Sword or Butter Knife? A Breach Analysis of Suspended Sentences in Tasmania

Lorana Bartels*

Abstract

Suspended sentences are a widely used but controversial sentencing disposition. To date, most breach analyses have only examined court action taken in respect of alleged breaches, not instances where the suspended sentence was apparently breached but no court action was taken. This article examines all partly and wholly suspended sentences imposed in the Tasmanian Supreme Court over a two-year period and the number of cases breached, whether or not the breach was prosecuted. The findings demonstrate that most apparent breaches of suspended sentences are not prosecuted. Data are presented on the nature of the offences committed in breach and the seriousness and frequency of offending. The article also examines the relevance of key sentencing variables, including age, prior record, gender, length of sentence and operational period and analyses relevant time periods for breach and breach action. The research and policy implications of the findings are also considered.

Introduction

Suspended sentences are currently available in all Australian jurisdictions and are a common but controversial sentencing disposition. A suspended sentence is a prison sentence which is imposed on an offender but not activated. The sentence may be either wholly or partly suspended. Imposing a suspended sentence requires the court to impose the term of imprisonment and then order that all or part of the prison term be held in suspense for a set period (the operational period).

Suspension of the sentence is generally conditional upon the offender complying with certain obligations. In Victoria and Queensland, for example, the only condition that can be attached to a suspended sentence is the requirement that the offender not commit any offence punishable by imprisonment during the operational period, while New South Wales and South Australia require the offender to enter into a good behaviour bond. A sentence may be suspended 'subject to such conditions as the court thinks necessary or expedient' in Tasmania (for discussion, see Bartels 2007:124-128).

* Criminology Research Council Research Fellow, Australian Institute of Criminology. The research reported here is based on doctoral research conducted by the author and does not represent the views of the Australian Government.

It is reasonable to postulate that a requirement of supervision and the intensity of that supervision may be relevant to the decision to initiate proceedings for breach. Analysis of all suspended sentences imposed in the Supreme Court in the reference period (1 July 2002 – 30 June 2004) indicates that the offender was subject to supervision by Community Corrections in 23% of suspended sentence cases (Bartels 2008:178). This is substantially lower than the use of supervision in NSW, where a 2005 study found that since suspended sentences were reintroduced in 2000, supervision had been ordered in 68% of cases dealt with in the higher courts (Poletti & Vignaendra 2005).

A suspended sentence is often referred to as a Sword of Damocles, but a Canadian court observed in *R v Brady* in relation to a similar sentencing option, the conditional sentence, that even if such a sentence

> could be equated to a sword, it does not hang by a thread, but by a rope. And the only way this rope can break is if the offender himself cuts it. No one else can do so. This is within the exclusive and sole control of the offender. And with each passing day of the sentence, the 'sword' shrinks until finally it becomes a butter knife.

This article explores whether suspended sentences in Tasmania are a sword or a mere butter knife by presenting the findings of a breach analysis of 310 offenders who received a partly or wholly suspended sentence in the Tasmanian Supreme Court over a two-year period. It constitutes the first Australian research to examine all breaches of suspended sentences, not only those cases where the offender is brought back to court, and highlights the significance of effective administrative processes in dealing with breaches.

Powers and Policies for Dealing with Breaches

In order to understand the significance of breach analyses to the use of suspended sentences, it should be noted that there are conflicting views on the most appropriate means of responding to a breach of suspended sentence. On the one hand, the credibility of the suspended sentence and sentencing as a whole would seem to be dependent on predictability and sentences meaning what they say they mean. After all, if the court 'clearly indicates that a further offence will lead to activation, it must fulfil that indication in the event of a further offence, otherwise it will lose credibility and authority' (Samuels 1974:401). Several commentators have called for certainty in the prosecution of breaches (Nagin 1998; Doob 2000), arguing that lax enforcement will undermine deterrent effect, undermining offenders' perceptions as to the severity of the sentence (Ashworth 1983; Roberts & Gabor 2004), as well as undermining public and professional confidence. Brignell and Poletti (2003:8) argue that the 'forcefulness and reputation' of suspended sentences depends in part 'on the extent to which the courts ensure a tough approach to any breaches that may occur'. Ashworth (1983:75) suggests that 'offenders' perceptions of the seriousness of a suspended sentence would be significantly impaired if they knew that courts had a complete discretion whether or not to activate the suspended sentence on the occasion of a subsequent conviction'. On the other hand, there are also powerful arguments for discretion and flexibility on breach. Excessively strict enforcement of the breach process may trigger high numbers of breach hearings, which may in turn undermine sentencers' confidence in the sanction and wipe out any supposed reductions in prison admissions (Roberts & Gabor 2004:106). Judicial discretion enables the courts to take into account any changed circumstances between the time of the sentence and the time when the breach is brought before the court (Freiberg 2002; Daunton-Fear 1980), as well as past compliance with the suspended sentence. It also acknowledges 'the reality of many criminal offenders is that they do not work within

essentially middle-class cognitive and lifestyle frameworks where actions and consequences are carefully premeditated and calculated' (Freiberg 2002:112). Such an approach accommodates trivial breaches and recognises that in some cases, breach may be a result of a failure to provide support and services to an offender, rather than fault on the part of the offender (Sentencing Advisory Council 2005). Finally, this approach also means that there is an opportunity for the court to correct any net-widening or sentence inflation which may have occurred at sentencing, while avoiding the 'back-door' route to imprisonment. As the present study demonstrates, however, the scope for judicial discretion to accommodate offenders' circumstances may be completely negated in circumstances where there is inadequate prosecution of breaches.

Tasmania

The effect of a suspended sentence will clearly differ significantly, depending on the law in relation to breaches, with a mandatory cumulative activation provision yielding a very different effect than where activation is at the court's discretion. As Bartels (2007:128-131) notes, the majority of Australian jurisdictions have a presumption of activation on breach. In Tasmania, by contrast, there is currently no presumption that the sentence will be activated. Based in part on the research findings in this article, the Tasmania Law Reform Institute (TLRI) has recently recommended introducing a statutory presumption of activation on breach, suggesting that there 'is a need to clearly communicate to offenders and to the community that breaches will be dealt with seriously if the order is to have integrity and not be regarded as a let-off with no serious consequences' (2008:119).

Section 27(1) of the Tasmanian *Sentencing Act* 1997 (the Act) presently provides that a suspended sentence may be breached by committing an imprisonable offence or breaching a condition of the suspended sentence during the operational period of the sentence. Where a breach appears to have occurred, an 'authorised person' may apply to the court for an order. An 'authorised person' is defined in s3 of the Act as meaning the Director of Public Prosecutions (DPP), a police officer or probation officer.[1] For the purposes of this article, breach action is considered to have been 'taken' where there has been an application to the court for an order under s27, even where the court does not activate the breached sentence.

Section 27(4) provides that if the court is satisfied that the offender has breached the condition of the suspended sentence without reasonable excuse or committed the new offence, the court may order the suspended sentence to take effect (i.e. activate the sentence), order a substituted sentence to take effect instead, or vary the conditions on which the execution of the sentence was suspended. The substituted sentence may be any sentence that the court could have imposed had it just found the offender guilty of the original offence, but no greater term of imprisonment is to be imposed by the substituted sentence than was imposed by the suspended sentence (s27(5)); the court accordingly has the discretion to impose a 'substituted' sentence which continues the suspended sentence. Where the original sentence is ordered to take effect, there is a presumption that this is to be immediate and cumulative on any other sentence, unless the court orders otherwise (s27(6)).

