENCES IN NSW

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*Since they were re-introduced to NSW in April 2000, the use of suspended prison sentences has tripled in NSW Local Courts and more than doubled in NSW District and Supreme Courts. The aim of the current study was to assess the extent to which suspended sentences have replaced custodial and non-custodial penalties. In Local Courts, the proportional use of full time and periodic custody sanctions decreased after the introduction of suspended sentences but so did the use of Community Service Orders (CSOs). In the Higher (District and Supreme) Criminal Courts, there appears to have been a small reduction in full-time imprisonment and the use of period detention. The introduction of suspended sentences, however, has also resulted in significant reductions in the use of bonds and CSOs.*

### INTRODUCTION

A suspended prison sentence is a term of imprisonment that has been imposed by the court but suspended for the length of the sentence. Offenders who are supervised by way of suspended sentences are permitted to remain in the community on the condition that they enter into an agreement to be of good behaviour and follow the conditions set down by the court (Brignell & Poletti, 2003). They have been used extensively as alternatives to full-time custody in many jurisdictions since their origins in France in the late 19<sup>th</sup> century (Lulham, Weatherburn & Bartels, 2009). In New South Wales, suspended sentences have been introduced, phased out and then re-introduced as successive governments have attempted to find the best mix of sentencing alternatives. Following a recommendation by the NSW Law Reform Commission (2006), suspended sentences were re-introduced in their current form in April 2000.

The operation of suspended sentences in NSW is set out under s12 of the *Crimes (Sentencing Procedure) Act 1999*. The decision to impose a suspended sentence involves three stages. Initially, the judge or magistrate must decide whether the crime warrants a sentence of imprisonment. Section 5(1) of the *Crimes (Sentencing Procedure) Act 1999* requires that, in order to pass down a term of imprisonment, the court must be satisfied that no other penalty is appropriate. Second, if imprisonment is deemed to be appropriate, the length of the term of imprisonment must be determined. Thirdly, depending on the length of the sentence to be passed down, a determination must be made as to how the sentence should be served. A judge or magistrate can decide to impose a full-time custodial

sanction, a periodic custodial term, detention to be served in the home, or to suspend the prison term.

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 Honourable Mr Debus MP said:

“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.”

In other words, the intention of suspended sentences was to demonstrate that the offence is sufficiently serious to warrant a prison term but allows judges and magistrates to suspend the term of imprisonment where they see no useful purpose in incarcerating the offender. The threat of the prison sentence for infractions of the good behaviour bond is assumed to have a strong specific deterrent effect on future offending. Recent research, however, has found that suspended sentences exert no greater deterrent effect than supervised bonds (Weatherburn & Bartels, 2008).

Since their re-introduction, the proportion of people receiving suspended sentences has tripled in NSW Local Courts (from 1.7% of all people convicted in 2000 to 5.1% in 2008) and more than doubled in the Higher Courts (from 6.9% to 16.8%; NSW Bureau of Crime Statistics and Research, 2001; 2009). This increase raises the question of whether suspended sentences

are substituting for full time custody (as one would expect if they were being applied as intended), or whether they are being imposed in lieu of non-custodial penalties. The issue is important because breach of a suspended sentence is more likely to result in a sentence of imprisonment than breach of a non-custodial order, such as a bond. The use of suspended sentences in cases where a non-custodial penalty might have been imposed therefore has the potential to increase rather than reduce the overall rate of imprisonment.

The simplest way of assessing whether suspended sentences have offset prison sentences is to observe whether the proportion of people being sentenced to imprisonment decreased after suspended sentences were re-introduced. Conversely, the easiest way to determine whether suspended sentences are substituting for less serious penalties is to see whether the proportion of people receiving non-custodial penalties decreased following the introduction of suspended sentences. In the next section, we describe the data sources employed to assess trends in the use of suspended sentences. We then present and discuss the results of the analysis.

