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Sentencing in the Netherlands. Taking risk-related offender characteristics into account

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There's more to sentencing than imprisonment

The effects of offender characteristics on multifarious sentencing outcomes¹

Sigrid van Wingerden & Johan van Wilsem

ABSTRACT

Sentencing research focusing solely on unsuspended imprisonment does not do justice to the practice of sentencing, where so many other types of punishment are also imposed, and often simultaneously. To investigate the extent to which this imprisonment bias might generate incomplete and consequently biased findings when testing the focal concerns theory, we compare the effects of offender characteristics on imprisonment, other types of punishment, and a combination of various sanctions. The findings suggest that the effects of offender characteristics differ for each type of punishment. If combinations of various sanctions are included, some offender characteristics no longer have mitigating or aggravating effects and might even have the reverse effects. This is why future sentencing research should aim to include all the types of sanctions.

6.1 INTRODUCTION

For both judges who impose sanctions and for researchers sentencing is no simple matter. It is complex because of the ambiguity as to what a fair sentence is, and because of the numerous sentencing options within the formal sentencing framework. The Penal Code enables judges to combine various principal and accessory punishments and measures, which can also be imposed in various modalities (suspended or unsuspended).² The law gives judges ample

1 An earlier version of this chapter has been published in Dutch as: 'Straffen omvat meer dan gevangenisstraf. De effecten van daderkenmerken op de straftoemeting voor het gehele sanctiepakket', *Tijdschrift voor Criminologie* (2014, (56) 1, p. 3-23) (DOI: 10.5553/TvC/0165182X2014056001001).

2 The range of sanctions has also been expanded to include sanctions based on special laws, e.g. disqualifying someone from driving (Article 179 Roads and Traffic Act) and closing down a company (Article 7 Sub C Economic Offenses Act) or placing it under state supervision (Article 8 Part 2 Economic Offenses Act).

discretionary power to decide which sentence to impose. The wide range of sanctions combined with the judges' ample sentencing freedom has the advantage of equipping judges to individualize the sentences, which are thus made-to-order. At the same time though, it means the sentencing process is not transparent and can lead to unjustified inequality. According to Van Kalmthout (2000, p. 33), 'from a perspective of equality and legitimacy', present-day sentencing 'can hardly be called acceptable'. Not only does this inequality detract from the legitimacy of the sentencing, it detracts from the legitimacy of Dutch criminal law as a whole. This is why research into sentencing is so important; revealing the factors in the sentencing process can contribute towards a more transparent administration of justice and provide tools to improve the sentencing consistency.

In recent decades, quantitative sentencing studies have greatly increased our knowledge about sentencing but are generally characterized by two limitations. Firstly, they often only focus on unsuspended prison sentences and not on *other types of sanctions or modalities*. Secondly, they fail to adequately address the *combinations* of sanctions that are so widely imposed. In the Netherlands in 2011, offenders were sentenced to an average of 1.4 types of sanctions not including the suspended modalities (Van Rosmalen, Kalidien, & De Heer-De Lange, 2012). Due to these limitations, the severity of the *total imposed sanction* is not adequately addressed in quantitative sentencing studies.³ This not only applies to research in the Netherlands; in the past three decades studies in the United States have rarely if ever focused on combinations of sanctions, though judges do impose them.⁴

After all, sanction severity not only manifests itself in unsuspended prison sentences, it is also evident in other types or combinations of punishment. Under certain circumstances, other types of punishment can even be viewed as more severe than unsuspended prison sentences. Survey studies on the perceived severity of various sanction types and lengths, the *penal metrics* or *exchange rates*, show that 75% of the offenders perceive a sizeable fine or a lengthy suspended sentence as more severe punishment than a short prison sentence (Spelman, 1995) and that offenders consider a suspended sentence of three years more severe than an unsuspended prison sentence of a month (Sebba & Nathan, 1984). Other studies show for example that if given a choice between five years of probation or one year in prison, almost half the offenders

3 The first limitation applies less to *qualitative* sentencing studies where judges are interviewed, since they are often asked what sentence they would impose in the form of an open question (see e.g. Beyens, 2000; Van Wingerden et al., 2011). This makes it easy to see why judges do or do not impose certain sentences. But qualitative studies fail to devote enough attention to *combinations* of sanctions or how the types or combinations of sanctions are interrelated. No precise amount of punishment is studied (Beyens 2000).

4 In the 1970s and 1980s, studies were conducted that classified various types and combinations of sanctions, e.g. on a sanction severity scale of 93 points going from a suspended sentence to a life sentence in prison or the death penalty (Spohn et al., 1985; Uhlman, 1978).

would prefer to serve the time in prison (Crouch, 1993). In addition, due to its unspecified duration, the Dutch measure of placement in an institution for mentally ill offenders is perceived as a more severe sanction than a prison sentence (Heidanus, 2013).

Earlier quantitative studies present an incomplete picture of sentencing practice, since they do not address the entire range of sanctions. Factors assumed in earlier studies to play a role in sentencing might well appear to play a different role if combinations with other sanctions are also taken into account. Offenders addicted to drugs might for example run less of a risk of a prison sentence because the measure of placement in an institution for habitual offenders is more likely to be imposed. If this measure is included in the study, drug addiction might no longer be viewed as a mitigating circumstance.

