Between verdict and detention

Summary

The WODC makes regular forecasts of the need for judicial sanctions capacity in the Netherlands (see Steinmann e.a., 1999). These sanctions involve compulsory services to the community (so-called task sanctions) as well as imprisonment for both minors and adults. The basis for these forecasts are past developments. For most forms of sanction capacity these developments are quite clear, but for adult imprisonment different sources show different developments. This means that several forecasts for adult imprisonment are possible, which is far from desirable. Thus more insight is required into the differences between these sources.

One way to measure the need for prison capacity is to calculate capacity on the basis of pronounced sentences. This is the WODC-method. Another way is to count how many prison cells are actually occupied and how many people still have to be imprisoned. This is the DJI-method, which is named after the department that is responsible for the prisons. The forecasts are made by looking at the development of the need for prison capacity according to the WODC-method and then applying this development to the most recent calculation of the need for prison capacity according to the DJI-method.

The problem is that the need for prison capacity according to the WODC-method strongly deviates from the need for prison capacity according to the DJI-method. In the period 1993-1999 the average difference is 2700 prison cells. There is a difference in levels as well as in development. The need for prison capacity according to the DJI-method is at a much higher level than according to the WODC-method. As long as the difference is structural and has obvious causes, it is easy to make a correction. In this case the difference in levels is not a problem. But the difference in development could be. If the figures on which the forecast model is based, show a different development than the figures on which the actual forecasts are based, relevant developments in the forecasts could be ignored.

The objective of this report is to determine which factors influence the difference in levels and development between the WODC-method and DJI-method. These factors may be taken into account when making future forecasts. The explanatory factors can be classified into four categories. Firstly, there may be errors in the calculation of the need for prison capacity in the past. Secondly, someone may be sentenced to imprisonment but eventually does not go to prison (in the Netherlands). Thirdly, it is possible someone was originally not sentenced to imprisonment (in the Netherlands) but still has to go to prison. Finally, there may be shifts in time. When calculating the prison capacity a variety of errors can occur. Most of them have little effect or their effect is unclear. However, there is one kind of error which has a large effect. The WODC-method is based on first instance sentences. Appeal can lead to a change in sentence. The WODC-method corrects for appeal but there are indications that the correction is too large. The WODC-method assumes that appeal reduces the first instance sentence with about thirteen percent. But lately this percentage has dropped to ten percent. This means that in the period 1993-1999 on average 257 detention years have been wrongfully deducted. Another inaccuracy is that the DJI-method adds a margin to the actual prison capacity to allow for peaks and maintenance. On average the margin is 745 detention years in period 1993-1999. To make the DJI-method comparable with the WODC-method this margin should be deducted.

A large number of prison sentences are never executed due to pardons. Unfortunately, correcting for pardons would only increase the difference between the WODC-method and the DJI-method only larger with on average 379 detention years in the period 1993-1999.

On the other hand people who have not been sentenced to prison, sometimes still have to do time. This is the case when task sanctions fail, conditional prison sentences are executed, fines are not paid, unjust remands, or when Dutch people who have been sentenced abroad are allowed to serve their sentence in the Netherlands. A correction would add on average 1414 detention years to the WODC-method. Because all factors mentioned are of increasing importance, these factors also influence the difference in development between the WODC-method and the DJI-method.

In the beginning of the Nineties the number of prison sentences to be executed piled up due to lack of prison capacity. This caused a shift in time, which influenced the development of the need for prison capacity. This is
because the WODC-method counts people the minute they are sentenced, while the DJI-method counts them when they are in prison, which, due to capacity problems, may be at a much later date. A related problem is that people who should have been held on remand, were sent home due to a lack of prison capacity. The DJI-method added those people to their capacity needs, but these people were counted again when they were sentenced to imprisonment. Thus they were counted twice. In the period 1993-1999 on average 382 people that should have been remanded were sent home.

All of the factors mentioned above had a significant influence on the difference between the DJI-method and the WODC-method. But due to policy changes some of these factors will not play an important role in the future. The capacity margin has been halved. There are no longer shortages of prison cells. As a consequence people who are on remand are rarely sent home. Many of the pardons related to cases where people were eligible for a task sanction but did not get it because they did not turn up at their trial. When the new law on task sanctions becomes effective, people can be sentenced to a task sanction even if they do not turn up at their trial. So the number of pardons is expected to fall. A policy change is also expected in the case of conditional prison sentences. A common condition is that people are not allowed to commit any crimes within a certain time period. But this condition poses no extra restraint on the convict, because nobody is allowed to commit any crimes. Thus there is a tendency to a diminished use of this kind of sanction.

The capacity margin, failed task sanctions, unjust remands and unpaid fines will always form a significant part of the difference between the DJI-method and the WODC-method. Due to seasonal peaks sending people home when they should have been remanded, cannot be totally avoided. It is expected that the number of people who were sentenced abroad but serve their sentence in the Netherlands, will grow.

When making forecasts it is advised to take into account especially the failed task sanctions and unpaid fines. The WODC intents to add these improvements to its forecast models in the near future. More research is necessary on unjust remands.

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Tussen uitspraak en detentie; een verklaring voor het verschil tussen twee methoden om de behoefte aan sanctiecapaciteit te meten

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The Hague, WODC, 2001
Onderzoeksnotities, no. 2001/4