

# EXPLORING PROBATION SUPERVISION COMPLIANCE IN THE NETHERLANDS

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## I

### INTRODUCTION

In many Western countries offenders can be placed under probation supervision. While supervised, they avoid incarceration and, instead, can stay in the community. Offenders are expected to benefit more from supervision in the community than incarceration, as they avoid the stigmatizing labels of being imprisoned whilst benefiting from the conditions attached to the supervision, which are means to influence the probationer's behavior to avoid future offending.<sup>1</sup> In some countries, such as the United States, probation supervision is considered an alternative sanction,<sup>2</sup> while in others, such as the United Kingdom, supervision forms a requirement of suspended sentences.<sup>3</sup> In the Netherlands, similar to the United Kingdom, probation supervision is a legal requirement of various suspension modalities, such as suspended sentences, suspension of pre-trial detention under conditions, detention under hospital orders with conditions, and conditional early release from prison.

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<sup>1</sup> James Bonta, et al., *Exploring the Black Box of Community Supervision*, 47 J. OFFENDER REHABILITATION 248, 251–252 (2008).

<sup>2</sup> Joan Petersilia, *Probation and Parole*, in THE HANDBOOK OF CRIME AND PUNISHMENT (Michael Tonry ed. 1998).

<sup>3</sup> UK SENTENCING COUNCIL, SUSPENDED SENTENCES (2018).

Yet, while probation supervision is increasingly imposed,<sup>4</sup> its effectiveness remains debatable.<sup>5</sup> Studies have shown high failure rates in probation<sup>6</sup> and there is little evidence that it reduces recidivism.<sup>7</sup> Furthermore, in a previous study by the author it was concluded that offenders had an increased chance of recidivating when special conditions were attached to the probation supervision, suggesting little support for the idea that probation supervision can influence offending behavior.<sup>8</sup> Insight is needed into factors that may affect probation supervision compliance for two reasons. First, probation supervision failure is expected to be a significant predictor of recidivism.<sup>9</sup> Second, probation supervision relies far more on offenders' compliant behavior to make it work compared to custodial sanctions.<sup>10</sup> As Bottoms puts it: "effectiveness and compliance are, in the field of community penalties, topics that are inextricably linked."<sup>11</sup> This paper focuses specifically on offenders given suspended sentences with probation supervision in the Netherlands and explores what factors are related to probation supervision compliance.

What are offenders' motivations to comply with the conditions of their probation supervision? Strategies can often be divided into surveillance or control-oriented supervision

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<sup>4</sup> See LAUREN E. GLAZE, et al., PROBATION AND PAROLE IN THE UNITED STATES 2009 (U.S. Department of Justice, 2010) (noting that despite a slight down-turn in probation supervision from 2008 to 2009, there has been a large upward trend in probation supervision since 2000); Gijs Weijters, et al., *Recidive onder justitiabelen in Nederland. Een verslag over de periode 2004 tot en met 2016* (WODC 2017); UK MINISTRY OF JUSTICE, OFFENDER MANAGEMENT STATISTICS QUARTERLY, ENGLAND AND WALES (2017), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/633154/offender-management-statistics-bulletin-q1-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/633154/offender-management-statistics-bulletin-q1-2017.pdf).

<sup>5</sup> Bonta, et al., *supra* note 1.

<sup>6</sup> Faye S. Taxman, *Supervision – Exploring the Dimensions of Effectiveness*, 66 FED PROB. 14, 14–16 (2002).

<sup>7</sup> James Bonta, et al., *An Experimental Demonstration of Training Probation Officers in Evidence-Based Community Supervision*, 38 CRIM. JUST. AND BEHAV. 1127, 1127 (2011); Weijters, et al., *supra* note 4.

<sup>8</sup> Pauline G. M. Aarten, et al., *Reconviction Rates After Suspended Sentences: Comparison of the Effects of Different Types of Suspended Sentences on Reconviction in the Netherlands*, 59 INT'L J. OFFENDER THERAPY AND COMP. CRIMINOLOGY 143, 154 (2015).

<sup>9</sup> Willemijn Lamet, et al., *Social Bonds Under Supervision: Associating Social Bonds of Probationers with Supervision Failure*, 40 CRIM. JUST. AND BEHAV. 784, 784 (2013).

<sup>10</sup> Gwen Robinson & Fergus McNeill, *Exploring the Dynamics of Compliance with Community Penalties*, 12 THEORETICAL CRIMINOLOGY (2008).

<sup>11</sup> Anthony Bottoms, *Compliance with Community Penalties*, in COMMUNITY PENALTIES: CHANGE AND CHALLENGES 89, 89 (Anthony Bottoms, et al. eds., 2001).

and treatment-oriented supervision,<sup>12</sup> which are also the strategies Dutch probation officers adhere to, as will be discussed in more detail below. These supervision strategies are the central focus of the paper because the paper itself concentrates on the Netherlands. With regard to the first type of supervision—surveillance—one of the approaches often used for securing probation supervision compliance is the presence of sanction threats.<sup>13</sup> If offenders do not comply with the conditions of their probation supervision, their case gets revoked. This instrumental perspective is also known as deterrence theory: social control mechanisms and the risk of sanction aim to persuade the rational-choice offender that offending is not worth the risk as the benefits of compliance outweigh the costs of punishment.<sup>14</sup> It is expected that the benefit of complying with the conditions of their probation supervision is likely to outweigh the cost of the prison sentence hanging over their heads.

An important aspect of treatment-oriented supervision is the support and guidance the probation officer offers to the probationer.<sup>15</sup> It is important to examine the relationship between probation officer and probationer because, as Taxman states: “Supervision services are built on the framework that ‘contacts,’ or the relationship between the offender and the supervision agent, are the cornerstone to managing and/or changing offender behavior.”<sup>16</sup> In psychotherapy, the quality of the relationship between a therapist and patient is found to be one of the most important predictors of a successful treatment outcome.<sup>17</sup> This therapeutic or

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<sup>12</sup> Jennifer L. Skeem & Sarah M. Manchak, *Back to the Future: From Klockars' Model of Effective Supervision to Evidence-Based Practice in Probation*, 47 J. OFFENDER REHABILITATION 220, 221 (2008).

<sup>13</sup> See Pamela Ugwu-dike, *Compliance with Community Penalties: The Importance of Interactional Dynamics*, in OFFENDER SUPERVISION: NEW DIRECTIONS IN THEORY, RESEARCH AND PRACTICE (Fergus McNeill, et al. eds., 2010) [(noting that deterrent enforcement provisions have recently become a primary strategy for compliance in many jurisdictions)].

<sup>14</sup> Raymond Paternoster, *How Much do we Really Know About Criminal Deterrence?*, 100 J. CRIM. LAW & CRIMINOLOGY 765, 782 (2010).

<sup>15</sup> Craig Dowden & Donald A. Andrews, *The Importance of Staff Practice in Delivering Effective Correctional Treatment: A Meta-Analytic Review of Core Correctional Practice*, 48 INT'L J. OFFENDER THERAPY AND COMP. CRIMINOLOGY 203, 211–13 (2004).

<sup>16</sup> Taxman, *supra* note 6, at 15.

<sup>17</sup> Louise Gaston, *The Concept of the Alliance and its Role in Psychotherapy: Theoretical and Empirical Considerations*, 27 PSYCHOTHERAPY: THEORY, RES., PRAC., TRAINING 143, 148 (1990).

working alliance theory can also be applied in a probation supervision setting.<sup>18</sup> There is evidence that how probation officers view and deliver models of probation supervision determines whether these models are effective.<sup>19</sup> In other words, we can expect that if probationers have a good relationship with their probation officer, they are more likely to comply with the conditions of their probation supervision.