This is why this paper examines the extent to which the findings of earlier sentencing studies hold up or alter if sentencing research is expanded from only the unsuspended prison sentence to the total sentence imposed. Since the judge makes a selection from the total range of sanctions to suit each offender, we focus particularly on the effects of individual offender characteristics. We examine the extent to which the effects of offender characteristics hold up if the analyses do not solely focus on unsuspended prison sentences, but also include (combinations of) other sanctions imposed by the judge. This enables us to pose the following question: *To what extent do we need to reconsider our knowledge about offender characteristics as sentencing factors when the scope of the research is expanded to include the entire range of sanctions?*

6.2 EARLIER SENTENCING STUDIES

Quantitative sentencing research has shown that many offender characteristics play a role in the judges' sentencing decisions. Recent studies in the Netherlands show for example that women are less severely punished than men (Boone & Korf, 2010; Johnson et al., 2010; Van Wingerden et al., 2011). In addition, offenders who were born in the Netherlands or look Dutch are less severely punished, but the effects of age and the offenders' prior criminal record are less unambiguous (Johnson et al., 2010; Van Wingerden et al., 2011; Wermink et al., 2012). The offender's social circumstances are also related to the sentencing. Offenders who are unemployed, have criminogenic friendship ties or an alcohol problem are more severely punished (Van Wingerden et al., 2011).

These Dutch findings are similar to those in the United States, where sentencing research originated. These studies have also shown less severe punishment for women (Curry, 2010; Doerner & Demuth, 2010; Koons-Wit, 2002), young offenders (Doerner & Demuth, 2010; Spohn & Holleran, 2000) and also the oldest ones (cf. a curvilinear age effect) (Steffensmeier et al., 1995).

Blacks and Hispanics are punished more severely than whites, although these effects are frequently indirect or play a role in interaction with other factors (Spohn, 2000); in particular young, black men are punished the most severely (Steffensmeier et al., 1998). The social circumstances of the offenders are however rarely taken into consideration in American sentencing studies. The studies that do take them into consideration often fail to present an unambiguous picture, for example as regards educational level (Koons-Wit, 2002; Wooldredge, 2010) and labour market position (Chiricos & Bales, 1991; Myers, 1988).

As is noted above, earlier quantitative sentencing research in the Netherlands failed however to do adequate justice to the complexity of the wide range of sanctions. In some studies, no attention at all is devoted to any sanctions other than unsuspended prison sentences (Komen & Van Schooten, 2006; Van Tulder & Diephuis, 2009; Wermink et al., 2012). Since other sanctions and combinations of sanctions are overlooked, this leads to an incomplete survey of sentencing. Other studies do take various types of sanctions into consideration, for example by separately analyzing different types of principal punishments and modalities (e.g. Jongman et al., 1984; Van der Werff & Van der Zee-Nefkens, 1978; Van Wingerden et al., 2011), but here again, without doing adequate justice to combinations of sanctions. There are also studies that make an effort to address combinations of sanctions by using other sanction types such as the placement in an institution for the mentally ill (Tbs), as independent variables in the regression models estimating the chance and length of the unsuspended prison sentence (Johnson et al., 2010; Van Tulder & Van der Schaaf, 2012; Van Wingerden & Nieuwbeerta, 2010). This however entails issues of endogeneity; it assumes that the judge first decides whether to the order the placement in an institution for the mentally ill and only then addresses the matter of whether to impose an unsuspended prison sentence. This sequence of decisions is not plausible; in actual practice the judge would make the decisions integrally rather than independently of each other.

In view of the focus in earlier research on the unsuspended prison sentence, studies that include the total range of sanctions could produce new testing results from the *focal concerns theory* perspective (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998), the most widely used framework in sentencing studies. From this perspective, the judges' decision-making is constrained by limited information and time and in this context, the court's judgment can be either consciously or unconsciously influenced by amongst others earlier experiences with comparable cases, prevalent stereotypes and prejudices (Albonetti, 1991). Under this assumption of bounded rationality, three focal concerns are believed to lead the court's judgment: (1) the blameworthiness of the offender; (2) the extent to which the suspect is dangerous and society needs to be protected from him; (3) practical considerations (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998). These practical considerations can pertain to such issues as insufficient prison capacity, the court not having

time, or problems taking care of the offender's children in the event of a prison sentence. Many of the findings related to the importance of offender characteristics in the matter of sentencing are viewed from this focal concerns perspective. Given the second focal concern that the judge is trying to protect society from danger in the future, the fact for example that young men of non-Western descent are more likely to be sentenced to prison sentences and to longer ones is interpreted as a confirmation of the assumption that groups whose circumstances more frequently tend to promote recidivism are sentenced to more severe punishment (e.g. Steffensmeier & Demuth, 2000).

