

COST Action IS 1106: Offender Supervision in Europe

Country Report for Switzerland

*A contribution to the working groups no. 1 & 2:
Experiencing Supervision and Decision-Making*

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1 Introductory remarks

In accordance with the first phase of the COST Action IS 1106 “Offender Supervision in Europe” as depicted in its “Memorandum of Understanding” (MoU) this report provides a mapping of current understanding of the nature of Offender Supervision as practiced in Switzerland. It delineates available relevant datasets and points at research that has been undertaken in the field of the Action up today.

The report’s authors participate in working group no. 1 “Experiencing Supervision” (Jachen C. Nett) and no. 2 “Decision-Making” (Jonas Weber). Because too much interference and duplication was expected the authors decided to join efforts and write a single report instead of two reports that cover each of the working group’s themes separately.

The statistical data referring to the penal system as presented in this report are not confined to sanctions that are “extra-mural” in character but include all forms of penal sanctions. For the data shown in the charts shall provide an overview of the demographics of the offender population (age, gender, and type of law affected) that allows for an appraisal of the character and scope of criminal offending with which Swiss jurisdiction is concerned. In contrast to the statistical perspective, the explanations concerning issues of decision-making in the Swiss penal system solely focus on the thematic frame given by the Action.

Applying the concept of “Offender Supervision” as depicted in the MoU to the Swiss context requires a specification in legal terms. Thus, the current country report defines Offender Supervision as the ordering, execution and control of non-stationary measures and penalties as well as of conduct orders towards persons committing a crime and defying standards of conduct. The applicable legal terms are enshrined in criminal law, private law and police law as parts of administrative law.

Swiss legislation is strongly characterized by federalism. Today, the principle instruments of Offender Supervision are regulated at federal level, but their implementation is subject to cantonal authority. Parts of these implementary regulations are highly heterogeneous.

2 Penal procedure

Only since 2011 penal procedure is unified nationwide by the Swiss criminal procedure code (StPO, Schweizerische Strafprozessordnung). Until then, all 26 cantons had their own criminal procedure codes.

According to Article 237 paragraph 1 StPO compulsory measures court orders one or more alternative measures instead of remand, if alternative measures achieve the same purpose as remand. Paragraph 2 particularly includes alternative measures such as the requirement to stay or not to stay in a specific place or in a specific house (letter c), to report to a public office at regularly intervals (letter d), to do a regular job (letter e) or to undergo medical treatment or a medical examination (letter f) together with the prohibition of making contact with specific persons (letter g). As laid down in paragraph 3, technical devices allow monitoring the compliance of such alternative measures.

Compulsory measures court is not bound to the request of the public prosecutor or the accused person when ordering alternative measures. This applies in particular if the public prosecutor requests the ordering or the extension of the period on remand or if the accused person applies for unconditional release from remand. Compulsory measures court may revoke the alternative measures at any time, or order other alternative measures or the accused’s remand (Article 237 paragraph 5 StPO).

It is crucial that the requirements for remand¹ remain fulfilled, as only under these prerequisites alternative measures are legally admissible. The decisive factor is that the risk for re-offense can be effectively averted by conduct orders – which legitimize remand – e.g. concerning the place of residence (Article 237 paragraph 2 letter c StPO).

To date alternative measures in terms of requirements concerning the place of residence (letter c), the report to a public office (letter d), a regular job (letter e), medical treatment (letter f) and the prohibitions of contact (letter g) have only rarely been ordered as substitutes for remand. There are no empirical studies available at present. The evaluation of StPO implementation is expected for 2016.

3 Criminal penalties

3.1. Ordinary criminal proceedings

With the latest revision of the legislation, which entered into force in 2007, community service as a penalty has been introduced. Thus, criminal courts may currently order the following sanctions specified in the Articles 34 to 41 of the Swiss Criminal Code (StGB, Schweizerisches Strafgesetzbuch): monetary penalties, custodial sentence or community service. Community service may serve as an alternative to a custodial sentence of less than 6 months or a monetary penalty not exceeding 180 daily penalty units (Article 37 paragraph 1 StGB). Within the scope of this sentence community service and monetary penalty take precedence over custodial sentences; imposing a custodial sentence requires special prerequisites (Article 41 StGB).

The court may suspend the execution of community service, monetary penalty and custodial sentence up to 2 years (Article 42 StGB); furthermore, the execution of community service, monetary penalty and custodial sentence of at least 12 months and no more than 36 months may be partially suspended (Article 43 StGB). The court may order probation assistance for fully and partially suspended sentences (Article 44 paragraph 1 StGB). For the duration of the probationary period the court may impose conduct orders (Article 44 paragraph 2 StGB) related e.g. to a profession, place of residence, medical and psychological therapy (Article 94 StGB). Cantonal execution authorities and probation assistances are in charge of supervising the conduct orders. The Criminal Code itself does not contain any provisions concerning the supervision of conduct orders.