The present study aims to further investigate how these theories together are relevant in a Dutch probation supervision setting to further expand our knowledge on what works in increasing compliance. Using longitudinal data on a sample of offenders given suspended sentences with probation supervision in two of the largest court districts of the Netherlands, this study empirically investigates the balance between control-oriented supervision and treatment-oriented supervision in a coercive setting.

This study is highly relevant in two ways. First, it offers a useful framework to develop a better understanding and broaden the evidence on probation supervision compliance. A sound theoretical framework for probation practice, Schwalbe argues, can aid in strengthening probation programs,<sup>20</sup> and more specifically increase compliance in these programs. Second, this study contributes to the discussion on the effectiveness of probation supervision in two ways. For one, most of the earlier studies used cross-sectional data to determine probation supervision compliance.<sup>21</sup> This is one of the first studies to use longitudinal data in which a group of offenders was followed during their probation supervision period. While I will refrain from drawing any cause-and-effect conclusions in this paper due to the limitations that arose

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<sup>18</sup> See Elizabeth C. Ross, et al., *The Therapeutic Alliance: A Theoretical Revision for Offender Rehabilitation*, 13 AGGRESSION AND VIOLENT BEHAV. (2008) [(presenting a preliminary Revised Theory of Therapeutic Alliance with special emphasis on offender rehabilitation)].

<sup>19</sup> Dowden & Andrews, *supra* note 15; Skeem & Manchak, *supra* note 12; Taxman, *supra* note 6.

<sup>20</sup> Craig S. Schwalbe, *Toward an Integrated Theory of Probation*, 39 CRIM. JUST. AND BEHAV. 186, 187 (2012).

<sup>21</sup> See e.g., Lamet, et al., *supra* note 9; Kathryn D. Morgan, *Factors Associated With Probation Outcome*, 22 J. CRIM. JUST. (1994); David E. Olson & Arthur J. Lurigio, *Predicting Probation Outcomes: Factors Associated With Probation Rearrests, Revocations, and Technical Violations During Supervision*, 2 JUST. RES. AND POL'Y (2000); Barbara Sims & Mark Jones, *Predicting Success or Failure on Probation: Factors Associated With Felony Probation Outcomes*, 43 CRIME & DELINQUENCY (1997).

whilst conducting this research, this longitudinal study has made it possible to provide more insight into the sequence of events and changes during the probation period that can affect probation supervision compliance. Also, because the focus is on more general probation supervision characteristics, the results are of interest not only for Dutch probation practice but also for international probation practices.

## II

### A THEORETICAL FRAMEWORK ON PROBATION SUPERVISION COMPLIANCE

#### A. Demographic And Crime-Related Predictors of Probation Supervision Compliance

Much of the research on probation supervision has focused on individual-related and crime-related characteristics associated with success and failure of probation supervision. While the focus of this study is on investigating the possibility of increasing compliance through a balance of control and support, these demographic and crime-related characteristics are also important predictors of compliance. For this reason, they form an integral part of this article.

Earlier studies have found that gender, age, educational level, employment, offense type, and criminal history predicted supervision success or failure.<sup>22</sup> More specifically, young probationers, males, probationers with lower levels of education, and probationers who are unemployed were more likely to fail their probation than older probationers, females, probationers with a higher education, and probationers who are employed. Research is less consistent with respect to ethnicity and marital status. Morgan found no significant relationship between ethnicity and probation supervision failure,<sup>23</sup> while Sims and Jones found probationers from ethnic minorities to be at higher risk for failure.<sup>24</sup> The relationship between marital status

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<sup>22</sup> See e.g., S. H. Clarke, et al., PROBATIONER RECIDIVISM IN NORTH CAROLINA: MEASUREMENT AND CLASSIFICATION OF RISK (University of North Carolina at Chapel Hill School of Government. 1988); M. Kevin Gray, et al., *Examining Probation Violations: Who, What and When*, 47 CRIME & DELINQUENCY (2001); Lamet et al., *supra* note 9; Morgan, *supra* note 21; Olson & Lurigio, *supra* note 21; Sims & Jones, *supra* note 21.

<sup>23</sup> Morgan, *supra* note 21.

<sup>24</sup> Sims & Jones, *supra* note 21, at 324.

and probation failure is also somewhat ambiguous. Some researchers concluded that unmarried probationers had a significantly higher chance of probation failure,<sup>25</sup> while Roundtree, Edwards, and Parker found no significant relationship.<sup>26</sup> Crime-related characteristics, such as a criminal history and probationers convicted of a property offense were also associated with a higher increase in probation supervision failure.<sup>27</sup>

## B. Deterrence And Compliance

Deterrence theory postulates that any human action is the result of a cost-benefit analysis and individuals are rational human beings that weigh the costs and benefits of their actions. Regarding offending, one way to shape a person's behavior is providing incentives or threatening with legal punishment.<sup>28</sup> The cost of legal punishment is considered higher than the benefits of offending, resulting in desistance from crime.<sup>29</sup> There are three factors that dominate this cost-benefit analysis: certainty, severity, and celerity.<sup>30</sup> Certainty refers to the likelihood of legal punishment, severity refers to the punishment's magnitude, and celerity refers to the swiftness of imposing the punishment. Therefore, the central hypothesis is: the greater the certainty, severity, and celerity of a legal punishment, the more individual rule-breaking will desist among those sanctioned (specific deterrence) and among those aware of the sanctions imposed (general deterrence). In this paper, the focus is on specific deterrence, as the sample includes individuals that were given suspended sentences with probation

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<sup>25</sup> Morgan, *supra* note 21; Sims & Jones, *supra* note 21.

<sup>26</sup> George A. Roundtree, et al., *A Study of the Personal Characteristics of Probationers as Related to Recidivism*, 8 J. OFFENDER COUNSELING SERVICES REHABILITATION (1984).

<sup>27</sup> See Morgan, *supra* note 21; JOAN PETERSILIA & S. TURNER, INTENSIVE SUPERVISION FOR HIGH-RISK PROBATIONERS: FINDINGS FROM THREE CALIFORNIA EXPERIMENTS (RAND. 1990); Sims & Jones, *supra* note 21.

<sup>28</sup> Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, 23 CRIME & JUST. (1998).

<sup>29</sup> Raymond Paternoster, *How Much do we Really Know About Criminal Deterrence?*, 100 J. CRIM. L. & CRIMINOLOGY 765, 783 (2010).

<sup>30</sup> Michael R. Geerken & Walter R. Gove, *Deterrence: Some Theoretical Considerations*, 9 LAW & SOC'Y REV. (1975).

supervision. In line with this theory, judges hope to alter offenders' behavior by threatening imprisonment in the case of non-compliance with the conditions of their probation supervision.

Although numerous studies have found that people are less likely to offend when they feel that they might get caught and punished,<sup>31</sup> this relationship is considered very weak.<sup>32</sup> According to Wodahl, Garland, Culhane, and McCarty, deterrent-based strategies are not effective as they focus solely on the threat of punishment to increase compliance.<sup>33</sup> Only when some form of treatment is included can recidivism be reduced.<sup>34</sup> However, in the study by Aarten, Denkers, Borger, and Van Der Laan, little support was found for this finding in a probation supervision setting.<sup>35</sup> They examined offenders given suspended sentences in the Netherlands under probation supervision and found no difference in the risk of recidivating between probationers given solely control-orientated special conditions and probationers given a combination of control- and behavior-orientated special conditions.<sup>36</sup>

Research did find that deterrence more likely depends on the perceived certainty of punishment rather than on the severity of punishment.<sup>37</sup> Specifically, individuals who view the threat of punishment as high commit fewer crimes. Individuals who perceive their chances of receiving punishment after committing a crime as low are more likely to have a long criminal history.<sup>38</sup> Thus, there is evidence that certainty of perceived punishment can be considered a

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<sup>31</sup> See Nagin, *supra* note 28; Daniel S. Nagin & G. Pogarsky, *Integrating Celerity, Impulsivity and Extralegal Sanction Threats Into a Model of General Deterrence: Theory and Evidence*, 39 CRIMINOLOGY (2001); Raymond Paternoster, *The Deterrent Effect of the Perceived Certainty and Severity of Punishment: A Review of the Evidence and Issues*, 4 JUST. Q. (1987); Raymond Paternoster, et al., *Perceived Risk and Social Control: Do Sanctions Really Deter?*, 17 LAW & SOC'Y REV. (1983).

