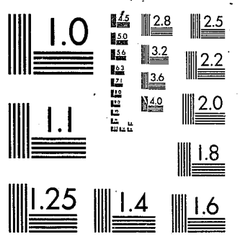

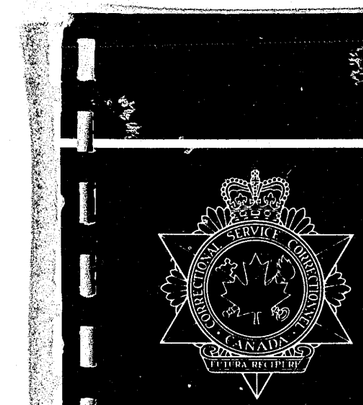

AN ADVISORY GROUP TO THE CORRECTIONAL SERVICE OF CANADA

THE CRIMINAL JUSTICE SYSTEM:

NETHERLANDS

Background Report No. 5

Strategic Planning Committee

April 1980

Correctional Service Canada | Service correctionnel Canada

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This report has been prepared as a background paper by The Strategic Planning Committee for its deliberations on the long-term future of The Correctional Service of Canada.

In the hope that it may be of value to government departments, agencies and individuals involved in criminal justice, I am pleased to share it with you.

D.R. Yeomans
Commissioner

Research Assistant: Cathy J. Gillis

This Report is a summary of the most recent literature available on the Criminal Justice System in Netherlands.

We are grateful to the officials of the Ministry of Justice, Netherlands, particularly J.J.M. Van Dijk, Assistant Director of Research for critical comments on this report.

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I CRIMINAL JUSTICE SYSTEM

A) Philosophy

- activation of the criminal justice process marks the limits of social intolerance;
- the criminal justice system is the least appropriate mechanism to solve social problems; other social or economic support systems are utilized first where possible;
- based on cultural and historical factors (i.e. deep social tolerance, respect for individual combined with collective responsibility);
- benevolent system of justice;
- emphasis on treatment of all offenders.

B) Administration

- Ministry of Justice responsible for prosecution/corrections;
- judiciary independent;
- one centralized police department, departmentalized into municipal and state agencies;
- police contracted to municipalities - under supervision of Burgomaster - chairman of municipal council;
- professional career paths for judges and prosecutors.

C) Operations

- wide discretionary powers at all levels of system;
- police and prosecution may apply fines or negotiate disputes without recourse to courts (new regulations 1978 - increase the number of violations subject to police discretionary fines);
- principle of opportuneness - prosecutor not bound to institute criminal proceedings (50-54% of crimes dealt with in pre-judicial stage either by conditional or unconditional discharge); decision not to prosecute may be protested;
- private citizens cannot instigate criminal proceedings;
- no bail system;
- judicial process more inquisitorial than adversary;
- no jury system;
- 80% pleas registered are guilty, although technically, guilty pleas not registered;
- high conviction rate;
- rapid trials, but delays are increasing;
- criminal responsibility relevant to finding of guilt and disposition;

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- two categories of offences - serious/minor, serious offendes adjudicated by a different judge;
- custody awaiting trial may only be ordered for serious offences.

D) Sentencing

- age of criminal responsibility eighteen, juveniles (12-18) dealt with under special code;
- children under 12 years old cannot be prosecuted;
- juvenile justice system - educational basis;
- imprisonment seen as last resort;
- sentencing policy - lenient; where there is imprisonment, sentences are short;
- no minimum specified (generally one day's imprisonment is seen as minimum); maximums specified;
- judiciary has great freedom in imposition of sentencing;
- prison sentences are set or indeterminate;
- high use of fines;
- few alternatives to incarceration available;
- death penalty abolished 1870, no discussion of re-introduction;
- lowest incarceration rate of all Western Nations (due to (1) brevity of sentences, (2) limited use of imprisonment, (3) exclusion of persons under 18 and those discharged in the pre-judicial stage from criminal prosecution, and (4) wide use of social measures outside the criminal justice system);
- offenders who are found not responsible may be sentenced to (1) discharge, (2) committed to a mental hospital and/or (3) detained at the Government's Pleasure (TBR).