In order to understand how breach proceedings operate in practice, information was sought from Tim Ellis SC, the Tasmanian Director of Public Prosecutions (DPP), who provided a copy of the Manual for his office. The Manual states *inter alia* that:

---

[1] In practice, all breaches of sentences imposed in the Supreme Court are taken by the DPP. As the Manual of the Office of the Director of Public Prosecutions states, 'All breaches of Supreme Court orders are to be dealt with by our Office' (Tasmanian Director of Public Prosecutions 2007).

> It is the Director's policy to always make application for an order for a substituted sentence or that the sentence take effect upon there having been a breach of the conditions of suspension, unless there are extremely strong reasons not to make such application (Tasmanian Director of Public Prosecutions 2007).

Commenting on the exercise of this discretion, the DPP advised: 'We do not wait for referral of a matter from Community Corrections or Police Prosecution Services or the like – if counsel preparing a file see an apparent breach which has not been dealt with they make the application on their own initiative'. He later elaborated on this, as follows:

> [W]hen we are dealing with someone, we have their prior convictions and if we spot that it involves a breach … we make an application … that's sort of standing instruction on counsel. We'd be most embarrassed if one slipped through. Now although it is a discretion, whether we do it or not, basically, we tend to do it.

He conceded, however, that the process currently operates in a 'very ad hoc' fashion, explaining that due to the small number of breach applications brought to his attention, 'I've never thought about any guidelines for it'.[2]

Previous Breach Studies

Breach analyses generally present information on the proportion of breached suspended sentences which are ultimately activated (the activation rate) and the proportion of suspended sentence recipients who ultimately serve time in custody on the breached suspended sentence (the total imprisonment rate).[3] A weakness of most breach analyses is that they only examine actioned breaches, that is, cases where the offender is prosecuted for breach. This approach presumes prosecution action is taken in all appropriate cases and therefore gives a much more optimistic perception of the proportion of offenders in breach of their sentence. As will be seen further below, there is a dramatic difference in Tasmania between actioned breaches and actual breaches, that is, where the offender commits further offences in breach of the sentence. Accordingly, the present study examines offenders' criminal records to determine whether there was an actual breach of the sentence by the commission of further offences, not just whether the offender was prosecuted for breach.

Australia

Tait's 1995 study of breaches in Victoria was the first Australian breach analysis of suspended sentences and Victoria remains the Australian jurisdiction about which the most information on breaches of suspended sentences is available (see Freiberg & Ross 1999; Sentencing Advisory Council 2005; Turner 2007; Sentencing Advisory Council 2008). Tait examined data on 2,804 offenders who had received a suspended sentence from a magistrate in 1990 and found that 18% breached their sentence (by committing a further imprisonable offence). Of these, 54% had their sentence activated, although this ranged from 40% for

---

[2] Although this discussion focuses on breaches of sentences imposed in the Supreme Court, analysis of breaches there would be incomplete without an understanding of the processes for dealing with breaches in the Magistrates' Court. The Tasmania Police Manual (2007) provides that 'Operational Information Services is to forward, at the earliest opportunity, details of any breach of suspended sentence or probation order to the relevant authority to enable further action to be considered'. In consultation with the Police Prosecution Services, it was acknowledged that there were difficulties in correctly identifying and processing breaches.

[3] This figure is ascertained by multiplying the proportion of offenders actioned for breach by the proportion sentenced to custody for the breach. For example, if 30% of offenders have breach action taken and 60% of those offenders have their sentence activated, this will give a total imprisonment rate of 18%.

offenders with one or two counts proved at breach, to 71% for offenders with 15 or more additional offences. The total imprisonment rate was less than 10% and Tait attributed this low rate to a short operational period and the discretion to resentence at the breach (1995:158). Both of these factors have since been amended in Victoria, with a subsequent increase in breach and imprisonment rates.

Data released by the Victorian Sentencing Advisory Council (SAC) indicate that 36% of offenders who received a suspended sentence in the Victorian higher courts in 1998-99 subsequently breached their sentence. Of these, 76% had their terms of imprisonment activated, giving a total imprisonment rate of 27%, almost three times higher than in Tait's study 10 years earlier. In the Magistrates' Court, 31% of the 2000-01 cohort breached their sentence and the sentence was activated in 64% of cases, giving a total imprisonment rate of 20% (Sentencing Advisory Council 2005).

More recent data published by the SAC indicate that after five years, 29% of suspended sentences imposed in the Magistrates' Court in 2000-2002 had been breached, compared with less than 9% of suspended sentences imposed in the higher courts (Turner 2007:8), with an overall breach rate of 28%. Furthermore, whereas 51% of offenders who breached a suspended sentence imposed in the Magistrates' Court did so in the first 12 months, only 13% of offenders sentenced in the higher courts did so. Turner's data also reveal that partly suspended sentences were slightly more likely to be breached than wholly suspended sentences in both the Magistrates' Court (32% vs 29%) and higher courts (10% vs 8%). The activation rate was 63% (66% in the higher courts and 63% in the Magistrates' Court), giving a total imprisonment rate of 17% (Turner 2007:13).

Data published by the Judicial Commission of NSW (Potas, Eyland & Munro 2005) indicate that suspended sentences accounted for almost 18% of the supervised community-based order types discharged in NSW in 2003 and 2004. Of these, 84% were completed successfully. Unfortunately there are no data available on the activation rate of breached suspended sentences and the total imprisonment rate therefore cannot be calculated. Furthermore, attempts to obtain information on the incidence and activation of breaches in other jurisdictions around Australia indicates that this information is not generally kept by relevant government departments.

England

Suspended sentences were introduced in England in 1967 and were also subject to the condition that the offender not commit any further imprisonable offence. The first English study of breaches was conducted after suspended sentences had been available for two years and indicated very high breach rates, with Sherlock (1970:1146) commenting:

> [F]or 83.3% of persons under suspended sentence to be back before the courts within the operational period points either to some rather unreal optimism when the sentences were passed, or to some basic misunderstanding of how the device is meant to work.

There was also a strong presumption in favour of activation – sentencers could only decline to bring the sentence into effect where it would be 'unjust' to do otherwise. Sherlock's figures indicate that the breached sentence was activated in 89% of cases in the Magistrates' Court and 81% of cases in the higher courts. The total imprisonment rate was between 67% and 74%. A subsequent study (Oatham & Simon 1972) estimated the breach rate at 40%, with 83% of breached sentences activated. The total imprisonment rate was 34% for men and 27% for women.

Bottoms' analysis of Home Office data (1987) indicated that 77% of partly suspended and 71% of wholly suspended sentences were activated in full on breach, with a further 5% and 6% respectively activated in part. There was accordingly an activation rate of 82% for partly suspended and 77% for wholly suspended sentences. Unfortunately, this study did not report the proportion of suspended sentences being breached and the total imprisonment rate therefore cannot be calculated from these data.