Since in Dutch jurisprudence, judges also often impose other sanctions in addition to prison sentences as well as combinations of sanctions, the question is what this means when it comes to testing hypotheses within the focal concerns theory. Which social groups are these other sanctions imposed upon and how severe are these sanctions? From the second focal concern perspective, i.e. preventing danger and protecting society, the prediction would be that these are the same groups that are more likely to be sentenced to prison sentences and to longer prison terms, such as young men of non-Western descent in unfavorable social circumstances. But from the perspective of the third focal concern, i.e. practical considerations, other predictions might be made. Offenders of non-Western descent might be likely to be sentenced to prison, but since language barriers are sometimes a problem, they are less likely to be sentenced to community service orders. Similarly, shorter prison sentences for women, perhaps because they need to take care of their children, can be counterbalanced by longer periods of community service. If the entire range of sanctions is taken into consideration, there are scenarios where it might not be so much a question of less severe sentencing as of counterbalancing the punishment alternatives in the sense that if one sanction is imposed less frequently or less severely for a particular social group, another sanction would be imposed more. In a scenario of this kind, the differences between social groups as regards the total punishment would be smaller or disappear altogether compared with punishment patterns based on unsuspended prison sentences.

This is why some researchers seek a solution for addressing the entire range of sanctions by converting the imposed sanctions into sanction points. Two aspects are important in this connection, i.e. the conversion key used to relate various sanctions to each other and the number of types of sanctions and modalities involved. Earlier sentencing studies using sanction points almost always used the conversion key of the Public Prosecutor's decision supporting system BOS/Polaris⁵ (Berghuis, 1992; Berghuis & Mak, 2002; Bosmans & Pemberton, 2012; Lodewijks et al., 2010; Pemberton & Bosmans, 2013), where one

5 Indication Framework for Prosecution (*Netherlands Government Gazette* 2012, 26824). Different relations between incarceration and fines can be deduced however from the Penal Code and the National Consultation Board of Chairmen of Penal Sectors (LOVS) guidelines.

day in prison is equivalent to two hours of community service and a fine of 35 euros.⁶ As regards the second aspect, the types of sanctions and modalities included when calculating the sanction severity, the studies referred to above include the period of incarceration as well as the community service and fine. In his studies, Berghuis (1992; Berghuis & Mak, 2002) also includes the orders of placement in an institution for mentally ill offenders and in an institution for juveniles. The study by Assink et al. (2010) includes forfeiture and driving disqualifications and is the only study where suspended sanctions are taken into account when calculating the sanction severity.

6.3 METHOD

To determine the extent to which the effects of offender characteristics hold up if the analyses do not solely focus on unsuspended prison sentences and also focus on other sanctions imposed by the judge, perhaps in combination, firstly we study the effects of offender characteristics on separate types of sanctions. After all, the results of sentencing studies limited to unsuspended prison sentences can only be distorted if the offender characteristics have different effects on different types of sanctions and modalities.

The characteristics of the offense and the court proceedings, such as the severity of the criminal act, the duration of the pre-trial detention, and the district where the case is tried are included in the analyses as control variables. To gain insight into the differences in the effects of the offender characteristics on different types of sanctions, we constantly conduct multivariate regression analyses with the same independent variables (offense, trial and offender characteristics), but vary the dependent variables (various sanctions). In addition to the duration of the unsuspended prison sentence ($n=9,928$), we focus on the three other most common types of sanctions and modalities, i.e. the duration of the suspended prison sentence ($n=13,196$), the duration of the unsuspended community service ($n=8,674$) and the duration of the suspended community service ($n=2,492$). The selection effects are limited by including offenders not sentenced to the punishment in question in the analysis as having a sentence duration of zero. Since the sentence duration is not normally dis-

6 Since these guidelines are regularly updated, the studies referred to above are still based upon older versions, where one day of incarceration is equivalent to a fine of twenty-three, twenty-five or twenty-nine euros. Van Tulder (2011) deviates from the BOS/Polaris guidelines by assuming that one day of incarceration is equivalent to fifty euros. He also uses a conversion key that he feels is more in keeping with "society's perceptions", i.e. one day of incarceration is considered equivalent to eight hours of community service. Assink et al. (2010, Assink & Pepels 2010) also deviate from the Decision Supporting System / Polaris. They consider one day of incarceration equivalent to ten hours of community service and a fine of 250 euros. Moreover, a fixed number of sanction points is allocated for incarceration.

tributed, we conduct the analyses on the natural logarithm of the sentence duration.⁷ To determine the extent to which the effects differ between the models, we examine whether an effect is statistically significant ($p < 0.05$) in one model but not in the other. In addition, in the case of effects that are statistically significant in both the models, we see whether the direction of the relations is the same.

