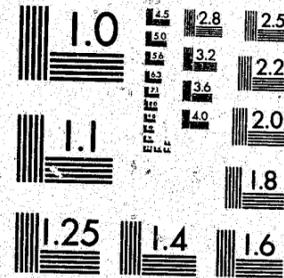


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# International Summaries

A Series of Selected Translations in Law Enforcement and Criminal Justice

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## Sentencing Requirements and Sentencing Practice in Serious Offense Cases — An Overview of the Years 1973-76 and Analysis of Decisions by Public Prosecutors

*The issue of sentencing disparity is seen from a different perspective in Europe, where judicial discretion has been severely limited. This summary examines the issues in The Netherlands.*

By Dr. O. J. Zoomer

### Introduction

In striving for greater consistency in sentencing, the Research and Documentation Center of the Dutch Ministry of Justice has conducted a variety of studies over the years. Research on sentencing began with the collection of data on actual sentencing inequities in criminal cases and led to consideration of the extent of the inequities and of the factors affecting them, e.g., prosecutorial discretion and criminal characteristics. A series of reports treated such subjects as prosecution policies, imposition of preventive detention, and offender characteristics relevant to prosecution decisions.

Incorporating the findings of those reports, this study examined the course of Dutch sentencing trends from 1973 to 1976, the sentencing differences for various crimes, and the sentencing differences within districts compared to among districts. The study also sought to determine whether these differences could be attributed to variations among districts in the type and seriousness of cases and what offense and offender characteristics were correlated to sentence types and severity. Finally, disparities between the sentence demanded by the prosecutor and the sentence actually imposed in the various districts, as well as the role of individual prosecutors involved in sentencing decisions, were assessed.

The study provides a statistical overview of serious crimes for the years in question, an analysis of criminal records, and an analysis of survey questionnaires completed by 94 prosecutors from various districts.

### Results of Statistical Analysis

Statistics on offenses, offenders, and criminal procedures were gathered from case files on burglary, extortion, armed robbery, manslaughter, murder, and rape for which sentences were imposed from 1973 through 1976. The study concentrated on 1,527 records from Den Haag, Den Bosch, and Amsterdam.

Not all districts and offenses studied were equally represented. Most offenses occurred fewer than 50 times, making any comparison of districts subject to reservations. In 90 percent of the cases, either conditional or unconditional prison sentences were imposed; the remainder consisted primarily of combinations of prison terms with fines or with preventive detention. Over the study period, the average severity of prison sentences increased or decreased slightly from year to year, paralleling variations in the percentage of unconditional sentences, i.e., sentences not subject to suspension or revision. The variations in the type and severity of sentences appeared to be a response to changes in the number of crimes committed rather than the result of policy changes.

Comparison of sentencing records by district revealed marked differences in types and severity of sentences imposed. The same was true of the relationship between sentences demanded and sentences actually imposed

*De strafvordering en strafbepaling in gevallen van zware criminaliteit—Een overzicht van de jaren 1973-1976 en een analyse van de beslissingen van officieren van justitie (NCJ 87677), 1981. (Netherlands Ministry of Justice, Research and Documentation Center) Translated from the Dutch by Kathleen Dell'Orto.*

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(50 percent conformity between sentences demanded and sentences actually imposed in Den Bosch compared to 18 percent in Haarlem). However, the differences in the degree to which the two types of sentences diverged were not consistent: the disparity was large for some offenses and small for others. The differences in penalties between years were considerably less pronounced.

Preventive detention, which can be imposed by the prosecutor in serious cases and is of varying duration, is practiced in Holland when justified by the circumstances of the offense. It was most common in Haarlem (92 percent) and least common in Alkmaar (61 percent). The high preventive detention rate in Haarlem did not appear to be associated with the relatively high level of serious offenses or with a higher level of sentences demanded than in other districts. However, the total percentage of unconditional sentences in Haarlem was one of the highest. Nor was the long duration of preventive detention in Den Haag and Den Bosch correlated to a high frequency of serious offenses or a high percentage of unconditional sentences. The percentage of convicted offenders in preventive detention during the study period rose from 76 percent in 1973 to 81 percent in 1976.