Suspended sentences were not widely used in England between 1991 and 2005, when the legislation was amended to once again promote their widespread use. A recent report published by the Centre for Crime and Justice Studies stated that breach of suspended sentences and effective enforcement of breaches 'have been major concerns for more than a decade and, as noted previously, were a particular worry prior to the introduction of the new orders' (Mair, Cross & Taylor 2007:25). Home Office figures indicate that 800 offenders had been received into custody for breach of a suspended sentence between January and August 2006, and the Home Office 'admit[ted] that the number of breaches of Suspended Sentence Orders is likely to be double that assumed in current prison population projections'. The authors concluded that the breach rate 'requires close monitoring'.

Methodology

The results of the studies discussed above are flawed by their concentration on actioned breaches. This study overcomes this failing by examining *all* instances where a suspended sentence was breached by the commission of an imprisonable offence and thereby substantially increases the level of understanding about breaches and breach analyses. This section presents details of the information obtained for my analysis and discusses some key methodological issues.

The data for the original dataset were obtained by examining all comments on passing sentence for sentences imposed in the Tasmanian Supreme Court between 1 July 2002 and 30 June 2004 (n=840). Access to the data for the present study was facilitated by the Tasmanian Institute of Law Enforcement Studies, which provided access to the Tasmania Police database of offenders' criminal records (Intrepid Centralised Enquiry (ICE)). Data were obtained between December 2006 and February 2007 and were analysed in SPSS, using uni-variate and bi-variate analyses with $p < 0.05$ as the test for statistical significance.

Determining the Parameters of the Dataset

Measure of 'Breach'

In this article, a breach is taken to have occurred where an offender has been convicted of an offence punishable by imprisonment committed during the operational period of the sentence. The Victorian Court of Appeal held in *Coleman v Director of Public Prosecutions* in relation to this test that that the issue is whether the offence is 'liable to be, or capable of being, visited with punishment by imprisonment', rather than whether the offender will in fact be sentenced to a term of imprisonment as a result of that offence, and specifically 'whether the particular offence actually committed [by the offender is] able to be visited with imprisonment' (per Batt JA at 394-395). In using this as the measure of breach, the SAC (2005) recognised that there 'is no requirement that the subsequent offence be of the same kind as the original offence for which the offender was sentenced', with the result that an offender who receives a suspended sentence for a serious offence 'risks having his or her

original prison sentence activated if he or she commits a relatively minor and/or unrelated offence'.

Length of Follow-up Period

Breach studies are generally limited to instances of offending which occur during the operational period of the suspended sentence. The follow-up period will accordingly vary, depending on the terms of the sentence. The SAC in its Discussion Paper (2005) considered the fact that operational periods in the Supreme Court have a maximum duration of three years and, taking into account data on court completion times, assumed 'that a five-year lag period from the time the suspended sentence was handed down will capture almost all suspended sentences breached and the sentencing outcomes attached'.

In the present study, all convictions entered by 1 January 2007 were examined, giving a follow-up period of between 2½ and 4½ years. In light of the information presented below on the time taken to prosecute breaches, this appears to be too short a follow-up period. In particular, there were 18 offenders whose operational period had not yet expired by 1 January 2007, and a further 16 offenders whose operational period had only expired in the previous six months. It is therefore probable that more offenders would have been found to have breached their sentence if a longer follow-up period had applied.[4] Accordingly, these findings may give an under-representation of the true rate of offending during the operational period of the suspended sentence, as well as possibly representing an under-count of breach action. It is therefore desirable that future analyses allow for a longer follow-up period. Nevertheless, in the present study, the problems associated with too short a follow-up period would appear to be ameliorated to some extent by the fact that all convictions during the operational period are examined, not just those few resulting in prosecution action.

Offence Seriousness

There is an extensive body of literature on ranking the seriousness of offences (see e.g. Edney & Bagaric 2007; Fox & Freiberg 1990; Indermaur 1990; von Hirsch & Jareborg 1991; Warr 1989). When considering the seriousness of the index offence and any breaching offence, this study adopts the National Offence Index (NOI), which was developed by the Australian Bureau of Statistics and ranks offences by Australian Standard of Classification (ASOC) code (see Andersson 2003). In this system, 'ASOC 0111: Murder' is ranked as the most serious (NOI=1) and 'ASOC 1699: Miscellaneous offences' as the least serious offence (NOI=155).[5] This analysis employs the model developed by the South Australian Office of Crime Statistics and Research (Corlett, Skrzypiec & Hunter 2005; Skrzypiec 2005), which groups offences into three broad levels, as follows.

---

4 For example, there was one case where the offender, who received a suspended sentence for burglary, had by 1 January 2007 only been convicted of minor traffic offences. In February 2007, however, he was convicted of a further 17 offences committed during the operational period, including nine counts of stealing.

5 It should be noted that the least serious categories listed are in fact 'ASOC 9998: No data provided' (NOI=156) and 'ASOC 9999: Inadequately described (NOI=157).

Table 1: Offence Seriousness

Offence seriousness	NOI	Examples of offending
Serious	1 – 61	Homicide; most violent and sexual offences; burglary; conspiracy; perverting the course of justice.
Moderate	62 – 93	Fraud; theft; dangerous or negligent driving.
Minor	94 – 157	Breach of bail and other court orders; trespass; offensive language; various regulatory traffic offences.

Offence Type

Breach patterns were examined on the basis of the offence for which the suspended sentence was imposed. Because of the small numbers of some offence types within ASOC divisions, certain types of offences were grouped together in order to give data groups of sufficient size to be meaningful, as set out in Table 2.

Table 2: Offence Types by ASOC Code and Offence Group

ASOC Division	Offence type
01: Homicide and related offences (n=16)	Violence (n=190)
02: Acts intended to cause injury (n=170)	Violence (n=190)
03: Sexual assault and related offences (n=92)	Sexual assault (n=92)
04: Dangerous or negligent acts endangering persons (n=4)	Violence (n=190)
05: Abduction and related offences (n=0)	Violence (n=190)
06: Robbery, extortion and related offences (n=77)	Robbery (n=77)
07: Unlawful entry/burglary (n=169)	Property (n=281)
08: Theft and related offences (n=78)	Property (n=281)
09: Deception and related offences (n=34)	Property (n=281)
10: Illicit drug offences (n=58)	Drugs (n=58)
11: Weapons and explosives offences (n=2)	Other (n=140)
12: Property damage and environmental offences (n=64)	Other (n=140)
13: Public order offences (n=18)	Other (n=140)
14: Road traffic and motor vehicle regulatory offences	Other (n=140)
15: Offences against justice/government (n=46)	Other (n=140)
16: Miscellaneous offences (n=10)	Other (n=140)

Dataset

There were 246 wholly suspended and 105 partly suspended sentences imposed by the Supreme Court between 1 July 2002 and 30 June 2004. Of these, 229 offenders on a wholly suspended sentence and 81 offenders on a partly suspended sentence were followed-up in the breach study, with the following information obtained from the ICE database:

- Whether the offenders committed any offences during the operational period
- Whether offence(s) committed imprisonable and/or an express breach of the conditions of the sentence
- Most serious offence committed (none, minor, moderate or serious)
- Number and type of offences committed in breach
- Whether breach action was taken
- Judicial action taken on breach.