Although comparing the effects of offender characteristics demonstrates the extent to which they differ for different types of sanctions, it still fails to take combinations of sanctions into consideration so that the analyses still fail to do justice to the entire sanction. This is why the second model focuses on the total range of sanctions with the sanctions and possible combinations of sanctions converted into *sanction points*.⁸ Firstly, we consider the unsuspended prison sentence, community service and fine. To do so, as in numerous other studies, we use the conversion key of the BOS/Polaris, i.e. one day of incarceration is equivalent to two hours of community service and a fine of 35 euros.⁹ Secondly, we also include the suspended version of these sentences. Following the example of Assink et al. (2010), we calculate the severity of suspended sentences by multiplying the sanction severity if the sentence were unsuspended by the chance of the offender committing another offense within two years.¹⁰ For adult offenders, this is 0.275 (Wartna et al., 2011). Lastly, we include the measures stipulating the institutionalization of habitual offenders and mentally ill offenders when calculating the sanction severity. Since as a rule the measure stipulating the institutionalization of habitual offenders goes into effect for two years, this measure is considered equivalent to incarceration for two years (730 days). The measure stipulating institutionalization of mentally ill offenders is considered equivalent to incarceration for 1,864 days, i.e. the average length of stay in 2005-2007 of 5.1 years (Nagtegaal et al., 2011).

7 Since it is impossible to calculate a natural logarithm of zero, first a sentence duration of one is added in all the cases (cf. Johnson & Kurlychek 2012).

8 We also conduct factor analyses to see whether the underlying *sanction factors* can be discovered in the various sanction types and severities. This does not turn out to be the case.

9 The same analyses are also conducted with a different conversion key (one day of incarceration is equivalent to eight hours of community service and a fine of eighty euros). The results largely coincide with the results based on the other conversion key. However, offenders with at least three juvenile convictions are now punished significantly more severely than offenders with no prior convictions and offenders born outside of Europe are no longer punished significantly differently than offenders born in the Netherlands. Lastly, offenders with problems in the fields of education and employment are now no longer punished significantly more severely, and offenders with problems in the field of family relations are now punished significantly less severely than offenders without these problems.

10 This period of two years is in keeping with the average duration of the probation of the offenders in our data of 2.04 years.

6.4 DATA

Every criminal case is different. To be able to compare the outcomes of criminal cases, as many of the characteristics as possible need to be controlled for. To conduct good sentencing research, the data set thus needs to contain detailed information about the offense, case processing and offender characteristics. In this study, sentencing is therefore examined based on data from the Recidivism Assessment Scales (RISC) file of three probation agencies (3RO) and the Public Prosecutor's data. In the RISC file, all risk assessments based on RISC from the period 2005-2007 are registered. The file contains a variety of characteristics and social circumstances of the offender that can be relevant to the sentencing. We linked the file to the registry of the Public Prosecutor, containing information on the cases' prosecution and sentencing outcomes in first instance. Merging the two data sets produces a file containing detailed information about offense, case processing and offender characteristics as well as about sentencing (N=22,031).¹¹ The descriptive statistics of the data are shown in Appendix 6.1.

Combinations of sanctions are quite common in the file. A total of 41,614 sanctions are imposed, an average of 1.9 for each offender.¹² Table 6.1 summarizes the combinations of sanctions; 72% of the offenders given an unsuspended prison sentence are also given a suspended prison sentence and 14% are given unsuspended community service as well. Only 18% of the offenders given an unsuspended prison sentence are given this punishment 'separately'.¹³ These statistics underline the relevance of studying the complete punishment in sentencing research.

11 See Van Wingerden et al. (2011) for an extensive description of the file.

12 The following sanctions are included: unsuspended and suspended principal punishments, accessory punishments, placement in an institution for mentally ill offenders, for habitual offenders, or for juveniles and driving disqualification.

13 Punishments are considered 'separate' if they are not imposed in combination with the sanctions in this table. Juvenile detention, Placement in an institution for juveniles and driving disqualifications are not included here.

Table 6.1. Combinations of sentencing types (N=22,031)

Type of Convictions or Sentences Types (N = 22,032)	Principal punishments						Accessory punishments				Measures	
	Imprisonment		Community Service		Fine		Disfranchisement	Forfeiture	Withdrawal from circulation	Tbs	ISD	
	Unsuspen- ded	Suspen- ded	Unsuspen- ded	Suspen- ded	Unsuspen- ded	Suspen- ded						
Total (N)	9,928	13,196	8,674	2,492	1,106	689	797	1,564	1,297	278	562	85.4
Separately (%)	18.2	10.5	14.7	39.2	25.9	60.8	1.3	.8	.0	12.6	85.4	
Principal punishments												
Imprisonment	-	54.3	16.1	2.6	9.0	2.9	19.6	78.7	68.7	85.6	7.7	
Unsuspen- ded	72.1	-	64.9	1.6	28.7	3.6	35.0	69.4	65.5	2.2	.0	
Suspended	14.0	42.7	-	55.3	12.7	6.4	51.2	27.1	32.0	.0	.0	
Community Service	.6	.3	15.9	-	7.2	1.2	8.3	2.8	4.0	.0	.0	
Unsuspen- ded	1.0	2.4	1.6	3.2	-	27.3	34.5	2.5	3.6	.4	.2	
Suspended	.2	.2	.5	.3	17.0	-	6.4	1.2	.4	.4	.0	
Accessory punishments												
Disfranchisement	1.6	2.2	4.7	2.6	24.9	7.4	-	3.4	1.5	.7	.0	
Forfeiture	12.4	8.2	4.9	1.8	3.5	2.6	6.6	-	27.4	10.4	4.4	
Measures												
Withdrawal from circulation	9.0	6.4	4.8	2.1	4.2	.7	2.5	22.7	-	11.5	2.5	
Tbs (institution for the mentally ill)	2.4	.0	.0	.0	.1	.1	.3	1.9	2.5	-	.0	
ISD (institution for habitual offenders)	.4	.0	.0	.0	.1	.0	.0	1.6	1.1	.0	-	
Note: The table has to be read vertically. Example: of the 8,674 unsuspended community service orders 16.1% is imposed in combination with an unsuspended imprisonment sentence. Because judges can combine more than two punishment types the percentages in the columns add up to more than 100%.												