Use of background reports was most frequent in Roermond (82.5 percent) and least frequent in Amsterdam (44.7 percent). This may explain the higher rate of suspended or modified prison penalties and of special conditions ordered in conjunction with the sentence in Roermond than in Amsterdam.

Findings indicated that the court "tended toward the middle" in sentencing decisions. When the maximum penalty for an offense was high, the power of discretion in imposing penalties was applied liberally. The lower the maximum penalty, the less the discretionary penalty diverged from the maximum. The courts thus served as a corrective mechanism when penalties demanded were far above or below the average.

### Results of the Study of Case Files

To explain the observed differences in sentencing, offense and offender characteristics affecting the type and severity of sentences were examined. The analysis then sought to determine influences of districts and years operating independently of offender and offense characteristics. The goal was to identify disparities in sentencing policy. Offense data studied included type, seriousness, method of commission, and victim characteristics. Classes of information on offenders encompassed the personality of the offender, the offender's social circumstances at the time of the offense, and evidence of recidivism.

The study made the following assumptions for all offenses:

- The seriousness of the offense was the most significant factor affecting the severity of the sentence.
- The more serious a crime, the less weight was given to other factors in sentencing decisions.

- Lesser penalties were influenced by other variables relating to the offense and the offender, e.g., social circumstances of the offender.
- In less serious cases, the possibilities for social rehabilitation of the offender were more likely to be weighed against the interests of the victim and of society.
- Personality factors were more important than social factors in sentencing decisions for serious offenses.
- The effect of the victim's situation on sentencing decisions increased when the offender-victim confrontation was direct, especially if the offense was violent.

The study findings substantiated these assumptions for the offenses in question—burglary, extortion, armed robbery, manslaughter, murder, and rape.

**Offense and Offender Characteristics.** Only for the least serious offense considered, i.e., burglary, were the age of the offender and recidivism of importance. These variables especially influenced the kind of penalty imposed. The value of the stolen items and possession of firearms were also significant factors in burglary cases. Contrary to expectations, the seriousness of the victim's injuries had little effect on sentencing in extortion cases and only a limited effect in armed robbery cases. The results indicated that the seriousness of the offense in terms of financial damage and injury affected the sentence only when the damage or injury was intentional.

In the case of murder and manslaughter, victim characteristics had little effect on the severity of the penalty. When attention was focused on attempts alone, possession of a weapon and the offender-victim relationship, rather than the extent of injuries, were the most relevant factors for sentencing. Finally, three factors were especially significant for rape sentencing decisions: whether more than one sexual offense was involved, whether the rape was actual or attempted, and whether the offense was committed by one or several offenders. In addition, the location of the offense, i.e., whether inside a house or outdoors, had a decided influence on the kind of penalty.

In general, analysis established that the severity of the penalty could be predicted accurately from record data—more accurately than the type of penalty. The severity of the penalty was least predictable for burglary and rape, the offenses with the least severe penalties. This situation is probably the result of the broader categories for classifying the severe penalties, i.e., unconditional sentences of more than a year, which are common for serious offenses, as opposed to a variety of suspended and short-term unconditional sentences for "lesser" offenses. In addition, other factors, such as individual personality differences among prosecutors, may influence severity of penalties for "lesser" offenses more markedly than for serious offenses.

**Other Variables.** Legal procedures, such as preventive detention and background or psychiatric reports, also affected sentencing, probably because both these procedural variables and the sentences were influenced by the same offense and offender characteristics. In the most serious cases in which a psychiatric report was deemed necessary, the type of offense was a determining factor in decisions to impose preventive detention, and, at a later stage, the type of crime also swayed decisions to impose severe sentences such as long-term imprisonment. In cases of murder or manslaughter, preventive detention as a factor had predictive value for the kind but not the severity of penalty. For other offenses, preventive detention was more relevant to the severity than to the type of penalty. Lengthy preventive detention generally increased the severity of the penalty later imposed. The decision of prosecutors to impose preventive detention thus appeared to play a role in later decisions regarding penalties.