<sup>32</sup> Paternoster, *supra* note 29.

<sup>33</sup> Eric J. Wodahl, et al., *Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections*, 38 CRIM. JUST. AND BEHAV. (2011).

<sup>34</sup> STEVE AOS, ET AL., EVIDENCE-BASED ADULT CORRECTIONS PROGRAMS: WHAT WORKS AND WHAT DOES NOT (Washington State Institute of Public Policy. 2006); Joan Petersilia, *A Decade of Experimenting With Intermediate Sanctions: What Have we Learned?*, 3 CORRECTIONS MGMT. Q. (1999).

<sup>35</sup> Aarten et al., *supra* note 8.

<sup>36</sup> *Id.*

<sup>37</sup> Gordon P. Waldo & Theodore G. Chiricos, *Perceived Penal Sanction and Self-Reported Criminality: A Neglected Approach to Deterrence Research*, 19 SOC. PROBS. (1972).

<sup>38</sup> SUZANNE POLICH, ET AL., DOING CRIME: A SURVEY OF CALIFORNIA PRISON INMATES (RAND. 1980).

modest deterrent factor,<sup>39</sup> but little evidence has been found for perceived severity and celerity as effective deterrents in reducing criminal behavior.<sup>40</sup> Maxwell and Gray examined to what extent perceived certainty of punishment of offenders on intensive supervision probation deterred them from violating probation requirements.<sup>41</sup> Their results support deterrence theory: controlling for a number of variables related to criminal behavior and program attrition, perceived certainty of punishment in the case of non-compliance significantly influenced program violation and length of time spent in the program. Offenders' perception that a street smart offender will get caught in a case of non-compliance was a significant predictor of their completing their intensive supervision program.<sup>42</sup>

While there is evidence that deterrence affects compliance, deterrence often leads to short-term compliance—complying only during the probation supervision period—since individuals are less motivated to comply when external environmental factors are absent.<sup>43</sup> Instead, internal motivations are found to shape long-term compliance, in other words refraining from offending in the future.<sup>44</sup> For this reason, it is expected that deterrence alone will not be enough for the probation supervision program to be effective and internal factors, through the alliance between probation officer and probationer, can be a useful addition in the formulation of a more integrated theoretical framework for strengthening probation supervision compliance.

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<sup>39</sup> Paternoster, *supra* note 29, at 814.

<sup>40</sup> Raymond Paternoster & Leeann Iovanni, *The Deterrent Effect of Perceived Severity: A Reexamination*, 64 SOC. FORCES (1986).

<sup>41</sup> Sheila R. Maxwell & M. Kevin Gray, *Deterrence: Testing the Effects of Perceived Sanction Certainty on Probation Violations*, 70 Soc. Inquiry 117, 132 (2000).

<sup>42</sup> *Id.*

<sup>43</sup> See Raymond Paternoster, et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 Law & Soc'y Rev. (1997) [(noting that earlier studies were entirely grounded in deterrence theory and often ignored other potential factors shaping compliance with the law)].

<sup>44</sup> *Id.*



### C. Therapeutic Alliance And Compliance<sup>45</sup>

Although previous research mainly focused on identifying effective program principles in offender rehabilitation,<sup>46</sup> lately, attention has shifted more to the manner in which programs can be delivered to offenders. Preliminary results have suggested that the way a probation officer delivers a program may be a fundamental condition for behavioral change.<sup>47</sup>

Andrews and Kiessling introduced five 'Core Correctional Practice' principles, derived from the Risk-Needs-Responsivity model, that were expected to increase the effectiveness of correctional programs for offenders.<sup>48</sup> These principles include effective use of authority, criminal modelling and reinforcement, problem solving, use of community resources, and quality of the interpersonal relationship between officer and offender. Dowden and Andrews believe that this last principle, the quality of the relationship, is probably the most essential of all five principles.<sup>49</sup> According to this principle, "the interpersonal influence exerted by the correctional staff member is maximized under conditions characterized by open, warm, and enthusiastic communication."<sup>50</sup> They further argue that the development of a relationship based on mutual respect and liking between officer and offender increases the effectiveness of a rehabilitation program.<sup>51</sup> The influence this relationship has on a successful treatment outcome has found much support in psychotherapy literature. Studies examining this

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<sup>45</sup> While the therapeutic alliance shows many points of convergence with the interactional or interpersonal justice theory developed by Tom Tyler, the latter reflects evaluations of the decision-maker's sensitivity, such as whether respect was given during the interaction. The therapeutic alliance theory considers the bond between two people, and their ability to work collaboratively to set goals and tasks to get to a successful treatment outcome. Probation supervision is about the probationer working together with his probation officer on the conditions that were set by the court to finish the supervision successfully. It therefore goes beyond the evaluation of a decision-maker's sensitivity, and for this reason the therapeutic alliance theory was considered a more appropriate framework in this study to explore probation supervision compliance.

<sup>46</sup> Donald A. Andrews, et al., *Classification for Effective Rehabilitation: Rediscovering Psychology*, 17 CRIM. JUST. AND BEHAV. (1990); Daniel H. Antonowicz & Robert R. Ross, *Essential Components of Successful Rehabilitation Programs for Offenders*, 38 INT'L J. OFFENDER THERAPY AND COMP. CRIMINOLOGY (1994).

<sup>47</sup> Ros Burnett & Fergus McNeill, *The Place of the Offender-Officer Relationship in Assisting Offenders to Desist From Crime*, 52 PROB. J. (2005).

<sup>48</sup> Donald A. Andrews & J. J. Kiessling, *Program Structure and Effective Correctional Practices: A Summary of the CaVic Research*, in EFFECTIVE CORRECTIONAL TREATMENT (Robert R. Ross & Paul Gendreau eds., 1980).

<sup>49</sup> Dowden & Andrews, *supra* note 15, at 205.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

therapeutic or working alliance between therapist and patient have shown that alliance is a significant predictor across a range of clinical samples—such as patients with depression and substance abuse<sup>52</sup>—and across a range of treatment methods.<sup>53</sup> In addition, compared to therapists' views, the views of patients tend to be more reliable and predictive of treatment outcome.<sup>54</sup> According to Martin, Garske, and Davis, if patients perceive their alliance as positive, they are more likely to finish their treatment successfully.<sup>55</sup> It is, therefore, important to examine the probationers' views on their relationship with their probation officer.

#### D. Balancing Guidance And Control in a Coercive Setting: an Impossible Task?

The question that arises, however, is whether these psychotherapy findings can be generalized to a correctional setting. Can trust and a positive relationship be established in a coercive setting where the suspended sentence implies that society has little trust in the probationer to begin with? The probationer, after all, is placed under supervision where his behavior is controlled through specific conditions and the monitoring is done by the probation officer.