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6.5 RESULTS

6.5.1 Sentencing effects of offender characteristics on incarceration and other sanctions

Table 6.2 shows the results of the regression analyses for various sanctions. In some respects, the effects of offender characteristics on the duration of unsuspended prison sentences exhibit similarities to their effects on other types of sanctions. For example, women are sentenced to significantly shorter unsuspended as well as suspended terms in prison than men. However, it is not true of any offender characteristic at all that it has the same significant effect on all four types of sanctions. It is not uncommon for counterbalancing to occur; an offender characteristic might coincide with a less severe sentence for one type of sanction, and a more severe one for another. Thus women might get a shorter prison sentence, but longer suspended community service. In addition, offenders under the age of 21 get shorter unsuspended prison sentences than offenders between the ages of 21 and 30, but longer suspended ones. What is more, unlike the case with unsuspended prison sentences, the offenders' country of birth does not play a role in the duration of the suspended prison sentence, and the duration of community service is *shorter* for offenders born abroad.¹⁴ The effects of the offenders' criminal record are different for each type of sanction. For example, for offenders with at least three juvenile convictions prison terms are longer but community service terms are shorter. The effects of the offenders' social circumstances are also not the same for all the types of sanctions. Problems in the field of housing, education and employment lengthen the duration of incarceration but shorten the duration of community service. And problems related to emotional well-being tend to coincide with shorter unsuspended prison and community service sentences but bear no significant relation to the suspended variants. There are also differences in the effects as regards problems in the fields of thinking patterns, behavior and skills. They do *not* bear a significant relation to the duration of unsuspended prison sentences, *lengthen* suspended prison sentences and *shorten* unsuspended community service sentences.

14 As regards placement in an institution for mentally ill offenders, there is also a different direction in the correlation between the offenders' country of birth and the sanction imposed. Offenders born abroad have significantly less of a chance of being placed in an institution for the mentally ill. (Due to a lack of space, the results regarding the placement in an institution for mentally ill offenders are not presented here, but are available upon request from the authors).

Table 6.2. OLS-regression analyses on the length of the different punishment types (N=22,031)

	Imprisonment		Community Services		Total
	Unsus. B	Susp. B	Unsus. B	Susp. B	B
Constant	.07	1.27***	2.11***	1.02***	2.43***
<i>Offense characteristics</i>					
Maximum penalty	.09***	.07***	.06***	-.02***	.10***
Maximum penalty unknown	.41***	-.56***	-.38**	-.25**	-.31***
Offense type of most serious offense (Ref=Assault)					
Intimidation	.23***	.05	-.22***	-.12***	-.01
Violent theft	.73***	.81***	-.11	-.21***	.52***
Vices	.31***	1.28***	.57***	-.35***	.84***
Homicide	.40***	.54***	.14	-.23***	.53***
Other violent crimes	.76***	1.02***	.14	-.23**	.60***
Forgery	.15	.68***	.82***	-.26***	.84***
Theft	-.27***	-.50***	-.17*	-.30***	.35***
Aggravated theft	.30***	.22***	.19***	-.23***	.42***
Other property crimes	.37***	.41***	.63***	-.20***	.69***
Destruction of property	-.08	-.98***	-.64***	-.03	-.61***
Violation of public order	.07	.32***	.26***	-.18***	.22***
Drugs	.99***	1.18***	.46***	-.33***	.74***
Traffic	.06	-.98***	-.14	-.61***	.44***
Other crimes	.18***	1.07***	.71***	-.30***	.67***
Number of offenses	.22***	.34***	.21***	-.01	.23***
<i>Case processing characteristics</i>					
Length of preventive custody (months)	.58***	.01	-.37***	-.06***	.25***
Court district (Ref.=Utrecht)					
Alkmaar	-.27***	-.19*	.23**	.26***	-.06
Almelo	-.09	.29**	.18*	-.05	-.07
Amsterdam	-.36***	-.20**	.10	.19***	-.08*
Arnhem	-.32***	-.12	.11	.20***	.01
Assen	-.21**	-.30**	-.19*	-.01	-.16**
Breda	-.24**	.05	.31***	-.02	.02
Den Bosch	-.31***	.11	.10	-.10*	-.03
Den Haag	-.27***	.01	.28***	.08*	-.07
Dordrecht	.16*	.54***	.02	-.35***	.28***
Groningen	-.27***	-.24**	.24**	.20***	-.07
Haarlem	-.04	-.13	.01	.11*	-.05
Leeuwarden	.09	-.10	.26**	-.04	.14**
Maastricht	-.24**	-.16	.25**	.17**	.01
Middelburg	-.16	-.39***	.33**	.30***	-.03
Roermond	-.12	-.05	.13	.10	.10
Rotterdam	-.41***	.08	-.05	-.09*	-.12**
Zutphen	-.20**	.14	.13	-.02	.03
Zwolle	-.38***	-.26**	.12	.14**	-.19***