E) Sanctions

i) fines

- frequently used sanction;
- cannot be used in lieu of 6 years or more imprisonment;
- two-thirds of convictions are dealt with by fines;
- maximums set out in criminal code,
- custody substituted for default of payment.

ii) suspended sentence or probation

- frequently used sanction;
- supervision given to government subsidized private rehabilitation agencies;

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- each judicial district has its own Probation/Aftercare Board with professional composition. Boards are responsible for decisions on probation and parole cases;
- a suspended prison sentence can be converted into conditional probation, with up to 3 years supervision;
- no community service orders, but currently under discussion;
- may be used in lieu of fine or imprisonment.

iii) imprisonment

- prison term - determinate or indeterminate;
- range from one day to 15 years; 20 years maximum for recidivists or life;
- 4 types of imprisonment.

a) detention (custody)

- lenient form of imprisonment;
- for minor offenders, and serious offenders involving negligence;
- term cannot exceed 1 year;
- served in same manner as regular imprisonment;
- less choice of penal institutions;
- no parole possible.

b) regular imprisonment

- used to differentiate from lenient imprisionment;
- refers to long sentences (6 months or more).

c) commitment to state labor institution

- used for habitual drunks and vagrants;
- terms range from 3 months to 3 years;
- rarely used sanction;
- current discussion to abolish this sanction.

d) TBR (detention at the Government's pleasure)

- imposed for a period of two years; can be repeatedly extended for diagnosed criminal psychopaths or offenders with diminished responsibility;
- bi-annual court review;
- used for aggressive crimes or recidivists of property offences;
- rare usage.

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e) other sanctions

- additional sentences may include the deprivation of rights (i.e. to vote, hold public offices).

F) Trends

- increased use of fines, especially for drunken drivers;
- decreased use of imprisonment;
- increased demand to introduce the Community Service Order as an alternative sanction;
- increased number of short prison sentences imposed;
- evident increases in urban crime, especially drug-related crime;
- increase in sentence length for selected offences (i.e.: drug trafficking/armed robbery).

II CORRECTIONAL SYSTEM

A) Philosophy

- offender is in need of some form of treatment while being punished;
- general aversion to traditional prisons, seen as dehuminizing and degrading;
- incarceration and rehabilitation are not mutually exclusive;
- rehabilitative model operative in Dutch penal system.

B) Policy

- provision of humane care while in confinement, emphasis is on programs to aid re-integration;
- former prisons are sold or closed, not maintained;
- "walking convict" concept - offender can choose when to serve sentence, within specific time limits, attempts to reduce the number of "walking convicts" through pardons and sentence reduction, waiting list and call up procedures;
- reduce negative effects of imprisonment through positive-oriented programming.

C) Administration

- Ministry of Justice responsible for prisons, care of psychopaths and probation/aftercare service; each is a seperate unit;
- Supervisory Boards appointed for each institution; Boards have no administrative powers but oversee prison organization, they are independent from prison administration.

D) Conditions

- small institutions (15 to 120 bed capacity), excepting new large Amsterdam prison for pre-trial detainees, short sentence and women;
- low emphasis on security;
- extensive system of institutions; special and separate institutions for youth, women, short term sentences, those who require special training, etc.;
- special institutions for mentally abnormal offenders (i.e. designated criminal psychopaths); 5 private clinics; 2 state institutions (most dangerous offenders handled in these institutions, security is a priority over treatment);

- 6 juvenile institutions for those under 24;
- 25 remand centers (local jails) for sentences < 1 month;
- 2 State Labor institutions;
- 20 State prisons, capacity (1,641);
- one prison for women;
- total bed capacity of all institutions 3,667 (1977);
- no overcrowding of prisons;
- high staff:inmate ratio (1.5:1);
- little or no prison violence;
- high population turnover due to short sentences;
- liberal institutional regimes (re: dress, leave privileges, inmate organizations);
- old institutions found unsuitable for modern penal treatment, present construction phase of institutions is toward 'pavilion' system - division of institutions into units to accommodate 24 prisoners per unit;
- long term prisoners seen as having sentence of six months or more (5 for juveniles).

