Preventive detention as a measure to keep sentences short

Randi Rosenqvist
Oslo University hospital and Ila prison
Norway is a small country

- 5 million inhabitants
- 4,000 prison beds
- 4,000 beds in psychiatric institutions
- > 100 sane criminals on preventive detention
- > 100 insane criminals with a preventive detention hospital order
Our sentences are short

• Those released in 2007 had been in prison (cumulative)
  – < 1 month 28.9 %
  – < 3 months 65.5 %
  – < 9 months 85.3 %
  – < 1 year 89.0 %
  – < 3 years 95.2 %
  – < 5 years 98.5 %
Mean number of inmates per 100 000 in 2007

- Iceland  36
- Denmark  66
- Finland  68
- Norway  75
- Germany  88
- England and Wales  153
- Russia  635
- USA  762

*International Centre for prison Studies, Kings college*
We want to keep it like this

- Fines
- Conflict Counsel
- Community service sentences
- Drug treatment sentence with court control
- Suspended sentence
- Combined sentence
- Imprisonment (fixed date of release)
- Preventive detention
• 350 000 penal sanctions in 2006, crimes and minor offences (313 779 minor offences)

• > 8000 prison sentences,
• > 2000 combined sentences
• > 2000 suspended sentences
• < 3000 community sentences
Psychotic and severely mentally handicapped are not able to serve time

The insanity defence, § 44

– Approximately 70-80 cases a year as a result of a forensic psychiatric assessment, approx 20 will be sentenced to mental health care

– About 9000 complaints dropped on grounds of presumes insanity

• Not competent to serve time

  – No national figures available

• But approx 3% of the prison population have a severe mental illness
Those sentenced to psychiatric care

• are transferred to civil commitment in due course, for about half of them within three years

• There are no prison hospitals or forensic psychiatric institution, but we have medium secure units for the dangerous, sentenced or civilly committed.
There are about 20 preventive detention sentences for the sane each year

• All men start their sentence at Ila prison, there are 69 sentenced men there now.

• There are 10 beds in Trondheim prison
• There are 3 female sentenced in a woman's prison
• There are some men in halfway houses or on conditional release
The current legislation has been applicable for 10 years

• The Law Commission discussed the ethics of preventive detention as such.

• The claim was that the option of sentencing the few, very dangerous to preventive detention would keep the ordinary sentences short.
The Law Commission advised the use in cases such as:

- A person who is previously convicted for sexual abuse of children who is now found exposing himself on a playground.
- A person who is sentenced many times for violent assaults and has been drinking and fighting two weeks after release.
- A man who has committed his third rape.
These charges might give

• A fine!
• One year prison?
• Four or five years prison?

• A preventive detention with several more years in prison would protect the population better and give the criminal time to reform.
The Law Commission assumed

- That very serious crimes, as rape and murder or torture and murder, would be sentenced to maximum penalty, 21 years.
It was assumed

• that those who were sentenced to preventive detention needed longer than normal time to better themselves and they were to be given:
  – Cognitive programmes
  – Individual psychotherapy
  – Drug treatment programme
  – Education and work experience
  – Experience in daily living free of drugs
The Law Commission

• Advised the Courts to ask
  – How many times has he done it before, or something just as serious?
  – How long did it take from release to new offence?
  – Does he have a drug problem?
  – Does he have a job and a place to live?

• This was before the PCL-20 and the other checklists (VRAG, HCR-20 and others)

• The forensic experts risk assessments were not very impressive
Preventive detention

• has a **maximum length** and a **minimum length**.

• At minimum time one can apply for conditional release, the only subject the court then can consider is the risk of serous new offences.

• The maximum time can be extended, maximum five years at a time.
• The first serious criminal case after the law came into force was a case of two young men (18-19 years) previously not convicted, raping and killing two small girls (10-11 years).

• The political response was that they should be given the most severe punishment, preventive detention.
The maximum sentence in Norway is 21 years

• And the Parliament does not wish to alter this (for the time being, but what happens now?).

• Yet, they do think that child rapists and murderers deserve to stay in prison.

• Is then not the logic thing to do to expand the maximum sentences?
The ethical difficulties in long preventive detention

• How do you decide which of two felons who both deserve 21 years is the most dangerous?

• How do you assess dangerousness after 10 years (the longest minimum sentence) in prison?
Nonrecidivists   Recidivists

[Graph showing VRAG Score distribution for Nonrecidivists and Recidivists]

Marnie Rice, 2004
If reoffending is the issue..

• You will never be sure that the criminal actually will reoffend.

• We will know the false negatives, but not the false positives.

• Does that matter as long at the criminal anyhow should be in prison?
In my opinion..

- Preventive detention should not be the alternative for very severe criminality.

- But it can be sensible for those who would receive a rather short sentence otherwise. For such cases the possibility of preventive detention may keep the “normal” sentences short.
At Ila prison

• Most of those with preventive detention have sentences between 3 and 10 years.
• Some of the inmates have severe learning difficulties and other psychiatric problems and will never manage life on their own.
• Others might finish school, get a formal education, learn something about themselves through cognitive therapy programs and drug programs and actually reduce their risk of reoffending.
But, alas..

• Those with a severe personality disorder (psychopaths) will not improve and are a grate nuisance in the prison system, but they may impress the courts and be released.

• Our naive beliefs in treatment and rehabilitation for all is certainly wrong. Longer maximum sentences might be what gives the community the better protection.