(Continued)

Table 6.2 – Continued

	Imprisonment		Community Services		Total
	Unsus. B	Susp. B	Unsus. B	Susp. B	B
<i>Offender characteristics</i>					
Sex (Ref.=Male)					
Female	-.21***	-.17***	-.05	.16***	-.22***
Age (Ref.=21-30)					
12-20	-.14***	.19***	.26***	-.02	-.07**
31-40	-.12***	-.10**	-.12***	-.01	.01
41-50	-.12***	-.20***	-.29***	.05	-.04
> 50	-.11*	-.13*	-.56***	-.05	-.14***
Country of birth (Ref.=Netherlands)					
Western	.09*	-.06	-.20***	-.05	-.05
Non-Western	.11***	-.06	-.15***	-.05*	-.04*
Origin unknown	.06	-.06	-.25**	-.13*	-.08
Number of prior convictions as a minor (Ref.=0)					
1-2	.05	.13**	-.01	-.08**	.05*
3 or more	.14***	-.08	-.20***	-.09**	.04
Unknown	-.08**	.07	.16***	-.12***	.08***
Number of prior convictions as an adult (Ref.=0)					
1-2	.16***	.14***	.04	-.09***	.09***
3 or more	.28***	.08*	.01	-.17***	.18***
<i>Offender social circumstances</i>					
Accommodation	.35***	.00	-.35***	-.09***	.04*
Accommodation unknown	.55***	-.21***	-.56***	-.09***	.31***
Education and employment	.05*	-.10**	-.12***	-.06**	-.05**
Financial management and income	.09***	.08*	.04	.00	.14***
Relationships with partner, family and relatives	-.06**	.05	-.05	.08***	-.03
Relationships with friends	.21***	.08	.06	-.10***	.20***
Drug misuse	-.21***	-.15***	-.09**	-.02	.03*
Alcohol misuse	.06**	.13***	.15***	-.01	.07***
Emotional well-being	-.24***	.04	-.23***	.00	-.22***
Thinking and behavior	.04	.30***	-.10*	.05	-.05
Attitude	-.07*	-.47***	-.13***	-.06**	-.06**
R ²	.65	.15	.27	.11	.60

* $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$

In short, the effects of offender characteristics on the duration of unsuspended prison sentences differ in a number of ways from their effects on other types and modalities of sanctions in that there seem to be indications of counterbalancing. Features that coincide with a more severe sanction of one type regularly coincide with a less severe sanction of another type. This is why sentencing studies limited to unsuspended prison sentences can present a distorted picture. The question, after all, is how the counterbalancing of the

effects affects the total sanction severity. Are they evenly counterbalanced so that in the end the totality of sanctions is unaffected by offender characteristics? Or do we nonetheless see that certain offender characteristics affect one type of sanction more than another, leading in the end to a more severe total sanction?

6.5.2 Sentencing effects of offender characteristics; unsuspended prison sentences compared with the totality of sanctions

In the last column of Table 6.2, the results are shown of the total sanction severity model via the conversion into sanction points. We compare them with the results of the unsuspended prison sentence model commonly used in earlier studies. Are there any differences?

The results show that some offender characteristics have comparable effects in both the models. In the total sanction severity model, women are still less severely punished than men. So although women are treated more punitively than men as regards the duration of suspended community service, the final result is that they are less severely punished. The same holds true for offenders with problems in the fields of emotional well-being and attitude. They too are punished less severely in the unsuspended prison sentence model as well as the total sanction severity model. Comparable aggravating effects are observed as regards the offenders' prior convictions as an adult and problems in the fields of housing, financial situation, relationships with friends and drinking. As regards these offender characteristics, the findings of the unsuspended prison sentence model thus hold up.

However, the effects of other offender characteristics do differ in the two models. As regards offenders between the ages of 31 and 40 or 41 and 50 or with problems in the field of family relations, the mitigating effects on prison sentences disappear when other sanctions and combinations of other sanctions are also included in the study. The mitigating effects on prison sentences are counterbalanced by the aggravating effects on other sanctions. Aggravating effects similarly disappear in the case of offenders born in other Western countries or with at least three juvenile convictions. The other way around, in the unsuspended prison sentence model, there are no significant effects in the case of offenders with one or two juvenile convictions, but these offenders are significantly more severely punished in the total sanction severity model. So the total balance is very different for these offender characteristics than in the unsuspended prison sentence model.

What is more, the effects of the offender characteristics in one model are the reverse of what they are in the other. If the study is not confined to incarceration but expanded to include other sanctions and combinations of other sanctions, offenders born in a non-Western country are punished less rather than more severely than their Dutch counterparts. This kind of reverse effect

is also observed in offenders with problems in the fields of education and employment, who are also less severely punished in the latter model. Drug abuse also has reverse effects, but in the other direction; offenders with drug problems are punished less severely in the unsuspended prison sentence model and more severely in the total sanction severity model.