Criminal court may impose conduct orders in addition to an out-patient measure, where it refrains from a custodial sentence or the execution of a custodial sentence is suspended (Article 63 paragraph 2 StGB).

3.2. Summary penalty order procedure

In summary penalty order procedure, the public prosecutor may order community service of no more than 6 months, a monetary penalty of no more than 180 daily penalty units or a custodial sentence of no more than 6 months (Article 352 paragraph 1 StPO). Any of these sentences can be imposed unsuspended, suspended or partially suspended. Where the public prosecutor issues a

¹ As requirements for a remand or a preventive detention the provisions of Article 221 StPO apply. Accordingly a remand is only warranted if there is a serious concern that the accused will evade a penalty by absconding (Article 221 paragraph 1 letter a), that he will take actions to suppress evidence, especially if there is a danger of collusion (Article 221 paragraph 1 letter b), or that he will continue committing serious felonies or misdemeanours (Article 221 paragraph 1 letter c and paragraph 2).

suspended or partially suspended sentence, he is obliged to determine duration of the probation period. The sentences may be combined with probation assistance and conduct orders.

3.3 Statistics of convictions

Statistics of convictions referring to adults have been collected in the current form since 1984. They comprise all convictions that are included in the criminal records maintained by the Federal Office of Justice (BJ, Bundesamt für Justiz). It has to be pointed out, however, that not all convictions are recorded. The demands that have to be met for recording convictions have increased gradually since 1984. Convictions referring to serious offending are always recorded. In contrast, contraventions (acts that are punishable by a fine) only rarely fulfil the requirements for recording. In 2006 the so-called VOSTRA-ordinance was released which defines the terms of when a contravention has to be recorded. Because changes of the requirements for recording contraventions between 1984 and 2011 consequently distort real development of the number of convictions the respective statistics published by the Federal Statistical Office (BFS, Bundesamt für Statistik) only include convictions that refer to misdemeanours and felonies.

The first two diagrams present the development of convictions according to the different federal laws violated.

Figure 1 refers to the convictions in absolute terms between 1984 and 2011 and includes all federal laws; in contrast, Figure 2 focuses on the four main federal laws and shows the convictions with respect the shorter period 2007 to 2011 as percentages of all convictions. Because a conviction may refer to several laws the sum exceeds 100 per cent.