Ross and colleagues believe the therapeutic alliance model to be applicable to a correctional setting as long as the specific characteristics of such a setting are taken into account.<sup>56</sup> Characteristics can include dealing with hostile behavior of offenders since they are coerced into following a treatment program. Another characteristic is the dual role probation officers have: they are both counsellor and cop. Unlike psychotherapists, they not only promote

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<sup>52</sup> Jacques Barber, et al., *Therapeutic Alliance as a Predictor of Outcome in Treatment of Cocaine Dependence*, 9 PSYCHOTHERAPY RES. (1999); Louise Gaston, et al., *Alliance Prediction of Outcome Beyond In-Treatment Symptomatic Change as Psychotherapy Processes*, 1 PSYCHOTHERAPY RES. (1991).

<sup>53</sup> Steven J. Ackerman & Mark J. Hilsenroth, *A Review of Therapist Characteristics and Techniques Positively Impacting the Therapeutic Alliance*, 23 CLINICAL PSYCHOL. REV. (2003).

<sup>54</sup> D. FRIGO, THERAPEUTIC ALLIANCE: IMPROVING TREATMENT OUTCOME (Butler Center for Research, Hazelden Foundation. 2006).

<sup>55</sup> Daniel J. Martin, et al., *Relation of the Therapeutic Alliance With Outcome and Other Variables: A Meta-Analytic Review*, 68 J. CONSULTING AND CLINICAL PSYCHOL. (2000).

<sup>56</sup> Ross et al., *supra* note 18.

offender rehabilitation, but they also have to monitor offenders' compliance and protect public safety.<sup>57</sup> Although this dual role can affect the quality of the relationship, Andrews and Kiessling found that this firm but fair approach was most effective in reducing new convictions during supervision amongst a general population of probationers.<sup>58</sup>

Other studies have found a positive therapeutic alliance to influence treatment success and supervision compliance.<sup>59</sup> Specifically, Skeem and colleagues examined the relationship quality between probation officers and offenders and found that officers who used a combination of caring, fairness, trust, and authoritativeness with offenders were most likely to reduce offender recidivism.<sup>60</sup>

### III

#### SUSPENDED SENTENCES WITH PROBATION SERVICES IN THE NETHERLANDS

Suspended sentences became part of the Dutch Criminal Code in 1915. They were introduced in a time when there was little confidence in short-term imprisonment because of its high recidivism rates.<sup>61</sup> Confidence was placed in suspended sentences, as these sentences were deferred while simultaneously hanging over the heads of the offenders, functioning as a means to change their behavior. If the threat of revocation was considered insufficient, additional special conditions could be imposed.<sup>62</sup> While its popularity has decreased over time,<sup>63</sup> based on the findings and recommendations of the *Committee Freedom Restraint*<sup>64</sup> and

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<sup>57</sup> Skeem & Manchak, *supra* note 12.

<sup>58</sup> Andrews & Kiessling, *supra* note 48.

<sup>59</sup> See Dowden & Andrews, *supra* note 15; Patrick J. Kennealy, et al., *Firm, Fair and Caring Officer-Offender Relationships Protect Against Supervision Failure*, 36 LAW AND HUM. BEHAV. (2012); Sue Rex, *Desistance From Offending: Experiences of Probation*, 38 HOW. J. CRIM. JUST. (1999).

<sup>60</sup> Jennifer L. Skeem, et al., *Assessing Relationship Quality in Mandated Community Treatment: Blending Care With Control*, 19 PSYCHOL. ASSESSMENT (2007).

<sup>61</sup> Constantijn Kelk, *De voorwaardelijke veroordeling en de voorwaardelijke invrijheidsstelling onder de loep*, 1 DELIKT & DELINKWENT (2004).

<sup>62</sup> Edwin Bleichrodt, *De herontdekking van de bijzondere voorwaarde*, 88 PROCES (2009).

<sup>63</sup> For an overview, see Pauline G.M. Aarten, *Suspended Sentences: Public Opinion, Compliance and Recidivism* (2014) (unpublished Ph.D. thesis) (on file with author).

<sup>64</sup> COMMISSIE VRIJHEIDSBEPERKING, VRIJHEIDSBEPERKING DOOR VOORWAARDEN. DE VOORWAARDELIJKE VEROORDELING EN HAAR SAMENHANG MET DE TAAKSTRAF, DE VOORLOPIGE HECHTENIS EN DE VOORWAARDELIJKE INVRIJHEIDSTELLING (Sdu. 2003).

the study by Jacobs and colleagues,<sup>65</sup> the law on suspended sentences was recently revised and came into force in the Dutch Criminal Code in April 2012. A short overview of the suspended sentences in the Dutch Criminal Code and the possibility of attaching general and special conditions to these sentences will be described below, followed by a description of the role Probation Service plays once suspended sentences are imposed.

#### A. Article 14a of the Dutch Criminal Code

The sanctions of imprisonment, custody, fines and community service, can be fully or partly suspended.<sup>66</sup> Not all prison sentences can be suspended. Imprisonment not exceeding two years may be fully or partly suspended. In the case of a prison sentence exceeding two years but not four years, a maximum of two years of that sentence may be partly suspended. Imprisonment exceeding four years cannot be suspended.<sup>67</sup> Penalties such as deprivation of certain rights, for example taking away a driving license, can also be fully or partly suspended.<sup>68</sup> The court determines the length of the probation period and can differentiate the length of the probation period in each individual case as it deems appropriate. The maximum duration is three years, but can be extended to ten years when there are genuine indications that the offender may commit a serious crime again.<sup>69</sup>

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<sup>65</sup> M. J. G. JACOBS, ET AL., TOEPASSING VAN BIJZONDERE VOORWAARDEN BIJ VOORWAARDELIJKE VRIJHEIDSSTRAF EN SCHORSING VAN DE VOORLOPIGE HECHTENIS BIJ VOLWASSENEN (WODC. 2006).

<sup>66</sup> Strfl § 14a.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Strfl § 14b; For juveniles, the law regarding suspended sentences is similar, with a few exceptions. Imprisonment, community service and fines can be fully or partly suspended. The probation period, however, cannot exceed two years. Strfl § 77x. In addition, a learning order can be attached to suspended sentences as a special condition, instead of being part of a community service. As this paper focuses solely on adults given suspended sentences, the remaining section will discuss the criminal code of suspended sentences applicable to adults.

## B. General And Special Conditions

Suspended sentences are always subject to the general condition that the offender must not take part in any criminal activity during his or her probation period.<sup>70</sup> As a result of the revision of the law on suspended sentences, two additional conditions now fall under this general condition: first the offender must cooperate in establishing his identity and second the offender must cooperate during his probation supervision. These two additional conditions only apply when the judge imposes special conditions.<sup>71</sup>

It is at the court's discretion to determine whether one or more special conditions accompany the general condition. Special conditions can be divided into four groups.<sup>72</sup> The first group of conditions is referred to as "restorative special conditions." These conditions focus on restoring the damage done to the victims, including compensation or reparation. The second group concerns control-oriented special conditions. These special conditions focus on controlling the behavior of offenders, such as imposing a restraining order or a ban on the use of drugs and/or alcohol. The third group concerns behavior-oriented special conditions which focus on changing the behavior of offenders through behavioral interventions or their referral to or treatment in a healthcare facility. The final special condition allows the judge to impose other conditions concerning the behavior of the offender that are not laid down in the law. Each of these special conditions can be combined with electronic monitoring.<sup>73</sup> In addition, one or more special conditions can be attached to suspended sentences.

**Figure 1.** Overview of special conditions (*Straffeloven* § 14c)

*Restorative special conditions*

1. Full or partial compensation for the damage caused by the offence;
2. Full or partial reparation of the damage caused by the offence;

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<sup>70</sup> Strfl § 14c.

<sup>71</sup> *Id.*

<sup>72</sup> See Figure 1 for a complete overview.

<sup>73</sup> Strfl § 14c.