6.6 CONCLUSION

It is clear from this study that offender characteristics have different effects on different types of sanctions. Their effects on the duration of unsuspended prison sentences are virtually the reverse of their effects on suspended community service. This counterbalancing seems quite logical since suspended community service is considered much less severe than an unsuspended prison sentence. However, the different effects emphasize the importance of not confining sentencing research to unsuspended prison sentences. After all, offenders can sometimes be punished less severely as regards one type of sanction and more severely as regards another.

This study also shows that regarding certain offender characteristics, it does not matter whether other types of sanctions or combinations of sanctions are included. In the unsuspended prison sentence model as well as the total sanction severity model, women are punished less severely than men. This finding reinforces the conclusions of earlier studies. Moreover, since the findings of earlier studies are incomplete – a shorter prison sentence for women might for example be somewhat counterbalanced by lengthier suspended community service – this study demonstrates that shorter prison sentences for women cannot be completely explained by the fact that they are punished in a different way. Even if other sanctions are included, women still seem to be punished less severely than men.

There are however also offender characteristics whose effects do differ if the unsuspended prison sentence model is compared with the total sanction severity model. Offenders born in a non-Western country might get a longer unsuspended prison sentence than their Dutch counterparts, but in the total sanction severity model, they are treated less punitively, be it that the difference in the severity of the sanctions is extremely small. So the punitive treatment of non-Western offenders as to unsuspended prison sentences is counterbalanced by less punitive treatment as to other types of sanctions. One explanation might be that some foreign-born offenders do not have a fixed domicile or residence in the Netherlands and are therefore less apt to be sentenced to community service or a suspended conviction with special conditions since it would not be easy for the Probation Department to contact them about doing the community service or implementing the special conditions. In addition to fines, unsuspended prison sentences are essentially the only sanctions appropriate for them. So in this sense they are treated less punitively, which

is counterbalanced by the fact that other types of sanctions are much more frequently imposed. In the end if the complete range of sanctions is taken into consideration, the total punishment thus shows that offenders from different backgrounds are barely treated any differently as to the sanction severity. Hence, there is a striking discrepancy between these findings and those of studies solely focused on incarceration (Johnson et al., 2010; Van Wingerden et al., 2011; Wermink et al., 2012).

In a more general sense, this study shows there is some support for our assumption of punishment counterbalancing as regards certain groups of offenders: certain punishment types are less frequently or less severely imposed, while others are imposed more frequently or more severely, with barely any differences in the total punishment in the end. Nonetheless we certainly do not see the differences between the punishment of different social groups being completely eliminated. There continue to be clear differences and in some cases new differences between social groups emerged.

6.7 DISCUSSION

Side by side with the new sentencing patterns revealed in the present study, it should be noted that it also provides insight into the focal concerns theory, the leading theoretical framework in this field (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998). In comparing the results, it is striking that unsuspended prison sentences, the traditional focus of sentencing studies, exhibit regular parallels with certain types of sanctions (suspended prison sentences) and reverse patterns with other types of sanctions (suspended community service). Different types and durations of punishment are apparently considered appropriate for different types of offenders, and not only as regards the offender characteristics sex and country of birth, but the offenders' criminal records and various social circumstances as well. In the context of Dutch jurisprudence, where the judge has a large extent of discretionary power, more future research will be required to examine the types and lengths and combinations of sanctions that are imposed in relation to the focal concerns, i.e. the extent of the offenders' culpability and dangerousness and multifarious practical considerations.

When various types of sanctions are compared, there is always the discussion in the background about one mode of punishment being inherently more severe than another. A suggestion for future research might be to not only examine the total sanction severity as it is expressed via sanction points, but to also examine the sanction severity as it is perceived, e.g. by offenders and judges. American studies have shown for example that a suspended prison sentence of a considerable length is perceived as more severe than a shorter unsuspended prison sentence (Crouch, 1993; Spelman, 1994). Although it can help provide insight into the judges' motivation for imposing certain sentences,

barely any survey research of this kind has been conducted in the Netherlands. To duplicate the actual practice of Dutch jurisprudence, vignettes could be used to present various combinations of sanctions to respondents for their evaluation.

In addition, it is important for future research to devote further attention to calculating the total punishment severity. In the present study, the BOS/ Polaris guidelines are taken as point of departure and although they are the official guidelines, in a sense this conversion key is an arbitrary one. A contributing factor is that the contents of some of the sanctions are unclear. What do the special conditions mean for example if the offender has to follow the instructions of the Probation Service? The stability of these effects with other conversion keys should also be determined in future research. Perhaps the above proposal to ask judges how severe they perceive various types of sanctions might provide useful information. Another alternative would be to apply various scale techniques such as factor analysis to examine the systematic empirical aspects in the decisions to impose certain sanctions. Although we failed to distinguish any underlying factors in our first efforts when jointly analyzing all the punishments (see footnote 61), this could be further explored in future studies via alternative analysis strategies. In addition, sentencing studies that convert various types of sanctions into one sanctioning measure overlook the fact that sentencing factors can play different roles in different types of sanctions (Blumstein, Cohen, Martin & Tonry, 1983). The offenders' financial situation can play a different role for example in the amount of a fine than in the duration of a prison sentence. By using one and the same sentencing measure, it is quite possible that these specific effects do not emerge from the analyses and vice versa, that the observed effects are not relevant to every type of sanction.