Discussion of Findings

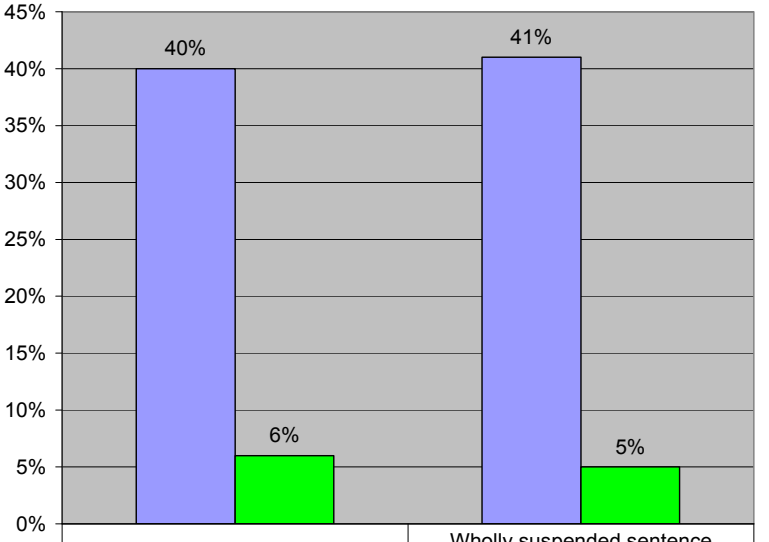
This section presents quantitative and qualitative information on breaches of suspended sentences and the judicial responses to breaches in the small number of cases where prosecuting authorities took breach action.

Breach Rates and Actioned Cases

Figure 1 sets out the breach rates and proportion of actioned cases for partly and wholly suspended sentences, with no statistically significant differences between partly and wholly suspended sentences in terms of breach rates or breach action taken. As at 1 January 2007, 40% of offenders on a partly suspended sentence and 41% of offenders on a wholly suspended sentence had breached their sentence (see Bartels 2009). This is broadly comparable with the recent Victorian data, which indicated a breach rate of 36% in the higher courts (Sentencing Advisory Council 2005).

Somewhat astonishingly, however, breach action was taken in respect of only two offenders on a partly suspended sentence (out of 32 in breach) and five on a wholly suspended sentence (out of 94 in breach), meaning that only 6% and 5% respectively of offenders in breach were brought back to court for breach action. In the Issues Paper prepared by the TLRI (Warner 2002:71), it was noted that there are ‘concerns that breach proceedings are neglected and many offenders breach without proceedings being initiated’. The data in this study suggest that there are numerous instances of breached suspended sentences which do not appear to have come to the attention of the relevant authorities.

Figure 1: Breach Rates and Actioned Cases



	Partly suspended sentence (n=81)	Wholly suspended sentence (n=229)
Sentence breached (n=126)	40%	41%
Breach action taken (n=7)	6%	5%

Of the seven actioned cases, the sentence was partly or wholly activated in two wholly suspended sentences and was activated in both partly suspended sentences. The operational period was extended or the original term resuspended in the remaining three cases. The activation rate overall was therefore only 3% and the total imprisonment rate – that is, the proportion of offenders in receipt of a suspended sentence who were ultimately required to serve time in custody – was a mere 1%. By way of contrast, the sentence was activated for 76% of offenders on a partly suspended sentence and 61% of offenders on a wholly suspended sentence originally imposed in the Victorian higher courts (Turner 2007), with an imprisonment rate of 17%.

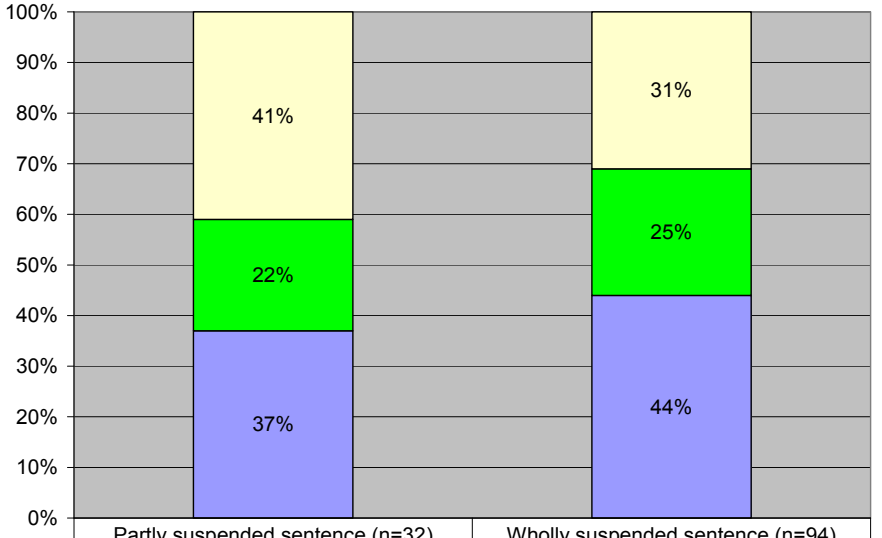
Keeping offenders out of prison and reducing the size of the prison population are of course key arguments in favour of suspended sentences. The analysis in Bartels (2009) demonstrates lower reconviction rates for suspended sentences than for other sentencing dispositions, suggesting that they may be an effective deterrent or rehabilitative sentencing option for some offenders. Nevertheless, a failure to deal appropriately with breached sentences not only reduces the effectiveness of the sentence for offenders, who may be encouraged to continue offending in the absence of breach action, but potentially also contributes to the negative perception of suspended sentences and may thereby undermine the criminal justice system generally. This article does not argue for a greater use of imprisonment – whether in the context of suspended sentences or otherwise – but rather integrity in the sentencing regime. There should therefore be greater concordance between the stated operation of the law in respect of the prosecution of breaches and actual practices. The TLRI has described the findings as 'startling', adding that while 'failure to initiate breach proceedings is not an inherent flaw of the suspended sentence, such a failure merely

fuels the public perception that such sentences are an ineffectual slap on the wrist and contributes to a lack of confidence in sentencing' (2008:111).

Offence Seriousness

Figure 2 sets out the most serious offence committed by offenders in breach during the operational period. Partly suspended sentences performed worse than wholly suspended sentences, with 41% of offenders in breach committing a serious offence, compared with 31% on a wholly suspended sentence. Offenders on a wholly suspended sentence, by contrast, were most likely to commit only minor offences (44% vs 37%), however the differences between the sentence types were not statistically significant.

Figure 2: Most Serious Offence Committed in Breach During the Operational Period



	Partly suspended sentence (n=32)	Wholly suspended sentence (n=94)
Serious (n=42)	41%	31%
Moderate (n=31)	22%	25%
Minor (n=53)	37%	44%

Even if one can readily imagine that the prosecutorial discretion should be exercised against taking breach action in respect of some minor, albeit imprisonable, offences (n=53), the same could surely not be said of those offenders who committed moderate (n=31) or serious (n=42) offences during the operational period of their suspended sentence. However, breach action was taken in only 7% of cases where the offender committed a moderate offence during the operational period of the sentence and in 12% of cases where the offender committed one or more serious offences. Fortunately, it would seem that in the few instances where breach action is taken, this is at least not done in respect of minor offences. Of the seven actioned cases, five involved the commission of one or more serious offences during the operational period and two involved moderate offences.