3. The deposit of a sum to be determined by the judge; and,
4. Payment of a sum to be determined by the judge in the Violent Offences Compensation Fund or the donation of such payment to an institution that aims to defend the interests of victims of crime.

*Control-oriented special conditions*

5. A ban on making contact with certain persons or institutions;
6. A ban on being or standing in the immediate vicinity of a particular location;
7. An obligation to be present at certain times or for a certain period at a certain location;
8. An obligation to report to a specific institution at specified times; and,
9. A ban on the use of drugs and/or alcohol and the obligation to participate in blood or urine tests to determine compliance with this condition.

*Behavior-oriented special conditions*

10. Referral to a healthcare facility;
11. An obligation be treated by an expert or health care facility;
12. A stay in an institution for assisted living or social care; and,
13. Participation in a behavioral intervention.

*Other special conditions*

14. Other conditions concerning the behavior of the offender

### C. Probation Supervision

The mission of the Dutch probation service is to make society safer by implementing effective and efficient sanctions and helping in reducing recidivism through the reintegration of the offender into society. Three organizations carry out probation tasks: the Social Rehabilitation for Addicted Offenders (hereafter SVG), the Salvation Army Probation Service, and the Dutch Probation Foundation. The SVG provides care and supervision to offenders with various addiction problems, the Salvation Army focuses on homeless offenders or offenders who are otherwise socially marginalized, and the Dutch Probation Foundation supervises the

remaining group of probationers.<sup>74</sup> It should be highlighted that the Dutch Probation Foundation is the focus of this paper and the description below is based on the working principles of this specific probation service.

The Dutch Probation Foundation<sup>75</sup> plays a role in every phase of the criminal justice process and has four tasks: 1) diagnosis and advice, 2) supervision of suspended sentence modalities, 3) performing behavioral interventions and 4) organization and supervision of community service orders. The most extensive task, and central in this study, is supervising suspended sentence modalities, such as suspended sentences. The probation service supervises compliance of offenders with the conditions of the probation supervision, motivates offenders to comply with the conditions, and reports any violations during their probation period.<sup>76</sup> For an offender given a suspended sentence with probation supervision, the probation officer formulates a mandatory action plan for the offender. The plan contains specific conditions that are tailored to target the assessed recidivism risks and risk factors associated with the offender's criminal behavior. Usually the plan contains a mix of control and support activities, such as mandatory treatment (drugs, alcohol, aggression), behavioral interventions, electronically monitored house arrest or street curfews, urine controls, and contact frequency. Furthermore, it states how supervision will be carried out and the responsibilities and obligations of the offender as well as the probation officer during the probation supervision period.<sup>77</sup> The probation officer meets with the probationer at least once a month to be informed by the probationer on how he is doing and whether he is complying with the conditions of his probation supervision. In a case of non-compliance, the probation officer will first reprimand the probationer. When non-compliance continues, the probation officer can give an official

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<sup>74</sup> Anton Van Kalmthout & Leo Tigges, *Netherlands*, in *PROBATION IN EUROPE* (Anton Van Kalmthout & Ioan Durnescu eds., 2008).

<sup>75</sup> For ease of reading, the Dutch Probation Foundation will hereafter be referred to as the probation service.

<sup>76</sup> Van Kalmthout & Tigges, *supra* note 74.

<sup>77</sup> MANJA ABRAHAM, ET AL., *INZICHT IN TOEZICHT: DE UITVOERING VAN TOEZICHT DOOR DE RECLASSERING* (DSP Groep, WODC. 2007).

warning before contact is sought with the prosecutor regarding possible consequences—possible consequences are revocation, extending the probation period and attaching new conditions to the suspended modality.

In 2017 in the Netherlands, approximately 30,000 probationers were under supervision.<sup>78</sup> In 2010, it was reported that 23 percent failed their probation supervision.<sup>79</sup> Unfortunately, no recent studies on the percentage of revocations amongst probationers have been done. The recidivism rates after two years show a slight decrease in the period from 2004 to 2013, with approximately 39 percent of those under probation supervision in 2013 being sentenced for a new offense within two years of completing their probation supervision completed compared to 43 percent in 2004. This percentage is lower in comparison to offenders sentenced to imprisonment, of whom 56 percent recidivated in 2013.<sup>80</sup>

## IV METHOD

### A. Procedure

The sample was selected from the operational system of the probation service in the Netherlands (hereafter: IRIS). Probation officers were e-mailed to determine the date of the probationer's next appointment(s). Since probationers see their probationer officers at least once a month, it was expected that a higher response rate would be achieved if the researcher spoke to them directly after that meeting with their probation officer. Probation officers were explicitly asked not to recruit the probationer for this research as it was believed that it would negatively affect the response rate.

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<sup>78</sup> This number is based on the statistics published on the sites of the SVG and Dutch Probation Foundation. No statistics of offenders whose supervision is carried out by the Salvation Army Probation Service are known. See *Reclassering Nederland, Feiten en cijfers* (2018), <https://www.reclassering.nl/over-de-reclassering/cijfers-en-feiten>; *Stichting Verslavingreclassering GGZ, Feiten en cijfers* (2018), <https://www.svg.nl/over-de-svg/feiten-cijfers>.

<sup>79</sup> Lamet et al., *supra* note 9.

<sup>80</sup> Weijters et al., *supra* note 4.



A brief description of the study was provided to the probationer and a flyer was given to take home. The probationers were informed that they would fill in a questionnaire twice (taking about thirty minutes per questionnaire) and would receive €7,50 (approximately \$9) for each filled-in questionnaire. If they agreed to participate, the probationers were asked to sign a voluntary consent form. The first questionnaire was filled in within one month of completing their first meeting with their probation officer (hereafter T<sub>1</sub>). The second questionnaire was filled-in about 7 months after their first participation (hereafter T<sub>2</sub>). At both times, probationers received exactly the same questionnaire that they completed in absence of probation officers to avoid possible influence from the probation officer including the probationer feeling pressured to provide socially desirable answers.

Besides the questionnaires, registered record data—such as the current offense, supervision level, risk, and how their probation supervision was going—was collected for each probationer from their case files found in IRIS. Permission to examine their case files was requested via the informed consent form.

## B. Sample Selection And Participants

The sample included all adult offenders under probation supervision if they met the following criteria. First, offenders were given fully or partly suspended sentences with probation supervision. Second, their probation supervision was carried out by the Dutch Probation Foundation (*Reclassering Nederland*) in the court districts of Amsterdam or The Hague.<sup>81</sup> Third, only male offenders were selected, as the population of female offenders given suspended sentences with probation supervision was only 14.8 percent.

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<sup>81</sup> The Dutch Probation Foundation was chosen simply because it is the largest of the three probation organizations in two of the largest court districts. Van Kalmthout & Tigges, *supra* note 74.

From September 2011 to March 2012, 228 probationers were identified as eligible for this study. The researcher was unable to contact 73 (32 percent) probationers because: a) their psychiatric problems were too serious and the probation officer asked us not to approach them; b) their case was already revoked for not showing up; or c) she was unable to approach them during the study period. Of the remaining 155 who were approached, 121 probationers (78 percent) agreed to participate in this study. In total, 118 probationers filled in the questionnaire at T<sub>1</sub>. Three probationers were not able to fill in the questionnaire due to language restrictions and, for this reason, were only interviewed at T<sub>1</sub>. Of the 121 probationers, 98 (81 percent) participated a second time, about 7 months after the first interview. Again, three probationers gave an interview instead of filling in a questionnaire at T<sub>2</sub>. As the present analysis is based on the questionnaires only, the final sample consisted of 95 probationers who participated at T<sub>1</sub> and at T<sub>2</sub>.