E) Operations

- security classification - open, semi-open, closed;
- institutions classified on sentence length admission.

i) open

- offender can serve last part of sentence at institution, if sentence is eight months or over, at least one-half must be spent in closed institutions;
- inmates work outside institution, receive normal wages;
- freedom of movement;
- little or no security;
- four open institutions (1977).

ii) semi-open

- used to serve last three months of sentence;
- inmates work outside institutions but on prison land.

iii) closed

- traditional prison;
- external security, low internal security;
- elaborate classification system; based on personality of offender, individual needs; age; length of sentence;
- institutional programs concentrate on individual treatment; therapeutic, work, study programs (psychological therapy seen as an important part of institutional programs);
- participation mandatory in all programs.

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iv) inmate profile

- lower socio-economic strata overrepresented in criminal justice process;
- majority of present population - bad risks and longtimers;
- minority groups heavily represented in proportion to population.

v) inmate rights

- very little information;
- low key issue;
- regulated by The Prison Act.

vi) parole

- conditional release after two thirds of sentence or nine months, whichever is greater;
- release on licence - decision of Probation and Aftercare Boards;
- parole supervision for one year or until expiry of sentence;
- supervision responsibility for Rehabilitation Societies - private agencies funded 100% by the government;
- usually granted.

vii) pardon

- crown prerogative;
- remission and reduction of sentence;
- commutation of life sentence;
- increased use of pardons (see page 5 "walking convicts").

F) Evaluation

- Prison Department maintains a research advisory section;
- most research projects concern treatment applications (especially specialized clinics for criminal psychopaths) - findings indicate that the capacity of these clinics to reduce recidivism is no greater than most of other forms of institutions;
- no recidivism statistics available.

G) Trends

- increased number of crimes against property (146,902; in 1968 to 262,198; in 1972);

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- constant rate in number of crimes against the person;
- decrease use of regular prison sentence/indeterminate sentence;
- lowest incarceration rate in the western world (24 per 100,000); lower overall crime rate;
- 1,700 inmates on any given day;
- internal pressures on correctional system;
- more self assertive and difficult prison population (especially drug addicts and foreign inmates);
- stress/frustration effecting upper management of institutions;
- seperate prisons difficult to attain due to centralized administration;
- a building up of the most serious offenders in prison population.

III CONCLUSION ON SYSTEM'S OPERATION

At first glance the Dutch penal system is an attractive model, with its low incarceration rate, short sentences and humane approach to offenders, however there are certain liabilities in the system. The reduced inmate population has forced the closure of jails and prisons; staff relocation is a concern but a more important effect is the increasing centralization of the system, which tends to oppose the community orientation policy. Further, lenient sentences, while assumed less destructive than longer sentences, produce a high turnover in the institutions which creates unrest and problems among long-term inmates and the staff. As seen in the Scandanavian systems, there appears little citizen involvement in corrections. The large central bureaucracy runs the system more on the "benevolence of decision makers than on safeguards". Criminal justice administration is left up to the 'experts'.

The use of the indeterminate sentence in the treatment of criminal psychopaths raises another issue. As many dangerous offenders and recidivists are classified as mentally unstable, it is possible the Dutch rid their prison system of troublemakers by conveniently calling them mad and treating them as such. One-third of the prison population was held in psychiatric institutions on renewable two year terms, but this provision is decreasing in use.

In regards to the overriding rehabilitation theme of Dutch corrections the concept of "walking convicts" appears a contradiction. If a person can remain crime free in his community until he is called to serve his sentence, is treatment really necessary? It would appear that imprisonment is nothing more than punishment, via deterrence or retribution, in these cases. Finally, there remains a heavy financial burden of the penal system, not to mention the human costs.