As a variable, the year of sentencing was of little use in predicting penalties. When district was considered as a variable, the kind of sentence was affected by district for burglary, extortion, and armed robbery, while the severity of penalty was affected by district for murder, manslaughter, and rape. However, sentencing disparities within districts were not of lesser magnitude than among districts. For all offenses, a number of the districts differed in sentencing decisions, but the small number of cases involved made it impossible to interpret the findings.

### Results From the Survey of Prosecutors

A significant general finding of the survey was that, in most cases, few factors were weighed in sentencing decisions. The factors considered relevant by prosecutors were essentially the same as those identified in the study of records. Seriousness was almost always cited, with method of commission (i.e., with or without a weapon) in second place. In cases of murder, manslaughter, and battery, the number of victims and use of weapons were especially important factors in determining crime seriousness. In addition, the circumstances leading to the offense were significant as mitigating factors for rape and other violent crimes, along with seriousness of the crime and injury to the victim. Material seriousness (i.e., damages incurred and injury to the victim and society), use of a weapon, and premeditation were aggravating factors in violent offenses. For property offenses such as burglary, seriousness, weapon use, and the degree of hard-core criminal involvement of the offender were decisive factors in sentencing decisions. The attitude of the offender was a relevant factor only in murder and manslaughter cases.

Aside from the factors mentioned already, very different factors played a role for each offense: The same factor was viewed as mitigating in one case and aggravating in others. The influence of background or psychiatric reports was limited.

The objective for penalties most commonly cited by prosecutors was moral retribution, especially in connec-

tion with burglary, extortion, murder, and manslaughter. The second most common objective, mentioned most frequently for rape and property offenses, was deterrence. Treatment and resocialization of the offender were named as objectives primarily in connection with murder, manslaughter, and rape.

Significant for the purposes of this study was the fact that the penalty first proposed by the public prosecutor was rarely modified after further review within the prosecutor's office or because of new insights gained by judges in court proceedings.

### Conclusions

This study was expected to provide a picture of sentencing practices for certain serious crimes and to contribute to a more equitable sentencing policy. The findings suggest that efforts to achieve a clear approach to sentencing for serious offenses is necessary. The hitherto accepted approach stresses, with some justification, the importance of individual sentences. According to this view, serious offenses do not lend themselves to clearly directed judicial policy: such cases are relatively rare, and different specific factors are relevant to each case. Furthermore, aspects of the offender's personality that have bearing on criminal responsibility must be taken into consideration.

The finding that at least the level of the penalty can be predicted from reports raised doubts about just how effective individualized disposition of serious cases is in practice. Although offender personality questions and thus criminal responsibility issues could be resolved through psychiatric reports, questionnaire results indicate that such reports are used in only half the cases. Background reports are more common, but are applied to sentencing decisions even less frequently than are psychiatric reports. Consequently, attainment of consistency in sentencing for serious offenses through such background and psychiatric reports cannot be regarded as possible or even desirable.

The alternative, attacking sentencing disparities on a statistical level, requires modification of the view that no two crimes are comparable. Offenses can be divided into categories of similar seriousness and type using criteria accepted within the public prosecutor's office. The points of similarity can be determined from factors relevant in sentencing. The next step should be to assign appropriate penalties to each of the categories established. For minor offenses such as driving under the influence, a limited number of factors for determining categories is used in setting appropriate sentences. More complex cases require consideration of as many aspects as possible by prosecutors making sentencing decisions. However, some agreement must be reached on the way in which various factors are to affect sentencing decisions—for example, to what degree youth should be considered a mitigating circumstance for a particular offense category.

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A practical aid in sentencing decisions would be a list of relevant factors to be weighed. This list should include the factors derived from reports on offenses and offenders as well as from psychiatric or background reports referred to in sentencing decisions. The factors can be grouped under such headings as "material seriousness of the offense" or "circumstances leading to the offense." Such a list would allow the prosecutor's office to describe offenses systematically.

The list would also allow the prosecutor to determine which factors are significant for sentencing and how much influence they should have on the sentence. Even if a particular prosecutor does not choose to render an opinion in such detail, the confrontation of opinions brought about in this fashion would still represent a step toward uniform disposition. It is in any case essential that the decisions and the reasons for them be clearly defined. In this way, a system of relevant characteristics and the appropriate penalties can be developed.

**END**