

Smart Justice

“Smart action for a safer community”

Suspended Sentences

What are suspended sentences?

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

Suspended sentences are an appropriate punishment option for many offences and can be a more effective crime deterrent than prison. Abolishing suspended sentences is likely to lead to a drastic, costly and unmanageable increase in the prison population.

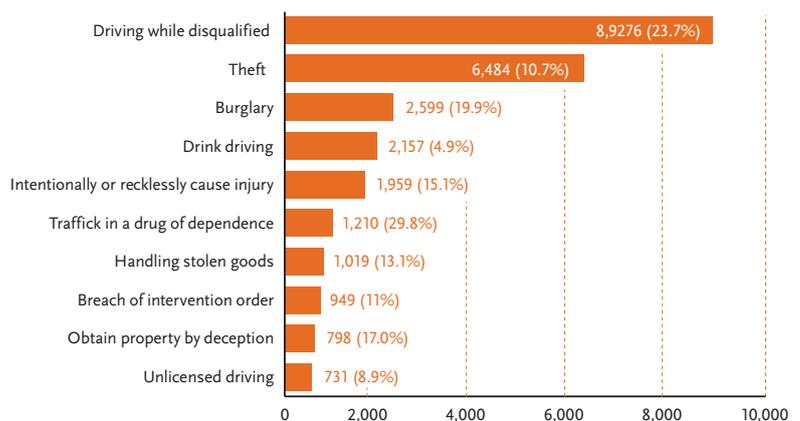
Debate about suspended sentences

Recently, there has been considerable debate about the future of suspended sentences:

- In 2006 and 2008, the Sentencing Advisory Council – a Victorian statutory body which researches sentencing and advises the government – published reports on suspended sentences. In its first report, the Council recommended phasing out suspended sentences over three years, along with changes to other community-based orders. In its second report, the Council did not recommend abolishing suspended sentences. Instead, it suggested changes to a number of sentencing options, and the monitoring of the impact of these changes before any decision was made on the future of suspended sentences. In May 2010, the Council released a monitoring report which found that the 2008 recommendations had not been fully adopted or implemented. It again

recommended introducing alternatives to suspended sentences.

- In 2006, the previous State Government introduced limitations on suspended sentences, restricting their use for certain serious offences – including murder, manslaughter, intentionally causing serious injury, armed robbery, rape and some other sexual offences – to cases where there are exceptional circumstances.¹
- In October 2010, the same Government removed suspended sentences for all ‘serious offences’, including armed robbery, sexual penetration of a child under 16 and intentionally causing serious injury.² The Government created a new intensive correction management order as an alternative to a suspended sentence. The new law is also set to abolish mandatory prison sentences for a subsequent offence of driving while disqualified or suspended.³
- A Liberal National Coalition Government was elected in November 2010 and plans to abolish suspended sentences for all offences. So far, the new State Government has introduced a bill to abolish suspended sentences for a number of crimes, including recklessly causing serious injury, commercial drug trafficking, aggravated burglary and arson.⁴



The number and percentage of people who received a suspended sentence for each of the 10 offences that had the highest number of suspended sentences imposed, Magistrates' Court, 2000-01 to 2006-07.

Source: Sentencing Advisory Council, *Suspended Sentences and Intermediate Sentencing Orders: Suspended Sentences Final Report Part 2* (2008), p 27

Suspended sentences are overwhelmingly used for non-violent crimes

- The most frequent recipients of suspended sentences are people who drive while disqualified. Suspended sentences for this offence made up 35% of suspended sentences imposed in 2008-09.⁵
- From 2001 to 2007 traffic offences accounted for almost one third of suspended sentences.⁶
- Non-violent property offences, such as theft, accounted for approximately one third of suspended sentences during the same period.⁷
- The use of suspended sentences for serious offences has not varied greatly over the last 9 years. The percentage of people who received a wholly suspended sentence for a serious offence in 2009 was almost the same as the percentage for 2001.⁸

People receiving suspended sentences are being punished:

- Suspended sentences have serious consequences for people seeking jobs or seeking to enter other countries, where people are often required to disclose prison sentences.
- About 12% of suspended sentences are partially suspended – meaning that offenders serve an immediate prison term followed by a period with a suspended sentence.⁹
- More than 50% of wholly suspended sentences are imposed in conjunction with another sentencing option, such as a fine or community based order.¹⁰
- If a person breaches a suspended sentence, the court must send them to prison to serve the sentence unless it would be unjust to do so in light of any exceptional circumstances which have arisen.¹¹

What will happen when suspended sentences are abolished?