There seems little chance of the Dutch abandoning their treatment model of corrections, in spite of the tentative findings regarding rehabilitation's failure. The cultural climate is less punitive and the emphasis on rehabilitation perhaps eases the social conscience in that the system operates on good intentions.

IV APPENDICES

A) Statistics

CRIMES KNOWN TO THE POLICE*

	1965	1970	1975	1976	1977
Total	169,221	265,732	453,178	525,566	550,654
Penal Code	147,235	225,788	397,958	462,167	479,730
of which:					
against public order and public authorities	2,644	3,586	4,274	4,953	5,494
against morality	9,332	8,752	7,264	7,737	8,032
against life and person	11,157	11,305	12,027	13,788	14,045
against property	115,248	189,469	345,710	401,218	406,204
malicious damage	7,679	11,181	26,703	32,196	43,389
Military Penal Code	558	634	1,130	1,325	1,419
Road Traffic Act	21,021	36,774	46,583	53,245	59,990
of which:					
drive under the influence of drink	8,065	9,195	21,204	25,853	30,099
drive on after incident	4,883	8,682	11,605	14,290	16,999
culpable homicide or grievous bodily harm	3,959	5,656	3,803	3,807	3,932
joy-riding	3,289	11,803	7,773	6,629	5,551
Economic Offences Act	107	88	47	49	71
Drug Act	-	-	3,030	3,968	3,845
Fire-arms Act	-	-	3,251	3,270	3,597
Crimes cleared up:					
absolute	87,857	109,241	149,579	173,196	177,840
per 100 crimes known to the police	52	41	33	33	32

* State and municipal police and Royal Marechaussee.

SOURCE: Justice and Prisons, Reprint from: "Statistical Yearbook of the Netherlands", 1978, Central Bureau of Statistics, The Hague, Netherlands.

SENTENCES IN REGARD TO OFFENCES

	1965	1970	1972	1973	1975
Total number of cases in which the accused was found guilty	40,167	45,334	47,546	47,589	54,230
Principal Penalties and Orders					
Imprisonment					
for life	-	-	-	-	-
5 years and over	18	8	19	17	42
over 1 year and less than 5	473	211	277	257	409
1 year	544	277	239	227	317
6 months and less than 1 year	2,127	1,878	1,813	1,571	1,720
3 months and less than 6	1,914	2,142	2,383	2,381	2,422
1 month and less than 3	2,525	2,668	3,112	3,007	3,418
less than 1 month	6,055	7,757	8,656	8,611	8,796
Total imprisonment	13,666	14,941	16,499	16,071	17,124
Confinement	109	82	68	56	25
Reformatory school	783	803	890	1,042	1,216
Detention	56	356	476	485	614
Fine	25,388	28,953	29,487	29,870	35,327
Reprimand	56	155	154	171	156
Bound over (adolescents)	100	53	36	58	37
Placed in an institution for special treatment	12	12	12	12	8
Placed under supervision					
sole	32	54	40	28	24
with other penalty or measure	632	394	225	246	164
Found guilty but not sentenced	117	66	59	72	86
Bound over (adults)	335	262	198	141	123
Additional Penalties					
Driving disqualification	6,721	9,939	10,590	11,057	14,479
Placed in a State Labour Colony	50	34	38	19	3
Forfeiture of goods	592	1,163	1,593	1,789	2,539
Withdrawal of goods from employment	192	398	1,389	1,422	2,394

SOURCE: Justice and Prisons, Reprint from: "Statistical Yearbook of the Netherlands", 1978, Central Bureau of Statistics, The Hague, Netherlands.

