

Balanced Justice

Suspended sentences: Should they be abolished?

What is a suspended sentence?

A suspended sentence is a prison sentence that is not put into immediate effect. A suspended sentence is imposed where the judge decides that the offence is serious enough for a jail term, but in the particular circumstances of the case, considers it appropriate for some or all of the imprisonment to be suspended. If the offender breaches the sentence by committing another offence, they are liable to go to prison to serve the suspended sentence.

Benefits of a suspended sentence

There are many reasons why suspended sentences are beneficial, including:¹

- they are an effective deterrent (research examining offenders' recidivism has found that suspended sentences appear to perform better than actual custodial sentences in preventing recidivism);
- they enable people who have committed crimes to avoid short prison sentences (thereby protecting them from the corrupting influences of prison);
- they have a symbolic effect (allows the seriousness of the offence to be recognised and denunciation of the person's criminal behaviour through the formal imposition of a prison sentence, while allowing the court to deal with that person in a merciful way);
- they assist to reduce the size of the prison population (short prison sentences significantly increase the prison population, potentially leading to prison overcrowding);
- they provide a protective effect against re-offending by maintaining a person's links with their community, as well as minimising the disruption to that person's family, accommodation and employment.²

However, suspended sentences have been in and out of favour in many jurisdictions over time, and this is mainly due to public perceptions about these sentences.³

There appears to be a misconception that suspended sentences are not real punishment for someone who has committed a crime and are a 'let off' or 'slap on the wrist'.⁴ It needs to be realised that despite the person not being immediately incarcerated, a suspended sentence is still punishment, as that person will have been subjected to prosecution, conviction and sentencing (all while facing the real possibility of time in prison), and will be left with the stigma attached to a sentence on their record (as a suspended sentence is regarded as equivalent to a sentence of imprisonment).⁵ Furthermore, in the event of breach of the terms of the suspended sentence, that person faces a real risk of going to prison for the original offence.⁶

Is imprisonment a better deterrent?

Studies examining the effectiveness of suspended sentences and full time imprisonment in reducing the risk of further imprisonment have found no evidence to support the view that persons given imprisonment are less likely to offend than those given a suspended sentence.⁷ Interestingly, it was found that there was a significant tendency for persons who had been imprisoned to re-offend more quickly on release than persons who received suspended sentences.⁸

Use of suspended sentences in Australia

Higher courts: In 2011-12, 88% of persons found guilty had custodial orders imposed; 65% were sentenced to custody in a prison, 19% were granted fully suspended sentences and 5% were sentenced to custody in the community.⁹

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Magistrates Court: In 2011-12, 9% of persons found guilty had custodial orders imposed; 5% were sentenced to custody in a prison, 4% were granted fully suspended sentences and less than 1% were sentenced to custody in the community.¹⁰

Children's Court: In 2011-12, 11% of children had custodial orders imposed; 6% were sentenced to custody in a juvenile correctional facility, 3% were granted fully suspended sentences and 2% were sentenced to custody in the community.¹¹

These figures show that when imposing custodial orders, the most favoured sentence imposed by all courts is a sentence of immediate imprisonment. However, suspended sentences are also widely used by courts of all levels and appear to be an important sentencing tool.

What will happen if suspended sentences are abolished?

Breach of international law

The *United Nations Standard Minimum Rules for Non-Custodial Measures* (the **Tokyo Rules**) advocate for sentencing options which demonstrate 'flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment'.¹² These Rules require that a range of non-custodial measures be provided from pre-trial to post-sentencing dispositions.¹³ Given that suspended sentences provide courts with a flexible sentencing option and assist (where appropriate) to keep people out of prison, it could be argued that removing the availability of suspended sentences would be a breach of the Tokyo Rules.

Loss of a valuable sentencing option

Courts need to have a wide range of sentencing options available to them in order to promote the interests of individualised justice.¹⁴ Courts must be able to impose sentences that align with both the nature of the offence and the individual circumstances of the case. Consequently, it must be remembered that suspended sentences have an important place in the sentencing hierarchy.

Increase in prison populations

The removal of suspended sentences will lead to more people being imprisoned, further burdening the prison system. A recent example of this comes from New Zealand, where following the abolition of suspended sentences, the number of people being sentenced to immediate terms of imprisonment rose by 23%.¹⁵

Prisons in Australia are already at capacity and the cost of running these facilities is incredibly high (in Queensland, the cost of housing a person in prison is approximately **\$318.50** per day or **\$116,252.50** per year¹⁶).

Balanced Justice view

The public image surrounding suspended sentences must be improved. The community needs to be made aware of the value and importance of suspended sentences within the justice system.

When imposing a suspended sentence, it is important that the judiciary explicitly communicate the significance of a suspended sentence, as this will assist to reiterate the seriousness and importance of a suspended sentence.

Academics, researchers, and others with information on the importance of suspended sentences should also help educate the public by disseminating such information through mainstream media channels.

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References

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- ⁹ Australian Bureau of Statistics, *Criminal Courts, Australia, 2011-12*, published at <http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/F6B0F33452AD4C88CA257B11000D4DE4?opendocument> (30 May 2013)
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This factsheet was produced on 31 May 2013

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