Lastly, in the study of various penal alternatives, combinations and levels of severity, it is important to examine the influence of a number of supplementary characteristics such as the material severity of the offense, the way it was committed, and the choice of the victim (see e.g. Johnson et al., 2010). Supplementary research also needs to be conducted on other populations; the present population of offenders that had their risk assessed by means of RISC relatively frequently pertains to offenders who commit offenses of above average seriousness. The question is how considerations pertaining to the severity of the sanction are expressed as regards less serious offenses. It should be noted in this connection that with respect to alternative populations – if there are no RISC files– it is not possible to go as deeply into the importance of offender characteristics such as those involving all kinds of personal and social circumstances.

Despite these limitations, our study provides theoretical and empirical arguments as to why future sentencing studies should not confine themselves to unsuspended prison sentences and should also include other sanctions and combinations with other sanctions in their research.

6.8 REFERENCES

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Appendix 1: Descriptive statistics (N=22,031)

	Min.	Max.	Mean	S.D.
<i>Dependent variables</i>				
Length of the unsuspended imprisonment (ln)	0	9.29	2.29	2.67
Length of the suspended imprisonment (ln)	0	6.59	2.57	2.21
Length of the unsuspended community service (ln)	0	6.15	1.73	2.20
Length of the suspended community service (ln)	0	5.48	.43	1.20
Total sentence severity (ln)	0	9.29	4.26	1.66
<i>Independent variables</i>				
<i>Offense characteristics</i>				
Maximum penalty	0	30	5.87	3.92
Maximum penalty unknown	0	1	.01	.10
Offense type				
Assault	0	1	.07	.25
Intimidation	0	1	.26	.44
Violent theft	0	1	.08	.27
Vices	0	1	.06	.24
Homicide	0	1	.05	.22
Other violent crimes	0	1	.01	.10
Forgery	0	1	.02	.13
Theft	0	1	.05	.21
Aggravated theft	0	1	.10	.30
Other property crimes	0	1	.03	.18
Destruction of property	0	1	.02	.12
Violation of public order	0	1	.07	.26
Drugs	0	1	.09	.28
Traffic	0	1	.03	.17
Other crimes of the Penal Code	0	1	.08	.26
Number of crimes	0	3	1.72	.84
<i>Case processing characteristics</i>				
Length of preventive custody (in months)	0	27	1.95	2.67
Court district				
Alkmaar	0	1	.05	.21
Almelo	0	1	.03	.18
Amsterdam	0	1	.12	.32
Arnhem	0	1	.06	.23
Assen	0	1	.04	.19
Breda	0	1	.03	.18
Den Bosch	0	1	.08	.27
Den Haag	0	1	.14	.34
Dordrecht	0	1	.03	.16
Groningen	0	1	.04	.20
Haarlem	0	1	.08	.28
Leeuwarden	0	1	.03	.17
Maastricht	0	1	.03	.18
Middelburg	0	1	.02	.15
Roermond	0	1	.02	.16
Rotterdam	0	1	.08	.26
Utrecht	0	1	.05	.22
Zutphen	0	1	.03	.18
Zwolle	0	1	.04	.20

(Continued)

Appendix 1 – Continued

	Min.	Max.	Mean	S.D.
<i>Offender characteristics</i>				
Sex				
Female	0	1	.90	.30
Male	0	1	.10	.30
Age				
Age 12-20	0	1	.16	.37
Age 21-30	0	1	.29	.46
Age 31-40	0	1	.27	.44
Age 41-50	0	1	.19	.39
Age > 50	0	1	.09	.28
Country of birth				
Netherlands	0	1	.72	.45
Western	0	1	.07	.26
Other origin	0	1	.18	.38
Origin unknown	0	1	.02	.15
Number of prior convictions as a minor				
0	0	1	.56	.50
1-2	0	1	.16	.36
3 or more	0	1	.10	.30
Unknown	0	1	.19	.39
Number of prior convictions as an adult				
0	0	1	.39	.49
1-2	0	1	.22	.42
3 or more	0	1	.39	.49
Unknown	0	1	.00	.05
<i>Offender social circumstances</i>				
Accommodation	0	2	.27	.47
Accommodation unknown	0	1	.14	.35
Education and employment	0	2	.68	.58
Financial management and income	0	2	.54	.56
Relationships with partner, family and relatives	0	2	.74	.58
Relationships with friends	0	2	.50	.50
Drug misuse	0	2	.40	.57
Alcohol misuse	0	2	.43	.59
Emotional well-being	0	2	.64	.54
Thinking and behavior	0	2	.84	.50
Attitude	0	2	.66	.53