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SUSPENDED AND PARTLY SUSPENDED SENTENCES

	1965	1970	1972	1973	1975
Suspended Sentence					
Imprisonment					
1 year	2	1	1	2	1
6 months and less than 1 year	84	31	18	25	48
3 months and less than 6	390	292	272	297	284
1 month and less than 3	674	687	741	691	775
less than 1 month	644	976	1,108	1,264	1,219
Total imprisonment	1,794	1,987	2,140	2,279	2,327
Confinement	16	8	7	10	3
Reformatory school	593	445	456	537	663
Detention	26	202	286	299	331
Fine	150	291	415	395	355
Bound over (adolescents)	58	21	16	27	17
Placed in an institution for special treatment	5	5	1	2	-
Partly Suspended Sentence					
Imprisonment					
1 year	350	149	125	122	152
6 months and less than 1 year	1,508	1,356	1,199	1,027	1,141
3 months and less than 6	843	1,088	1,193	1,125	1,188
1 month and less than 3	709	930	1,076	1,083	1,080
less than 1 month	757	1,024	1,153	1,270	1,137
Total imprisonment	4,167	4,547	4,746	4,627	4,698
Confinement	3	12	1	6	8
Reformatory school	57	181	212	242	266
Detention	8	27	37	26	25
Fine	595	915	962	879	1,011
Fined and:					
imprisonment (s.s.)	7,194	7,579	8,230	8,780	10,934
confinement (s.s.)	41	56	22	39	26
reformatory (s.s.)	583	529	662	653	648

SOURCE: Justice and Prisons, Reprint from: "Statistical Yearbook of the Netherlands", 1978, Central Bureau of Statistics, The Hague, Netherlands.

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POPULATION OF THE PENAL INSTITUTIONS ON DECEMBER 31ST*

	1965		1970		1973		1975		1976	
	M	F	M	F	M	F	M	F	M	F
Prisons, Houses of detention and State labour colonies										
Convicted persons	1,448	27	894	8	854	6	994	15	1,344	13
Unconvicted persons	1,508	33	1,403	17	1,179	17	1,137	25	1,315	33
Arrest of debt	4	-	1	-	2	-	1	-	2	-
In lunatic asylum or hospital or staying elsewhere for other reasons	83	2	107	3	167	3	179	5	231	5
Total	3,042	65	2,405	28	2,202	26	2,311	45	2,892	51
State institutions for child protection										
Convicted persons	85	-	70	-	44	-	51	-	39	-
Unconvicted persons	40	11	28	2	24	1	26	1	43	2
Placed under supervision	125	48	40	23	54	4	76	7	70	4
Staying elswhere for other reasons	35	10	110	13	101	18	49	8	89	-
Total	285	69	248	38	223	23	202	16	241	6

* Excluding was criminals.

SOURCE: Justice and Prisons, Reprint from: "Statistical Yearbook of the Netherlands", 1978, Central Bureau of Statistics, The Hague, Netherlands.

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CLASSIFICATION BY AGE OF THE POPULATION OF THE PENAL INSTITUTIONS [1]

	1965		1970		1973		1975		1976	
	M	F	M	F	M	F	M	F	M	F
Prisons, Houses of detention and State labour colonies 2)										
Under 18 years	47	-	75	-	53	1	68	3	83	2
18 - 20 years	533	5	502	2	432	1	386	8	525	6
21 - 24 years	623	11	594	7	552	8	647	10	759	15
25 - 29 years	573	11	448	3	486	7	497	6	662	8
30 - 39 years	674	12	455	7	440	5	479	8	543	10
40 - 49 years	354	13	239	5	176	2	173	6	220	7
50 - 59 years	167	7	67	1	52	-	47	2	82	2
60 - 69 years	56	3	21	3	10	1	14	1	15	1
70 years and over	16	-	4	-	1	1	-	1	3	-
Total	3,043	62	2,405	28	2,202	26	2,311	45	2,892	51
State institutions for child protection 3)										
Under 14 years	20	1	10	1	10	3	21	7	31	2
14 - 17 years	582	54	720	41	802	45	848	28	984	29
18 years and over	170	27	144	5	123	1	105	4	165	-
Total	772	82	874	47	935	49	974	39	1,180	31

1) Excluding war criminals.
2) Population on December 31st.
3) The age of the newcomers only.

SOURCE: Justice and Prisons, Reprint from: "Statistical Yearbook of the Netherlands", 1978, Central Bureau of Statistics, The Hague, Netherlands.