There were, however, numerous cases of equal or more serious offending where no breach action was taken, pointing to a somewhat arbitrary approach to the investigative

process and the exercise of the discretion to initiate breach proceedings. By way of example, *ZT* was sentenced for assault, partly suspended on condition of good behaviour. He was convicted of 20 offences committed during the operational period, including aggravated burglary, assaulting a police officer, sexual intercourse with a person under the age of 17 and driving with a prescribed content of alcohol. No breach action was taken in respect of the suspended sentence, although he did receive unsuspended sentences for some of the later offending. The imposition of an unsuspended sentence following a breached sentence may be some means of ensuring the consequences of breaching are brought home to an offender, but it is nevertheless important to bring breached sentences back to court, in order to maintain the integrity and credibility of suspended sentences.

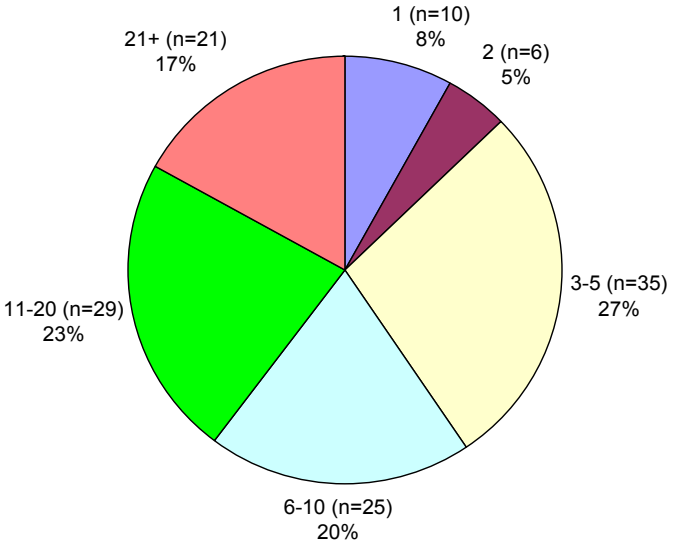
In *ZS*, the offender was sentenced for burglary, stealing and unlawful fire-setting and the sentence partly suspended on condition that he commit no crimes involving damage to property or fires. During the 18 month operational period, he committed 44 offences, of which 32 were serious and 11 were moderate, including numerous counts of burglary and stealing. Although none of the offences were in breach of the express condition of suspension that he not damage property, they were certainly imprisonable offences which enlivened the DPP's discretion to initiate action. No breach action was taken in respect of the suspended sentence and he received a further partly suspended sentence for a burglary committed in breach of the index sentence. He then proceeded to breach that sentence with yet another burglary, for which he received a wholly suspended sentence. This case highlights the incidence of offenders receiving numerous cumulative suspended sentences. In another case, an offender subject to a wholly suspended sentence for aggravated burglary committed 23 offences in breach of his sentence, six of which were serious and included two further counts of aggravated burglary. Not only was breach action not taken, but he subsequently received another three wholly suspended sentences.

Another offender was sentenced for the offence of cultivating a plant for sale, with the sentence wholly suspended on condition of good behaviour and that he commit no offences 'involving the trafficking, sale or supply of drugs or an intention to do so'. He was later convicted of five counts of using, possessing and cultivating drugs, and received a further wholly suspended sentence on condition that he be of good behaviour and not commit any offences against the *Misuse of Drugs Act* 1995 (Tas). Decisions of this nature raise the question of whether the sentencing judge is fully apprised of the offender's previous convictions and sentences and the circumstances in which any earlier suspended sentences were imposed, as the offender's later conduct was clearly a breach of the express conditions of the earlier suspended sentence.

Frequency of Offending

It would be understandable to see a lack of prosecutorial action on breaches if offenders committed very few offences in breach, but Figure 3 demonstrates this is not the case. In fact, only a small proportion of offenders in breach committed one (8%) or two (5%) offences. Almost a quarter (23%) committed between three and five offences and another 20% committed between six and 10 offences. A significant proportion committed 11-20 (23%) or 21 or more (17%) offences during the operational period of their sentence.

Figure 3: Number of Offences Committed During the Operational Period



Perhaps surprisingly, only one of the seven actioned cases involved an offender who had committed over 20 offences, with breach action taken against an offender who had committed 32 offences, including aggravated burglary and stealing, although the suspended sentence was ultimately continued with an extended operational period. No breach action was taken against the five most prolific offenders, who committed between 44 and 83 offences in breach. One offender received a wholly suspended sentence on condition of good behaviour and that he commit no offence of dishonesty. Although most of his offending was minor in nature, namely, 71 traffic offences and failure to pay fines, as well as one count of stealing, it is desirable that such an offender be brought back before court to determine the appropriate course of action. In fact, failure to do so may encourage offenders to perceive a suspended sentence as a slap on the wrist. This may in turn promote further offending, in the belief that breach action will not be pursued.

It is in this context interesting to note the recent findings of the SAC (2005) that defendants charged with a single breach offence were more likely to have their sentence activated than those with multiple breach offences. In the present study, the seven offenders who did have breach action taken committed more offences than offenders in breach overall: the mean number of offences committed by the 126 offenders in breach was 12.2, compared with a mean of 14.4 for the seven offenders sentenced for breach. The median figures were 7 and 13 respectively. This suggests that more prolific offenders may face a somewhat greater chance of being brought back before court for breach proceedings than those committing fewer offences, though there is still an overwhelming chance that prolific offenders will not be required to face the consequences of their breaches.

Examination by Key Sentencing Variables

Table 3 sets out the breach rates for a number of key variables, namely, the type of index offence, the offender's age, gender and prior criminal record and the length of the suspended sentence and operational period.

Table 3: Breach Rates for Key Offender and Offence Characteristics

	Partly Suspended		Wholly Suspended	
Characteristic	**%**	**N**	**%**	**N**
Index offence		*81*		*229**
Violence	41.1	21	42.9	56
Sexual assault	15.4	3	33.3	13
Robbery	73.3	5	40.0	15
Property	43.0	38	42.1	79
Drugs	42.3	6	33.3	26
Other	32.5	8	25.0	40
Age		*79*		*225**
18-24	55.4	29	48.2	101
25-34	36.8	23	47.8	57
35-44	32.3	21	28.6	31
45-54	16.7	2	0.0	30
55+	16.7	4	0.0	6
Gender		*81*		*229*
Male	39.8	66	43.9	186
Female	44.1	15	20.0	43
Prior record		*78**		*221**
Nil	27.6	32	18.8	116
Minor	55.0	29	37.9	80
Significant	52.0	17	82.4	25
Sentence length		*81**		*229*
0 > 6 m	42.0	9	22.2	112
6 > 12 m	42.2	22	68.2	83
12 > 18 m	37.0	23	26.1	27
18 – 24 m	28.6	27	33.3	7
Length of operational period		*81*		*229**
< 2 y	59.0	15	46.7	39
2 y	34.1	53	37.7	135
> 2 y	45.5	13	38.5	55

* denotes statistical significant ($p < .05$)

Offence Type

As set out in Table 3, wholly suspended sentences imposed for robbery were most likely (73%) and for sexual offences least likely (15%) to be breached. For partly suspended sentences, by contrast, 'other' offences were least likely to be breached (25%), while violence offences were most likely to be breached (43%). The differences in breach rates on the basis of offence type were significant for wholly suspended sentences. Due to the small numbers of partly suspended sentences imposed for offences other than violence and property, no meaningful statistical analysis can be undertaken on the basis of offence type.