As 32 percent of the probationers were not approached and 22 percent of the probationers refused to participate, it can be expected that generalizing the findings to all probationers may be somewhat problematic. Nevertheless, information from IRIS was used to compare those who participated at both T<sub>1</sub> and T<sub>2</sub> with those who did not. This revealed no significant differences in age, ethnicity, offense type, type of suspended sentence, assessed recidivism risk,<sup>82</sup> supervision level, or court district between the probationers who participated in both waves and a) the unapproached, b) the refusers, and c) those who filled in the questionnaire at T<sub>1</sub> only. However, there were a few exceptions. Probationers who filled-in the questionnaire only at T<sub>1</sub> had a higher recidivism risk and were, therefore, placed in a more

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<sup>82</sup> Based on the Risk Assessment Scales (RISc), the diagnostic tool of the Dutch probation service. The RISc assesses the offender's likelihood of reconviction, to provide an overview of the criminogenic needs of offenders, and to allow probation officers to formulate supervision plans. This risk assessment scale is a composite of demographics and crime-related characteristics that have been identified in international literature as predictors of recidivism. In a study done by Van Der Knaap, Leenarts, and Nijssen, the RISc was found to have favourable psychometric qualities. See LEONTIEN M. VAN DER KNAAP, ET AL., PSYCHOMETRISCHE KWALITEITEN VAN DE RECIDIVE INSCHATTINGSSCHALEN (RISC); INTERBOORDELAARSBETROUWBAARHEID, INTERNE CONSISTENTIE EN CONGRUENTE VALIDITEIT (WODC. 2007).

intensive supervision level, receiving more frequent face-to-face contacts in a month, than those who filled in both questionnaires. The probationers who were unapproached were slightly younger than those who filled-in both questionnaires ( $M = 27.41$  ( $SD = 10.54$ ),  $M = 30.91$  ( $SD = 10.98$ ), respectively). Also, of most probationers who were unapproached, recidivism risks were unknown and they were more often placed in a more intensive supervision level than those who filled-in both questionnaires.

### C. Variables

#### 1. Dependent Variables

*a. Self-reported compliance.* Offenders were asked about their willingness to comply with the probation conditions at both T<sub>1</sub> and T<sub>2</sub>. This variable was assessed with five items, including ‘I am motivated to comply with the conditions of my probation supervision’ and ‘I think it is unimportant to comply with the conditions of my probation supervision.’ Offenders could indicate on a five-point scale to what extent they agreed with these statements. A low score indicated a negative judgment, a high score indicated a positive judgment. Item means were averaged to form the self-reported compliance scale, which had a mean of 4.11 ( $SD = 0.62$ ) at T<sub>1</sub> and a mean of 4.12 ( $SD = 0.64$ ) at T<sub>2</sub>. There is no significant difference in self-reported compliance between both waves.

*b. Registered compliance.* This variable can be subdivided into (1) the number of technical violations and (2) whether the case was revoked due to non-compliance. With regard to the technical violations, the researcher examined whether probationers were given any warnings for non-compliance at T<sub>1</sub> and T<sub>2</sub>. Received warnings were found to be indicators for later probation supervision failure ( $\chi^2 = 7.35$ ,  $p = 0.19$ ). This dependent variable is dichotomous (0 = no warnings at T<sub>2</sub>, 1 = warnings at T<sub>2</sub>). At T<sub>1</sub>, 8 percent of the probationers had received a warning and at T<sub>2</sub>, 22 percent of the probationers had received a warning. There was, however, no significant correlation between self-reported compliance and technical violations

( $r = -0.173$ ,  $p = 0.094$ ). This indicates two separate measures of compliance, where the first measures the willingness to comply and the second predicts future probation supervision failure.

Revocation of the probation supervision was also examined. This dependent variable was also dichotomous (0 = supervision completed successfully, 1 = supervision revoked). Of the 95 probationers who participated in both waves, only 5 percent of the cases were revoked. While there was no significant correlation between self-reported compliance at T<sub>1</sub> and revocations ( $r = 0.019$ ,  $p = 0.852$ ) and at T<sub>2</sub> and revocations ( $r = -0.132$ ,  $p = 0.201$ ), a comparison between means showed some interesting results. At T<sub>1</sub> there was no significant difference between self-reported compliance and probationers whose cases were revoked compared to the probationers whose cases were not revoked. The difference was found at T<sub>2</sub>. Probationers whose cases were revoked were less willing to comply with their conditions ( $M = 3.7$ ) than probationers who completed their probation supervision successfully ( $M = 4.1$ ). However, the fact that there was no relationship between self-reported compliance and revocations suggests that offenders answered in a socially desirable way. This finding will be further discussed in the conclusion. In addition, a further analysis of revocations showed no relationship between the independent variables and revocations, thereby not allowing a further investigation of what increases the likelihood of a successful completion of the probation supervision. This is mostly likely due to the small number of revoked cases in this sample. For this reason, a further examination of revocations is left out of the analyses and the analyses focus solely on the technical violations.

## 2. Independent variables

In this study, control and guidance are the independent variables. They have been operationalized as follows based on the theoretical and empirical framework set forth earlier in this paper. Control, following deterrence theory, includes the *perceived certainty* of revocation

and *severity* of the revocation. Since celerity has found little empirical support in previous research, this variable was left out of the analyses. Guidance, according to the therapeutic alliance theory, is operationalized by examining the relationship between probation officer and probationer.

*a. Perceived certainty of revocation.* Offenders were asked about their perceived certainty of going to prison if they did not comply with the conditions of their probation supervision at T<sub>1</sub> and T<sub>2</sub>. This variable was assessed with two items: ‘If I do not comply with the conditions of my probation supervision I believe I have to go to jail’ and ‘If I do not comply with the conditions of my probation supervision it will have negative consequences for me.’ Offenders indicated on a five-point scale to what extent they agreed with these statements. The scale was computed on the basis of the mean item scores. A low score indicated a negative (less certain) judgment (1), and a high score indicated a positive (more certain) judgment about going to prison if they did not comply with the conditions of their probation supervision (5). The scale had a mean of 3.98 (*SD* = 0.86) at T<sub>1</sub> and a mean of 3.97 (*SD* = 0.74) at T<sub>2</sub>. There was no significant difference between the two waves.

*b. Severity of the revocation.* This continuous variable consisted of the number of days offenders would spend in detention if they did not comply with the conditions of their probation supervision.<sup>83</sup>

*c. Alliance with probation officer.* Offenders were asked about their relationship with their probation officer at T<sub>1</sub> and T<sub>2</sub>. Both time points were included in the analysis because probationers met their probation officer only a couple of times before completing the

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<sup>83</sup> In cases where suspended prison sentences with probation supervision were imposed, the time the offender would have to serve in prison if his case would be revoked was examined. In some cases, offenders were given suspended community service with probation supervision. In the Dutch penal code, two hours of community service is considered to be equivalent to one day of incarceration. In those cases where suspended community service was imposed, the hours the offender would have to work off if his case were to be revoked and divided the amount by 2 were calculated.

questionnaire at T<sub>1</sub>. As this gave insufficient time to develop a realistic opinion, their perceptions of this relationship were also examined at T<sub>2</sub>.

This variable was assessed with five items, including ‘My probation officer is interested in how I am doing’ and ‘My probation officer is friendly to me’. Offenders indicated on a five-point scale to what extent they agreed with these statements. A low score indicated a negative judgment (1), a high score a positive judgment about their probation officer (5). The scales were computed on the basis of the mean item scores. The scales had a mean of 4.08 (*SD* = 0.70) at T<sub>1</sub> and a mean of 4.12 (*SD* = 0.68) at T<sub>2</sub>. There was no significant difference between the two waves.<sup>84</sup>

#### D. Demographics And Crime-Related Characteristics

Previous research has shown that several demographics and crime-related characteristics have an impact on the probationers’ compliance. To control for their possible influence, these variables were also included in the analyses: age, ethnicity (0 = born in the Netherlands, 1 = born outside the Netherlands), marital status (0 = not married, 1 = married), children (0 = no children, 1 = children), educational level (0 = low, 1 = middle/high), work (0 = no work, 1 = work), type of offense (0 = violence, 1 = property, 2 = sexual, 3 = drugs, 4 = other), and a criminal history (0 = no, 1 = yes). To control for their possible influence, these control variables were also included in the analyses.