## METHOD

### Data source

The data were extracted from the Bureau's Higher and Local Criminal Court databases. Monthly counts of the number of people convicted for one or more offences between 1994 and 2008 were generated by the penalty they received for their principal (most serious) offence. If people were convicted more than once over this time period, they were counted multiple times. Penalties were grouped into the following categories:

- Full-time imprisonment (including detention in a juvenile institution);
- Home detention;
- Periodic detention;
- Suspended sentences (with and without supervision);
- Community Service Orders (CSOs);
- Good behaviour bonds (with and without supervision); and
- All other sanctions deemed to be more serious than a fine according to the Bureau's penalty hierarchy (see, NSW Bureau of Crime Statistics and Research, 2009, p.139).<sup>2</sup>

Fines and less serious penalties were excluded for the purposes of this analysis because fines make up around half of all penalties in the Local Courts. Their high volume would obscure subtle changes in imprisonment and other sanctions over time. We would also not expect the proportion of people receiving fines to be affected by the introduction of suspended sentences.

## Analysis

The analyses were descriptive. The proportion of people convicted in the Local and Higher Courts who received each penalty was plotted by the year in which the matter was finalised. No formal statistical tests were undertaken because it quickly became clear which penalties were being offset by the increase in suspended sentences.

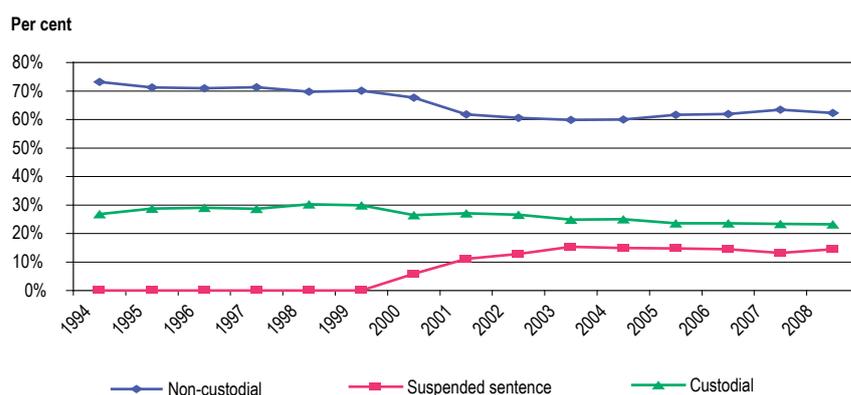
## RESULTS

### Local Courts

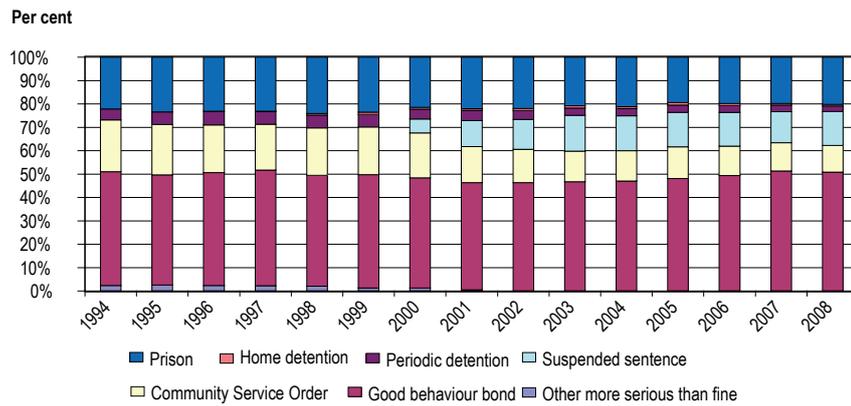
Figure 1 shows the proportion of penalties more serious than a fine that were custodial, suspended custodial or non-custodial penalties in NSW Local Courts between 1994 and 2008. It is clear from Figure 1 that the use of suspended prison sentences increased in the years immediately after their introduction and stabilised thereafter. In the first full year of operation (2001), 11.1 per cent of people received a suspended prison sentence. This increased to a high of 15.3 per cent in 2003 and stayed at around that level thereafter. It is also apparent from Figure 1 that the proportion of custodial sentences decreased slightly following the introduction of suspended sentences. However, the largest decrease is apparent with non-custodial penalties, which decreased substantially following the introduction of suspended sentences.