The findings for wholly suspended sentences accord with recent Canadian data indicating that breach rates were highest for robbery and burglary offences and lowest for sexual assault, drug and traffic offences (Statistics Canada 2006). The data most recently analysed by the SAC also indicate that a suspended sentence imposed in the higher courts for armed robbery was most likely to be breached (22%), while there were no breaches for sexual offences (Turner 2007). The SAC had earlier found (2005) that breach rates were highest for property offences (57%) and lowest for drug offences (11%).

Age

Offenders were less likely to breach their suspended sentence, the older they were at the time of the index sentence. Over half of 18-24-year-olds (55%) on a wholly suspended sentence breached, compared with only 17% of offenders aged 45 and over; 48% of offenders on a partly suspended sentence aged 18-34 breached, compared with no offenders aged 45 and over. The mean age for offenders who breached their sentence was 27, with a median of 23, compared with 33 and 30 respectively for those not in breach.

These findings conform with findings from the NSW Judicial Commission that the median age of offenders who successfully completed their sentence was higher than those whose sentence was breached and revoked (Potas, Eyland & Munro 2005). The SAC also recently found that offenders aged under 25 were more likely to breach their sentence than those aged 25 and over (Turner 2007). However, it should be noted that desistance from crime appears to be a function of age (eg Holland, Pointon & Ross 2007; Jones et al. 2006; Lloyd, Mair & Hough 1994; May 1999; Moffatt & Poynton 2007; Nagin & Farrington 1992; Spier 2002). Accordingly, this result should therefore not be taken as meaning that suspended sentences are an inappropriate sentencing disposition for young offenders.

Gender

In its Discussion Paper, the SAC (2005) found that women were overrepresented on breach in the higher courts but equally represented in the Magistrates' Court, while more recent data indicate higher breach rates for men in the Magistrates' Court and lower rates in the higher courts (Turner 2007). In the present study, men were slightly more likely to breach than women (41% vs 38%) but this difference was not statistically significant. Men were more likely to breach partly rather than wholly suspended sentences (44% vs 40%), while women were much more likely to breach wholly rather than partly suspended sentences (44% vs 20%). A possible explanation for this finding is difference in prior record – 67% of women on a partly suspended sentence had no prior record, compared with 50% of women on a wholly suspended sentence.

Although the numbers are clearly too small to infer that women are less likely to have breach action taken against them, only one of the actioned cases involved a female offender. In this context, it should be noted that the SAC (2005) found that in the Victorian Supreme Court, women were more likely than men to have their sentence activated, but the reverse

was the case in the Magistrates' Court. Recent Canadian research found that women were less likely than men to be admitted to custody following a breach of conditional sentence (Statistics Canada 2006).

Prior Record

Unsurprisingly, there were significant differences in breach rates on the basis of the offender's prior criminal record. As set out in Table 3, an offender with a significant prior record was more than four times more likely to breach their partly suspended sentence than a first offender (82% vs 19%). First offenders for both types of sentence were least likely to breach, while offenders with a minor record on a wholly suspended sentence were in fact slightly more likely to breach than those with a significant record (55% vs 52%). These findings generally conform with those of Oatham and Simon (1972), who found prior offending strongly associated with breach: 11% of male first offenders breached, compared with 71% for men with five or more previous convictions.

Somewhat unexpectedly, only two of the offenders against whom breach action was taken had significant prior records. Two had no prior record, a further two had a minor record and there was no information provided in respect of one offender.

Sentence Length

There was no statistically significant difference in breach rates on the basis of sentence length for wholly suspended sentences, but there was for partly suspended sentences, with sentences of 6>12 months particularly likely to be breached (68%). Interestingly, the longest wholly suspended sentences imposed were least likely to be breached (29%), compared with 42% for sentences of up to 12 months. These findings are broadly comparable with Tait's findings (1995) that offenders on a sentence of more than nine but less than 12 months were most likely to breach (29%), compared with only 16% of sentences of less than three months. The SAC also found (2005) that in the higher courts, 'the longer the imprisonment term suspended, the lower the breach rate and the less likely it is that a breach will occur', although there was no such nexus for the Magistrates' Courts.

Length of Operational Period

In Tait's study (1995), the length of the operational period was the most significant factor on breach, with logic dictating that 'the longer the period, the longer the person is at risk of breaching a suspended sentence'. The SAC (2005) also found a positive relationship between the length of the operational period and the likelihood of breach in the higher courts. Earlier research by Oatham and Simon (1972), by contrast, found that breaches were most likely to occur early in the operational period, suggesting that reducing the maximum operational period would have little effect on breach rates. Research by the NSW Judicial Commission on supervised suspended sentences found no correlation between length of supervision and completion success (Potas, Eyland & Munro 2005).

In the present study, 61% of all operational periods were set at exactly two years, so sentences with an operational period of this length were compared with those where it was set at either less than or more than two years. As the data presented in Table 3 demonstrate, sentences with an operational period of less than two years were most likely to be breached, while an operational period of exactly two years was least likely to be breached. However these differences were only statistically significant for wholly suspended sentences.

Logic would also seem to dictate that the longer the period at risk, the more offences are likely to be committed. There was however no clear relationship between length of

operational period and the number of offences committed, as Table 4 demonstrates. The median number of offences committed decreased as the operational period increased, while the mean number of offences was highest for sentences with the shortest operational period and lowest for sentences with an operational period of exactly two years.

Table 4: Number of Offences Committed by Length of Operational Period

Length of operational period	Mean	Median
< 2 years (n=32)	15.8	9
2 years (n=87)	8.5	5
> 2 years (n=35	10.3	6

Analysis of Relevant Time Periods

Table 5: Time to Reoffend (Days)

	Partly suspended sentence (n=37)			Wholly suspended sentence (n=113)		
	Range	**Median**	**Mean**	**Range**	**Median**	**Mean**
Time at risk until first offence	32-573	169	203	4-953	152	236
Time from first offence to conviction for that offence	23-630	192	186	22-1,147	240	261
Time at risk until conviction for first offence	110-854	369	389	56-1,373	412	500

Time to Re-offend

In order to further examine the relevance of the length of time at risk to offending, how long it took for an offender to commit their first offence after the imposition of the sentence (for wholly suspended sentences) or release from custody (for partly suspended sentences) was examined.[6] As Table 5 demonstrates, offenders on a wholly suspended sentence had a broader range in their offending period than those on a partly suspended sentence. For both groups, the mean period at risk before committing their first offence was about seven months (203-236 days), with a median period of about five months, thereby suggesting any changes to maximum operational periods will have little impact on re-offending patterns.[7]

---

[6] Not all first offences committed would have been imprisonable ones which could have been regarded as a breach of sentence, a detail which became apparent only after all the data had been gathered. Any future research should therefore record the date of the commission of the first imprisonable offence.