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<sup>84</sup> A factor analysis was done to determine whether the independent variables (perceived certainty and relationship with probation officer) and the dependent variable self-reported compliance were empirically distinguishable. Analyses from the principal components analysis with oblimin rotation yielded three separate factors with eigenvalues > 1, with a clear break after the fourth factor and the highest loadings on the intended factors. Together, the factors explained 74.68 percent of the variance. Internal consistency for each of the scales was examined using Cronbach’s alpha. The alphas ranged from moderate to strong, ranging from 0.68 (perceived certainty of revocation) to 0.85 (alliance with their probation officer and self-reported compliance). Overall, these analyses indicated that three distinct latent factors were underlying the data and these factors were moderately internally consistent. This table is available upon request.

Furthermore, because probationers were given both fully and partly suspended sentences, it was expected that this difference could potentially influence compliance as well. A dichotomous variable (0 = fully suspended and 1 = partly suspended) was added to the analyses as it was expected that actual incarceration as part of the sentence could positively influence compliance.

## V

### RESULTS

#### A. Descriptive Statistics

As shown in Table 1 at T<sub>1</sub> probationers had a mean age of 31.87 (*SD* = 11.04) years and most were born in the Netherlands (61.1%). Only 20 percent were married and 42.1 percent had one or more children. Most probationers had a low educational level (65.3%) and at T<sub>1</sub> 50.5 percent had work. Most probationers were convicted of a property offense (51.6%) followed by a violent offense (21%). A partly suspended sentence was given to 61.1 percent of the probationers, and the suspended sentence length was 89.63 (*SD* = 78.98) days. Most probationers were under supervised probation in the court district The Hague and 67.4 percent had a low supervision level. More than half of the probationers were previously convicted (64.2%).

[TABLE 1 ABOUT HERE]

Some additional analyses on the probation supervision, but not found in Table 1, showed that 46 percent of the probationers had to meet once every three weeks at the start of their probation, followed by once every two weeks (28 percent). Only 19 percent of the probationers had to meet once every four weeks and 6 percent had to meet once a week. On average, the probationers had three special conditions attached to their sentence. All of them had to meet with their probation officer at certain moments. The other special conditions were

mainly behavior-oriented. It must be noted that this research took place before the new implementation of the law in 2012, resulting in probationers often receiving rather broad conditions, such as complying with the instructions set by the probation officer, which would be specified during the supervision period.

## B. Background Characteristics And Compliance

To determine the relationship between the demographic and crime-related characteristics and the self-registered compliance and technical violations, a correlational analysis was done. Surprisingly, none of these variables were related to self-reported compliance and getting a warning at T<sub>1</sub>. Only age, work and a partly suspended sentence were related to receiving a warning at T<sub>2</sub>. In other words, the older the probationer, the less likely he was to receive a warning ( $r = -0.321^{**}$ ). Furthermore, probationers who had work ( $\chi^2 = 10.69$ ,  $p < 0.001$ ), and probationers with a fully suspended sentence ( $\chi^2 = 4.49$ ,  $p = 0.03$ ) were less likely to receive a warning at T<sub>2</sub>.

Since the other variables exerted little influence on self-reported and registered compliance, and because the small sample size disallows a large quantity of variables to be analyzed at the same time, they were left out of any further analyses.

### 1. Exploring Self-Reported Compliance

A correlational analysis between the independent variables and self-reported compliance revealed the following relationships. As shown in Figure 2, models (a) and (b), perceived certainty as well as a positive relationship with the probation officer were related to self-reported compliance at T<sub>1</sub> and T<sub>2</sub>. This means that probationers who reported a positive relationship with their probation officer and who perceived a revocation in case of non-compliance to be certain were more willing to comply. Severity of revocation was, however, not related to self-reported compliance. It was also found that the effect sizes of these correlations did not differ significantly between the two waves. However, a positive



relationship with the probation officer showed a stronger relationship with willingness to comply compared to the perceived certainty of revocation.

[FIGURE 2 ABOUT HERE]

In model (c), a more rigorous test of the collected data was done by conducting a linear regression analysis. The analysis showed that while a positive alliance with the probation officer at T<sub>1</sub> increased their willingness to comply at T<sub>2</sub>, this effect was fully mediated once perceived certainty of revocation at T<sub>1</sub> was added to the model. In other words, a positive alliance with a probation officer only has a positive influence on their willingness to comply, as long as they perceive a real threat of revocation if they do not comply with the conditions of their suspended sentence. Severity of revocation had no significant effect on the probationers' willingness to comply at T<sub>2</sub>.

## 2. Exploring Registered Compliance

A correlational analysis was also done between the independent variables and registered compliance, or technical violations. As shown in Figure 3 model (a), alliance with the probation officer, perceived certainty of revocation, and severity of revocation were not related to technical violations at T<sub>1</sub>. This is most likely because very few people had technical violations at the start of their probation supervision. In model (b), at T<sub>2</sub> only a positive alliance was related to technical violations. Probationers who perceived their relationship with their probation officer as positive were less likely to receive a warning for non-compliant behavior. Perceived certainty and severity of revocation were not related to technical violations at T<sub>2</sub>.

[FIGURE 3 ABOUT HERE]

A further analysis of technical violations showed that unlike Figure 2 model (c), none of the independent variables influenced technical violations. In other words, guidance and control by

the probation officer had no positive influence on receiving a warning during the probation supervision.

## VI DISCUSSION

The aim of the present study was to explore the extent to which deterrence—control—and the alliance with the probation officer—guidance—combined with demographic and crime-related characteristics were related to probation supervision compliance. Using two individual measures of compliance (self-reported and technical violations), the following conclusions were drawn.

First, it was found that only few of the demographics and crime-related characteristics were related to technical violations, including age, work and whether the probationer was given a fully or partly suspended sentence. There are two possible explanations for the other non-significant findings. First, these individual characteristics do not exert any influence on compliance. This explanation seems least likely as many studies have found a relationship between these characteristics and probation supervision failure.<sup>85</sup> Even in the Dutch probation context, Lamet and colleagues found a number of individual characteristics, such as age, ethnicity, educational level, type of offense, and criminal history, to be related to probation supervision failure.<sup>86</sup> An alternative explanation is that this paper only focused on self-reported compliance and technical violations. There was not enough variation in the number of revoked cases in this sample, hampering further analyses on its predictions. By focusing on self-reported compliance and technical violations, it suggests that probationers gave socially-desirable answers, even though probationers whose cases were revoked reported less willingness to

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<sup>85</sup> Clarke et al., *supra* note 22; Gray et al., *supra* note 22; Morgan, *supra* note 21; Olson & Lurigio, *supra* note 21; Sims & Jones, *supra* note 21.

<sup>86</sup> Lamet et al., *supra* note 9.

comply with the conditions of their sentence compared to probationers who successfully completed their probation supervision. A possible explanation for the social desirability, is that this study took place at the probation office. While the probation officer was never in the room at the time the probationer filled in the questionnaire and complete anonymity was guaranteed, probationers might have had difficulty believing that their probation officer would not see their answers and were unsure what the consequences would be once they were honest about their willingness to comply.