Figure 2 gives a more fine-grained analysis of the specific custodial and non-custodial penalties that decreased following the introduction of suspended sentences. While it is clear that the proportion of people receiving a full-time prison sentence decreased following the introduction of suspended sentences (from 23.5% in 1999 to 20.2% in 2008), the most salient change is the large reduction in use of CSOs. Whereas 20.4 per cent of people received a CSO in 1999, this had decreased to 11.5 per cent by 2008. The proportion of people receiving periodic detention also decreased markedly in the Local Courts following the introduction of suspended sentences (from 5.4% of penalties more serious than a fine in 1999 to 2.4% in 2008).

**Figure 1. Trends in custodial, suspended custodial and non-custodial penalties in NSW Local Courts, 1994-2008**



**Figure 2. Trends in non-fine penalties in the NSW Local Courts (1994 to 2008)**



### Higher Courts

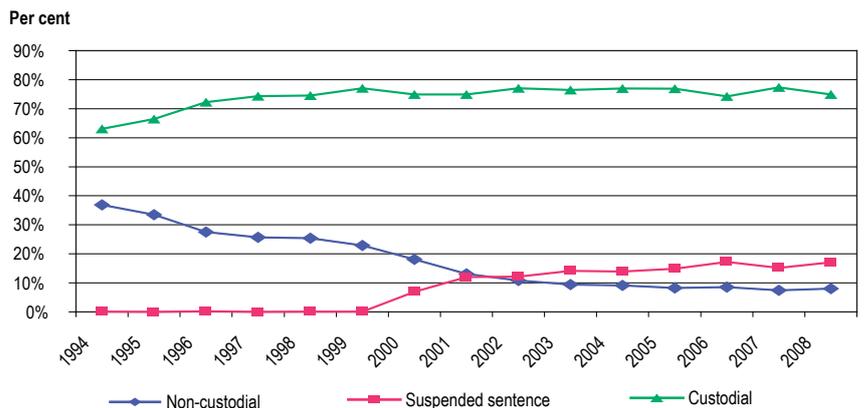
Figure 3 shows the proportion of penalties more serious than a fine that were custodial, suspended custodial or non-custodial penalties in NSW Higher Courts between 1994 and 2008. Unlike the trend in the Local Courts, the use of suspended prison sentences has gradually increased since they were introduced, without stabilising. In 2001, 12 per cent of people receiving penalties more serious than fines received a suspended prison sentence. By 2008 this had increased to 17.1 per cent. While the proportion of penalties that were custodial increased in the years prior to the introduction of suspended sentences, this increase appears to have been attenuated from 2001 onward. There was a gradual decline in the proportion of non-custodial penalties in the years prior to the introduction of suspended sentences and this decline appears to accelerate from 2001 onward.

Figure 4 gives a more fine-grained analysis of changes in specific penalties in NSW District and Supreme Courts following the introduction of suspended sentences. In the years prior to the introduction of suspended sentences, custodial penalties were gradually increasing as a proportion of all penalties. In 1994, for example, 63.1 per cent of people were given custodial penalties of some kind (full-time, home detention or periodic detention). By 1999, this had increased to 77.1 per cent. This increase was driven mainly by increases in full-time custody. The introduction of suspended sentences in 2000 appears to