[7] In one case, however, the offender first offended after more than two years and seven months on a suspended sentence with an operational period of three years. It is likely that if his operational period had been two years, he would not have breached the sentence at all.

Time to be Reconvicted

Another interesting factor is the time it takes for the first offence the offender commits on the suspended sentence to result in a conviction, as this may be the first time that the offender is forced to deal with the consequences of their conduct. Theoretically at least, this will often also signal the first opportunity for the prosecuting authorities to initiate breach proceedings. For reasons which are not clear on the data presented in Table 5, offenders on a wholly suspended sentence not only had a broader range, but also experienced longer delays to conviction. On average, offenders on a partly suspended sentence were reconvicted for the first offence committed after their release from custody after 186 days, whereas for offenders on a wholly suspended sentence it took 261 days to be convicted for the first offence committed on the suspended sentence.

Table 5 also sets out the time between becoming at risk of re-offending and the date of conviction for the first offence committed while at risk. Offenders on a partly suspended sentence who committed further offences were convicted after a mean of 389 days from their release from custody, while offenders on a wholly suspended sentence took 500 days to be convicted. In the absence of rigorous prosecution of breaches of a suspended sentence, such delays may encourage offenders in thinking that there will be no adverse consequences from their continued offending while on a suspended sentence.

Time for Breach Action to be Taken

Seven actioned cases were analysed in order to ascertain the time it took from when the offender was convicted for the first offence committed while on the suspended sentence until the breach proceedings were heard. This analysis demonstrates that it took between 41 and 1,148 days after conviction for the first offence committed during the operational period for the breach to be heard, with a mean of 334 days and median of 197 days. In other words, although it was possible for breach proceedings to be heard expeditiously (41 days), it took almost a year on average after the conviction for the first offence was entered for the matter to be brought back to court.[8] Although deterrence research generally focuses on the certainty and severity of punishment, celerity is also a key issue. Clearly, lengthy delays will only reinforce a perception that a suspended sentence is a mere slap on the wrist and enable an offender to continue to offend with impunity. To this end, the TLRI has recommended that the prosecution be given the power to make an oral application at the time of sentence of the breaching offence for the breach to be dealt with simultaneously or following an adjournment (2008:119).

Finally, examination of the seven cases where breach action was taken indicates that it took between 439 and 1,536 days from the imposition of the suspended sentence to the time when breach action was taken, with a median time lag of 1,076 days and a mean period of 976 days. These data suggest for any future analysis that a follow-up period of five years (1,826 days), as was adopted by the SAC in its study, would capture all instances of offending in breach of the suspended sentence and judicial action in respect of such breaches.

---

[8] As set out above, some of these convictions were not imprisonable and therefore may not have enlivened the power to initiate breach action. Further research is required to determine the time to breach proceedings for imprisonable offences.

Conclusion

This article presents a breach analysis of 310 suspended sentences imposed in the Tasmanian Supreme Court over a two year period. The policies and procedures for dealing with breaches are examined and my discussion is informed by discussions with prosecuting officers.

The principal finding of this analysis is that there is an overwhelming lack of action taken by the prosecuting authorities in Tasmania in respect of breached sentences. In fact, breach action is taken in only a very small proportion of cases, with numerous serious examples of offending going unprosecuted. This failure to deal appropriately with breached sentences not only reduces the effectiveness of the individual sentence, but may undermine confidence in the criminal justice system as a whole. The TLRI has said of these findings that '[q]uite clearly a situation in which only five per cent of breached orders result in proceedings is unacceptable. It makes a farce of the suspended sentence – the sword of Damocles is barely a butter knife' (2008:118). As the TLRI noted, the fact that the certainty of being caught has a stronger deterrent effect than the severity of the punishment (see von Hirsch et al. 1999) underlies the importance of ensuring that breach proceedings are not lax.

It is acknowledged that it might be inadvisable and impracticable to initiate proceedings in all cases of apparent breach. Some quite minor offences are punishable by imprisonment, and would therefore technically enliven the discretion to take action, but would be an inappropriate use of limited prosecution resources. By way of example, swearing or using indecent language in a public place or within the hearing of any person in that place is subject to a prison sentence of three months (*Police Offences Act* 1935 (Tas) s12), while placing dangerous junk such as a wardrobe in a public place attracts a penalty of six months (s19AA). It should be noted, however that the data examined above indicate that only 42% of breaching offences were minor.

It is highly undesirable that there be so significant a disjunction between policy and practice. If there is no intention by the prosecuting authorities to take action in all cases where the offender has committed an imprisonable offence or breached an express condition of the suspended sentence, then it may be appropriate that the legislation be amended to reflect the terms on which breach action is in fact likely to be taken, a proposition which the DPP regarded in his consultation with me as 'a reasonable point'.

Overall, there is clearly a need for better case management for dealing with breaches. If the lack of prosecutorial action were known to offenders, it would make for a very blunt Sword of Damocles. The failure to prosecute breaches may contribute to a legitimate public perception that suspended sentences are a mere slap on the wrist.

In order to rectify the current situation, the DPP suggested the need for computer software which presents an automatic notification when an offender on a suspended sentence commits a further imprisonable offence, a suggestion supported by the Police Prosecution Service. It is beyond the scope of this discussion to propose a model which will most efficiently and effectively ensure that breaches are dealt with appropriately, but this analysis highlights the need for better processes for dealing with breaches, including consideration of the use of computer software to automatically notify of apparent breaches. The Tasmanian DPP referred to the findings of this research in his most recent annual report, noting that although his office does not have direct involvement with the recording system of crimes and offences and therefore cannot develop any capacity for electronic capture and enforcement of breach proceedings, '[i]t could be that more summary and

efficient triggers for breach proceedings, to arise at the instance of the magistrate, judge or prosecutor who is seized of a matter involving an apparent breach, could be refined to provide a workable improvement, if not a complete solution' (Tasmanian Director of Public Prosecutions 2009:4).

There is also a need to improve communication about breaches between the relevant stakeholder groups in order to ensure that breaches are identified and proceedings brought more effectively and expeditiously. These proposals have been adopted by the TLRI (2008:119).

Finally, it would appear that no data are currently maintained in Tasmania about the incidence of breaches of sentencing orders, which means that judicial officers are sentencing in the absence of relevant information. The TLRI has recommended that the government allocate funding for the publication of easily accessible and digestible general crime and sentencing information including annual sentencing statistics to promote public understanding of crime and sentencing matters (2008: Recommendation 83). Future research should also examine the incidence of breaches and prosecution of such breaches in the Magistrates' Court and the impact of supervision on breach rates.

The present research findings constitute a significant contribution to the empirical knowledge on breaches of suspended sentences in Tasmania and informed the TLRI in its recommendations in respect of such sentences. These findings also lay the foundation for more effective sentencing practices and research more generally by filling a gap in the understanding of administrative processes for dealing with breaches of this controversial sentencing disposition.