Another conclusion that can be drawn is that control was only found to be related to self-reported compliance and not registered compliance. To be more specific, only probationers' perceived certainty that their case would get revoked if they violated the conditions of their probation supervision was a significant predictor of self-reported compliance; this finding is in line with the study by Maxwell and Gray.<sup>87</sup> It seems that only perceived certainty is an important factor of deterrence to establish a willingness to comply; yet future research should aim to establish whether control could actually influence probation supervision compliance.

Finally, a positive alliance with their probation officer was related to more self-reported compliant behavior and less warnings. Other studies have also shown that a positive alliance between probation officer and probationer is related to more motivation and compliance.<sup>88</sup> Like Rex,<sup>89</sup> this study found that when probation officers were friendly and showed interest, probationers reported higher compliance and fewer warnings were given. However, although the present study provides some indications that a positive alliance is also important in a Dutch probation supervision setting, some caution is warranted regarding this finding. A relationship established as a positive or negative alliance with the probation officer only at T<sub>1</sub> did not affect

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<sup>87</sup> Maxwell & Gray, *supra* note 42.

<sup>88</sup> Kennealy et al., *supra* note 59; Skeem et al., *supra* note 60.

<sup>89</sup> Rex, *supra* note 59.

their willingness to comply or whether technical violations were given. Since this study found some indications of an association between alliance and compliance, more research is required to determine the causal ordering of perceptions on alliance and compliance.

#### A. Limitations

A few methodological limitations need to be addressed. First, the study included a relatively small sample of probationers from the court districts of Amsterdam and The Hague. Second, probationers with a low recidivism risk and a low supervision level were slightly overrepresented compared to those who only participated in the first wave and to those who were not approached. A possible explanation for this is that the probationers who did not participate in the second wave were those with higher recidivism rates and who failed their probation supervision before the second wave took place. In addition, the probationers that were not approached were those whose probation supervisions were revoked almost immediately as they never showed up. For this reason, their recidivism risks remain unknown, as no assessment of their risks and criminogenic needs could be done. Also, some probationers had severe psychiatric problems and, compared with our sample, were more often placed in a high supervision level. The researcher was not allowed to approach this group, as probation officers felt that participation in the present study might have worsened their psychiatric problems. This overrepresentation in the sample may have introduced some bias. A third methodological limitation is that the actual probation failure was too small in this sample, thereby not allowing for a further examination of its predictors. Future research should include a larger sample, comprised of probationers from different rural and urban court districts and with higher recidivism risks and supervision levels, to determine the influence of deterrence, procedural justice, and alliance on actual probation supervision success or failure. The final methodological limitation is that only the probationers' views were included in the study with

no regard of the working style of the probation officers. Their style has been found to play a critical role in the successful completion of a probation supervision.<sup>90</sup> To fully understand the dynamics at play during the probation supervision, both sides of the story need to be incorporated in future research.

There is also a theoretical limitation that deserves attention: the alliance between probation officer and probationer was examined only in general terms. There are many definitions of alliance but the working alliance defined by Bordin has received considerable support.<sup>91</sup> Besides bonding, Bordin also emphasizes the quality of the collaboration and the consensus between therapist and patient regarding goals and tasks. This definition can give more insight into the causal mechanisms of how the alliance between probation officer and probationer can influence probation supervision compliance. While the present study has provided some insight into the importance of the alliance the probationer has with his probation officer, future research should specifically focus on determining the influence of the working alliance on probation supervision compliance.

## VII

### CONCLUSION

Despite the limitations, this is one of the first studies to examine the longitudinal relationship between deterrence, alliance, and probation supervision compliance. The results of this study have implications for probation officers and policymakers in the field of probation. The idea that legal authorities—the probation officers—can generate greater levels of compliance by increasing the perceived certainty of revocation and developing a positive

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<sup>90</sup> See Angela D. Crews & Richard P. Seiter, *Social Worker or Cop? Measuring the Supervision Styles of Probation & Parole Officers in Kentucky and Missouri*, 27 J. CRIME AND JUST. 27 (2004); T. R. Clear & E. J. Latessa, *Probation Officers' Roles in Intensive Supervision: Surveillance Versus Treatment*, 10 JUST. Q. 441 (1993).

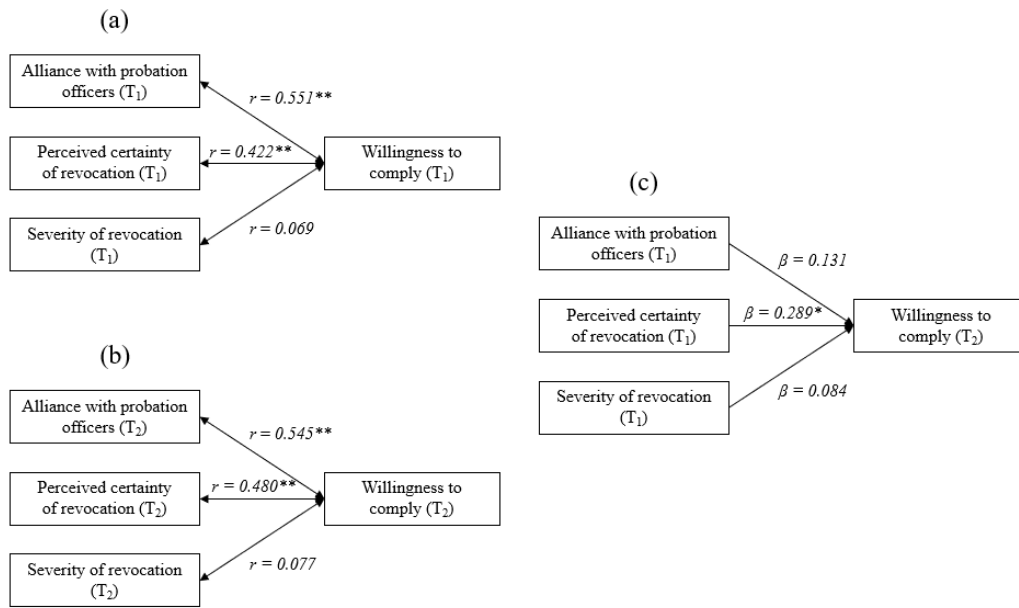
<sup>91</sup> Edward S. Bordin, *The Generalizability of the Psychoanalytic Concept of the Working Alliance*, 16 PSYCHOTHERAPY THEORY RES. & PRAC. (1979); Ackerman & Hilsenroth, *supra* note 53.

alliance with their client, is compelling. The next step is to focus on how the probation officer can achieve a balance between internal (positive relationship) and external (threatening to revoke) compliance: that is, to what extent does bonding stop, and, instead, a more formal reaction (threatening or giving a warning) influence the probationers' behavior.

**Table 1.** *Descriptive statistics (n = 95)*

	<i>M</i>	<i>SD</i>
Age (years)	31.87	11.04
Current suspended sentence length (days)	89.63	78.98
	<i>n</i>	<i>%</i>
Race		
Native	58	61.1
(Non-)western immigrants	37	38.9
Married		
Yes	19	20.0
No	76	80.0
Children		
Yes	40	42.1
No	55	57.9
Educational level		
Low	62	65.3
Middle/High	33	34.7
Work		
Yes	48	50.5
No	47	49.5
Type of offense		
Violence	20	21.0
Property	49	51.6
Damage & public disorder	15	15.8
Drugs	5	5.3
Other	6	6.3
Type of suspended sentence		
Fully	37	38.9
Partly	58	61.1
Supervision level		
Low	64	67.4
Medium	27	28.4
High	4	4.2
District		
Amsterdam	35	36.8
The Hague	60	63.2
Recidivist		
Yes	61	64.2
No	34	35.8

**Figure 2. Self-reported compliance**



**Figure 3. Registered compliance**