- 1) *The sentence won't fit the crime*
Abolishing suspended sentences will make it more difficult for judges to impose appropriate sentences which minimise the chances of reoffending.
- 2) *There may be a drastic, costly and unmanageable increase in the prison population*
The removal of suspended sentences will lead to more people being sentenced to immediate prison. In New Zealand, following the abolition of suspended sentences, the number of people being sentenced to immediate terms of imprisonment rose

“An immediate abolition of suspended sentences might have a catastrophic impact upon prisoner populations which would be unmanageable, unwise and very expensive.”

VICTORIAN SENTENCING ADVISORY COUNCIL REPORT.¹²

23%.¹³ While it is difficult to predict the impact of abolishing suspended sentences on the Victorian prison population, an increase of only 10% would mean an extra 435 Victorian prisoners.¹⁴ 435 extra prisoners could cost close to \$35 million annually in recurrent funding, not including the huge costs to construct new prison accommodation which could be over \$225 million – similar to the cost of building the planned new 200-bed Monash Children's Hospital.¹⁵

3) *Crime may increase*

The evidence suggests that removing suspended sentences will not reduce crime and may actually increase crime.

A recent NSW study compared the likelihood of reoffending of prisoners given suspended sentences with similar offenders sentenced to immediate terms of imprisonment. The study found that there was no evidence that prison acted as a greater deterrent than suspended sentences. In fact, for prisoners who had previously been to prison, suspended sentences were significantly more effective in preventing future offending than immediate terms of imprisonment. As a means of reducing further offending, suspended sentences are as effective, if not more effective, than immediate imprisonment.¹⁶

These findings are consistent with other research which shows that imprisonment makes re-offending more likely rather than deterring reoffending.¹⁷ Non-custodial sentencing options, such as suspended sentences, provide wider scope for rehabilitation and treatment.

Smart Justice alternatives

Sentencing reform should focus on increasing and strengthening non-custodial sentencing options that provide a wide scope for rehabilitation and treatment. Suspended sentences should be retained as an option for judges to use in appropriate cases – however, judges should be able to add conditions to suspended sentences to address the causes of offending and to further reduce the chance of reoffending. In order for conditions to be effective, it is critical that offender rehabilitation services be properly funded.

This factsheet was updated on 4 February 2011

1 *Sentencing Act 1991* (Vic) s 27(1A).

2 *Sentencing Further Amendment Act 2010* (Vic). It has a default commencement date of 1 January 2012.

3 *Sentencing Amendment Act 2010* (Vic) s 28.

4 *Sentencing Further Amendment Bill 2010*. More bills are expected to be introduced in 2011.

5 Sentencing Advisory Council, *Suspended Sentences in Victoria: Monitoring Report* (2010) Sentencing Advisory Council, 8.

6 Turner, *Suspended Sentences in Victoria: A Statistical Profile* (2007), Sentencing Advisory Council, 4, 7.

7 Turner, above n 6, 7-8.

8 Sentencing Advisory Council, above n 5, 25.

9 Turner, above n 6, 4.

10 Turner, above n 6, 3-4.

11 *Sentencing Act 1991* (Vic) s 31(5A).

12 Sentencing Advisory Council, above n 5, xix.

13 Sentencing Advisory Council, above n 5, 23.

14 There were 4,350 Victorian prisoners at 30 June 2009: Department of Justice, *Statistical Profile of the Victorian Prison System, 2004-05 to 2008-9* (2009).

15 Based on Council of Australian Government 2007-08 figures showing an annual recurrent expenditure per prisoner of \$80,665: www.justice.vic.gov.au. The prison capital cost estimate is based on the \$126.2 million cost of adding 244 prison beds announced in the 2010/11 Victorian State Budget: www.budget.vic.gov.au. For the \$220 million cost of Monash Children's see: G Macarthur, "New children's hospital for Melbourne's southeast", *Herald Sun* 14 March 2010.

16 Lulham, Weatherburn & Bartels, 'The Recidivism of offenders given suspended sentences: a comparison with full-time imprisonment' *Contemporary Issues in Crime and Justice no 136*, NSW Bureau of Crime Statistics and Research' 10.

17 Lulham & others above n 16 and the studies there cited.