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TOTAL NUMBER OF INMATES AND NUMBER OF DAYS SPENT IN THE PENAL INSTITUTIONS [1]

	1965		1970		1973		1975		1976	
	M	F	M	F	M	F	M	F	M	F
Prisons, Houses of detention and State labour colonies										
Total number of inmates present in the course of the year	19,413	570	21,367	408	21,253	404	19,304	345	25,260	417
Number of days	1,192,657	25,592	955,960	12,873	912,859	11,617	908,415	13,609	1,030,931	17,034
Average number of inmates	3,268	70	2,619	35	2,501	32	2,489	37	2,824	47
Number of days per head	61	45	45	32	43	29	47	39	41	41
State institutions for child protection										
Total number of inmates present in the course of the year 2)	957	132	1,021	95	1,044	79	1,094	61	1,211	47
Number of days	102,326	23,178	95,361	13,997	89,538	10,330	86,239	7,109	86,210	4,522
Average number of inmates	283	63	261	38	245	28	236	19	242	14
Number of days per head	107	175	93	147	86	131	79	117	71	96

1) Excluding war criminals.
2) Excluding those, who changed status but were not transferred to another establishment.

SOURCE: Justice and Prisons, Reprint from: "Statistical Yearbook of the Netherlands", 1978, Central Bureau of Statistics, The Hague, Netherlands.

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RELEASE ON LICENCE

	1965	1970	1973	1975	1976
Convicted persons, with regard to whom (more than) 2/3 of the term of imprisonment and at the same time 9 months have been expired:					
Total	906	412	413	615	895
of which: released on licence in the course of the year	576	328	323	418	665
or which: with sepcial conditions	386	161	234	184	372
the proposal of release on licence was yet in consideration on December 31st	168	57	69	151	207
not released on licence	162	27	21	46	23
Prisoners, who have got abatement or remission of the rest of their punishment	24	100	114	491	98

SOURCE: Justice and Prisons, Reprint from: "Statistical Yearbook of the Netherlands", 1978, Central Bureau of Statistics, The Hague, Netherlands.

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AVERAGE DAILY POPULATION OF THE PENAL INSTITUTIONS
(CHILD PROTECTION CASES AND THOSE COMPULSORILY
COMMITTED TO MENTAL INSTITUTIONS ARE EXCLUDED)

Year	Daily Population	Convicted
1963	3,550	1,558
1967	3,595	1,418
1968	3,369	1,204
1969	2,881	932
1970	2,657	905
1971	2,841	1,010

General Statistics

Population: 14 million

Rate of Imprisonment: 18/100,000 (1979 - estimate)
24/100,000 (1977)
20/100,000 (1975)

- average sentence length is 1.5 months;
- less than one-half of the prison population serve over one month;
- one-third of prison population serving T.B.R. terms (258 - in private institutions; 217 in state institutes - May 1977).

Prison Population (1976)

- 3,795 - 2,154 in detention, 1,641 in prison;
- 11,000 walking convicts;
- 900 on remand.

Sources: Central Recruiting and Training Institute of the Prison Service, 1975.
Netherlands Criminal Justice Investigation Seminar, April, 1978.

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B) External Factors

Political

- constitutional monarchy;
- democratic election process; party system;
- small in geographic size; dense population;
- strict gun control;
- unitary system of government.

Economic

- little economic/income disparity.

Social

- collective responsibility/unity of people for geographic and historical defense necessities;
- less fragmented;
- extensive social welfare system.

Cultural/Historical

- tolerant people, seen in historical events (i.e. asylum for religious refugees);
- a non-violent people; low tolerance of violence;
- experience of WWII and Nazis concentration camps; thus distaste for any form of imprisonment.

C) Organizational Chart

- Not Available

D) Reform Proposals

E) Update

Updates

- recent criminal law changes aim at increasing effectiveness of penal sanctions through installment payments of fines, "on the spot" fine payment to police, further strengthen incentives to the suspect to avoid prosecution, especially in regards to traffic offences;
- little media sensationalization of crimes and criminal procedings.

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