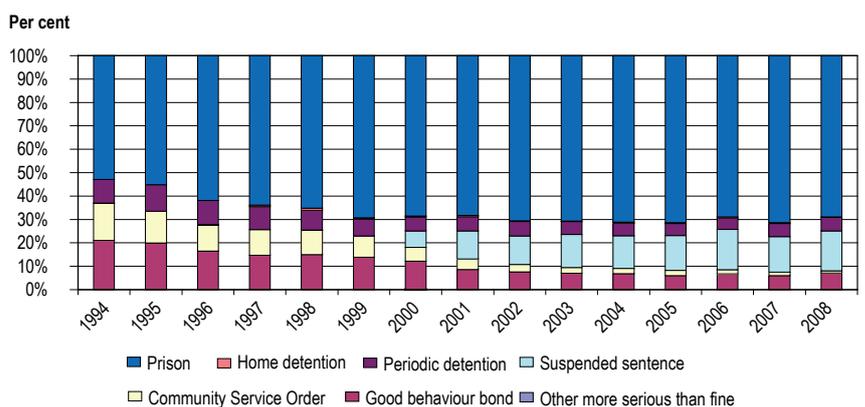
have attenuated that increase. By 2008, 74.9 per cent of people received a custodial sanction other than a suspended sentence. Like the trend in the Local Courts, this finding suggests that the introduction of suspended sentences has reduced the use of custody to some extent.

However, as with the trend seen in the Local Courts, the most significant change in Figure 4 is the reduction in use of CSOs. In the year prior to the introduction of suspended sentences, 9.1 per cent of people receiving penalties more serious than a fine received a CSO. By 2008, the use of CSOs in the Higher Courts had all but disappeared (1% of people receiving a penalty more serious than a fine received a CSO). The proportion of people receiving a good behaviour bond also decreased, from 13.9 per cent in 1999 to 7.1 per cent in 2008.

**Figure 3. Trends in custodial, suspended custodial and non-custodial penalties in NSW Higher Courts, 1994-2008**



**Figure 4. Proportional representation of penalties more serious than a fine in NSW Higher Courts, 1994 to 2008**



## DISCUSSION

The current study clearly shows that the use of suspended sentences has grown in the Local and Higher Criminal Courts in NSW. In the first full year of their implementation (2001), suspended sentences represented 11.1 per cent and 12.0 per cent of all sanctions more serious than fines in the Local and Higher Courts, respectively. By 2008, this had increased to 15.3 per cent and 17.2, respectively. This increase has replaced custodial sanctions to some extent but it is equally clear that suspended sentences have been used where non-custodial sanctions would otherwise have been employed. This is particularly true for CSOs in both court jurisdictions, but also for good behaviour bonds in the Higher Criminal Courts.

The increase in use of suspended sentences in lieu of custodial sanctions is not surprising. This is what we would expect if suspended sentences have been used appropriately. After all, the legislation requires that judges and magistrates first make a determination that a custodial sentence is appropriate and then make the decision to suspend the term of the imprisonment. What is surprising is that in a significant proportion of cases, judges and magistrates appear to have imposed a suspended sentence where they would not have imposed a prison sentence in the absence of this sentencing alternative. Use of CSOs has declined in the Local Courts and all but disappeared as a sentencing alternative in the Higher Criminal Courts. The use of good behaviour bonds has decreased in the Higher Criminal Courts.

This imposition of suspended custodial sanctions on offenders who would otherwise have received a non-custodial sanction has potentially serious implications for imprisonment rates over the longer term. The risk of imprisonment is probably higher for breaching the conditions of a suspended sentence than it is for breaching a good behaviour bond or a CSO. One unintentional consequence of increasing the use of suspended sentences is that a greater number of offenders may be drawn into the prison population. There is evidence that this occurred following the introduction of suspended sentences in New Zealand (Spier, 1998). Uncovering the extent to which this has occurred in NSW would require more fine-grained research than is possible in the current paper. It is clear, however, that the use of suspended sentences is increasing, not at the expense of custodial sanctions, but at the expense of other non-custodial sanctions.

## REFERENCES

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## NOTES

1. School of Psychology, University of NSW.
2. These penalties include suspended (juvenile) control orders, s.554 bonds in the Local Court, and Care and Treatment Orders in the District and Supreme Courts.