Acknowledgments

I am grateful to Professor Kate Warner, Professor Arie Freiberg, Professor Julian Roberts, George Zdenkowski and Terese Henning for their comments on earlier drafts of the research reported in this article. I am also grateful to the Tasmanian Institute of Law Enforcement Studies and the Tasmanian Department of Correctional Services for providing access to offenders' criminal records. Data for this research were collected under a grant from the Australian Research Council and were subject to ethics approval. The views and any errors contained in the article are the author's own.

Cases

Coleman v Director of Public Prosecutions (2002) 5 VR 393

R v Brady (1998) 121 CCC (3d) 504

References

Andersson C 2003 'Development of a National Offence Index for the Ranking of Offences' (Paper presented at the Evaluation in Crime and Justice: Trends and Methods Conference 24-25 March Canberra)

Ashworth A 1983 *Sentencing and Penal Policy* Weidenfeld and Nicolson London

Bartels L 2007 'The Use of Suspended Sentences in Australia: Unsheathing the Sword of Damocles' *Criminal Law Journal* vol 31 pp 113-131

Bartels L 2008 *Sword or Feather? The Use and Utility of Suspended Sentences in Tasmania* Unpublished PhD Thesis Faculty of Law University of Tasmania

Bartels L 2009 'The Weight of the Sword of Damocles: A Reconviction Analysis of Suspended Sentences in Tasmania' *Australian and New Zealand Journal of Criminology* vol 42 pp 71-100

Bartels L 2009 *Suspended Sentences in Tasmania: Key Research Findings* Trends and Issues in Crime and Criminal Justice No 377 Australian Institute of Criminology Canberra

Bottoms A 1987 'Limiting Prison Use: Experience in England and Wales' *Howard Journal of Criminal Justice* vol 26 pp 171-202

Brignell G & Poletti P 2003 *Suspended Sentences in NSW* Sentencing Trends and Issues No 29 Judicial Commission of NSW Sydney

Corlett E Skrzypiec G & Hunter N 2005 *Offending Profiles of SA Drug Court Pilot Program 'Completors'* South Australia Office of Crime Statistics and Research Adelaide

Daunton-Fear M 1980 *Sentencing in South Australia* Law Book Company Sydney.

Doob A 2000 'Transforming the Punishment Environment: Understanding Public Views of What Should Be Accomplished at Sentencing' *Canadian Journal of Criminology* vol 32 pp 323-340

Edney R & Bagaric M *Australian Sentencing: Principles and Practice* Cambridge University Press Port Melbourne

Fox R & Freiberg A 1990 'Ranking Offence Seriousness in Reviewing Statutory Maximum Penalties' *Australian and New Zealand Journal of Criminology* vol 23 pp 165-191

Freiberg A & Ross S 1999 *Sentencing Reform and Penal Change: The Victorian Experience* Federation Press Sydney

Freiberg A 2002 *Pathways to Justice: Sentencing Review* Department of Justice Melbourne

Holland S Pointon K & Ross S 2007 *Who Returns to Prison? Patterns of Recidivism Among Prisoners Released from Custody in Victoria in 2002-03* Corrections Research Paper Series Paper No 1 Department of Justice Melbourne

Indermaur D 1990 *Perceptions of Crime Seriousness and Sentencing* Criminology Research Council Canberra

Jones C Hua J Donnelly H McHutchison J & Heggie K 2006 *Risk of Re-offending Among Parolees* Crime and Justice Bulletin No 91 NSW Bureau of Crime Statistics and Research Sydney

Lloyd C Mair G & Hough M 1994 *Explaining Reconviction Rates: A Critical Analysis* Research Study No 136 Home Office London

Mair M Cross N & Taylor S 2007 *The Use and Impact of the Community Order and Suspended Sentence Order* Community Sentence Series Centre for Crime and Justice Studies London

May C 1999 *Explaining Reconviction Following a Community Sentence: The Role of Social Factors* Research Study 192 Home Office London

Moffatt S & Poynton S 2007 *The Deterrent Effect of Higher Fines on Crime: Driving Offences* Crime and Justice Bulletin No 106 NSW Bureau of Crime Statistics and Research Sydney

Nagin D & Farrington D 1992 'The Onset and Persistence of Offending' *Criminology* vol 30 pp 501-524

Nagin D 1998 'Criminal Deterrence Research at the Outset of the Twenty-first Century' *Crime and Justice: A Review of Research* vol 23 pp 1-42

Oatham E & Simon F 1972 'Are Suspended Sentences Working?' *New Society*, vol 21, pp 233-235

Poletti P & Vignaendra S 2005 *Trends in the Use of Section 12 Suspended Sentences* Sentencing Trends and Issues No 34 Judicial Commission of New South Wales Sydney

Potas I Eyland S & Munro J 2005 *Successful Completion Rates for Supervised Sentencing Options* Sentencing Trends and Issues No 33 Judicial Commission of New South Wales Sydney

Roberts J & Gabor T 2004 'Living in the Shadow of Prison: Lessons from the Canadian Experience in Decarceration' *British Journal of Criminology* vol 44 pp 92-112

Samuels A 1974 'The Suspended Sentence: An Appraisal' *Justice of the Peace* vol 138 pp 400-402

Sentencing Advisory Council 2005 *Suspended Sentences: Discussion Paper* Melbourne

Sentencing Advisory Council 2008 *Suspended Sentences: Final Report – Part 2* Melbourne

Sherlock M 1970 'The Suspended Sentence: What Has Gone Wrong?' *New Law Journal* vol 120 pp 1144-1146

Skrzypiec G 2005 *Offending at 16 to 20 Years of Age* South Australia Office of Crime Statistics and Research Adelaide

Spier P 2002 *Conviction and Sentencing of Offenders in New Zealand: 1992 to 2001* Ministry of Justice Wellington

Statistics Canada 2006 'Outcomes of Probation and Conditional Sentence Supervision 2003/2004 to 2004/2005' *The Daily* 15 December

Tait D 1995 'The Invisible Sanction: Suspended Sentences in Victoria 1985-1991' *Australian and New Zealand Journal of Criminology* vol 28, pp 143- 162

Tasmania Law Reform Institute 2008 *Sentencing* Final Report No 11 Hobart

Tasmania Police 2007 *Manual* Hobart

Tasmanian Director of Public Prosecutions 2007 *Manual: Review of Orders* Hobart

Tasmanian Director of Public Prosecution 2009 *Annual Report 2008-9* Hobart

Turner N 2007 *Suspended Sentences in Victoria - A Statistical Profile* Sentencing Advisory Council Melbourne

von Hirsch A & Jareborg N 1991 'Gauging Criminal Harm: A Living-Standard Analysis' *Oxford Journal of Legal Studies* vol 11 pp 1-38

von Hirsch A Bottoms A Burney E Wikstrom P-O 1999 *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* Hart Publishing Oxford

Warner K 2002 *Sentencing* Issues Paper No 2 Tasmania Law Reform Institute Hobart

Warr M 1989 'What is the Perceived Seriousness of Crimes?' *Criminology* vol 27 pp 795-822