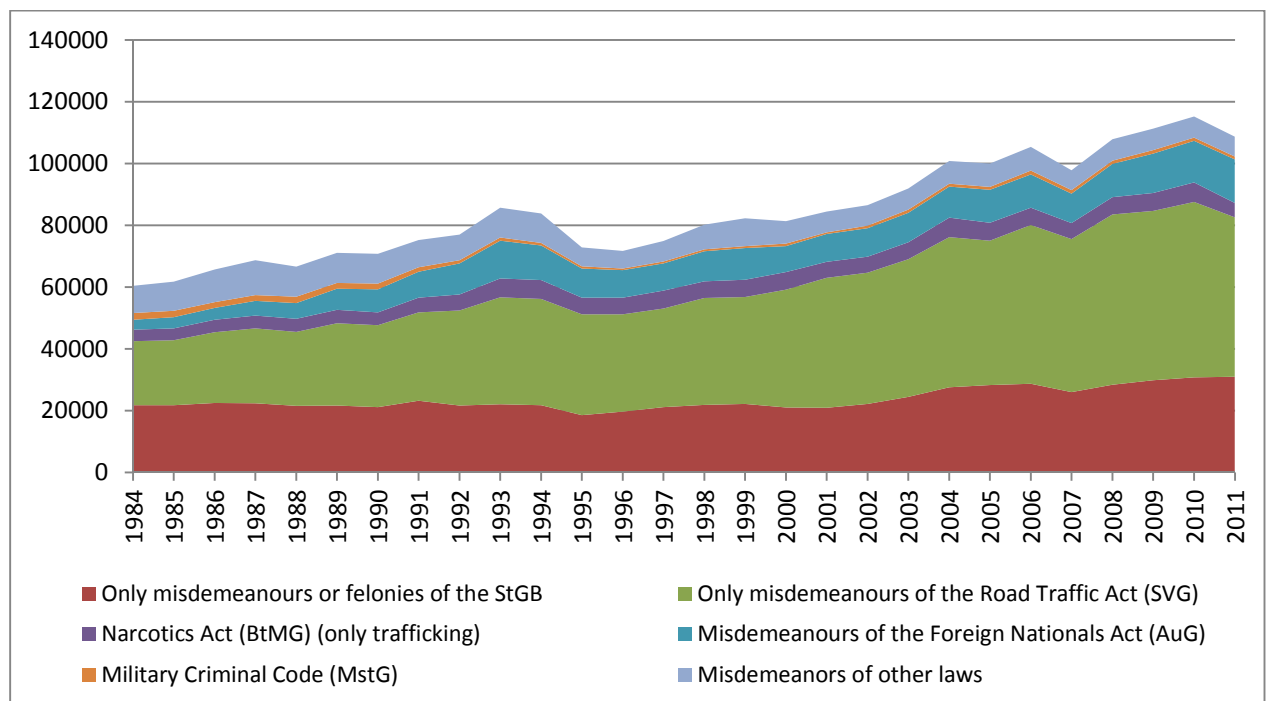


Figure 1 Convictions of adults according to all Swiss Federal Laws (1984 to 2011)

Source: BFS (www.bfs.admin.ch), state of database 06/30/2012

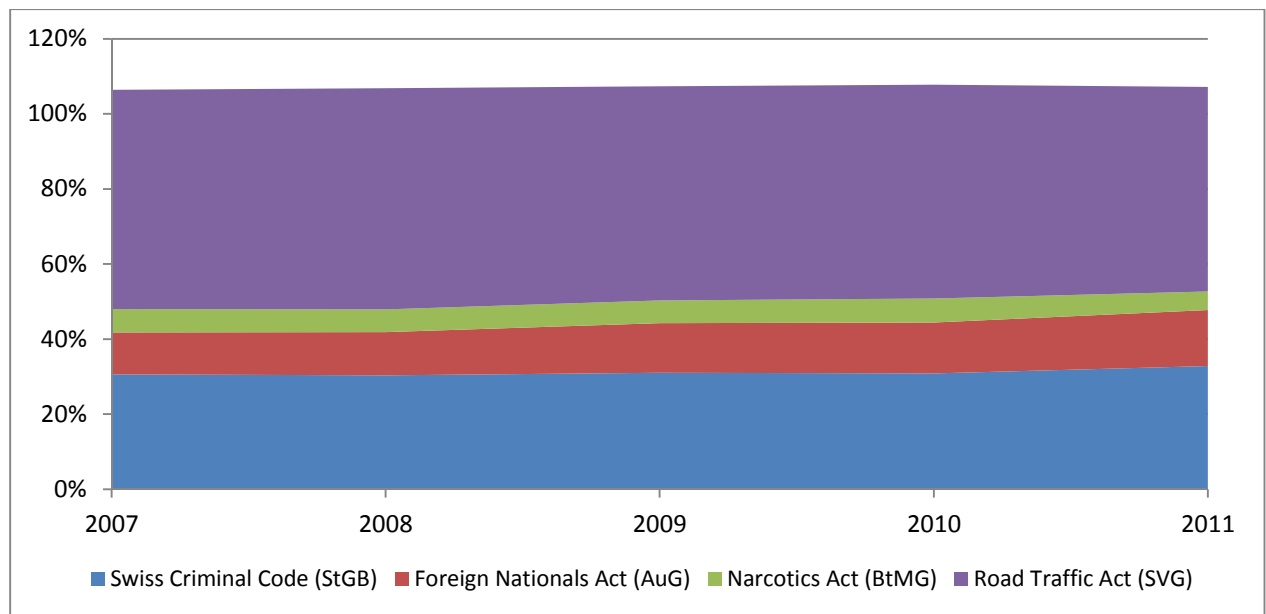


Figure 2 Convictions of adults according to the main Swiss Federal Laws in per cent of all convictions (2007 to 2011)

Source: BFS (www.bfs.admin.ch), state of database 06/30/2012

The following three diagrams show the demographic characteristics of the convicted adults referring to the period 2007 to 2011. It has to be pointed out here that the data do not correspond with number of convicted individuals because some of them were convicted more than once in the respective year.

Figure 3 presents the convictions differentiated according to gender. Accordingly, in 2011 14.7 per cent of the convictions concern women. Over the whole period this share remained fairly constant. Figure 4 presents the convictions differentiated according to age groups. It shows a successively diminishing share of convicted individuals the higher their age. With respect to the age groups it has to be taken into account that the first age group only has a range of two years whereas the oldest age group has no top limit.

Considering the proportion of Swiss and foreign nationals Figure 5 indicates that more than half of the convictions refer to foreign nationals which means that there is a substantial overrepresentation of this group. In addition, there is also a notable increase in the share of foreign nationals from a 51 per cent to 56 per cent between 2007 and 2011.

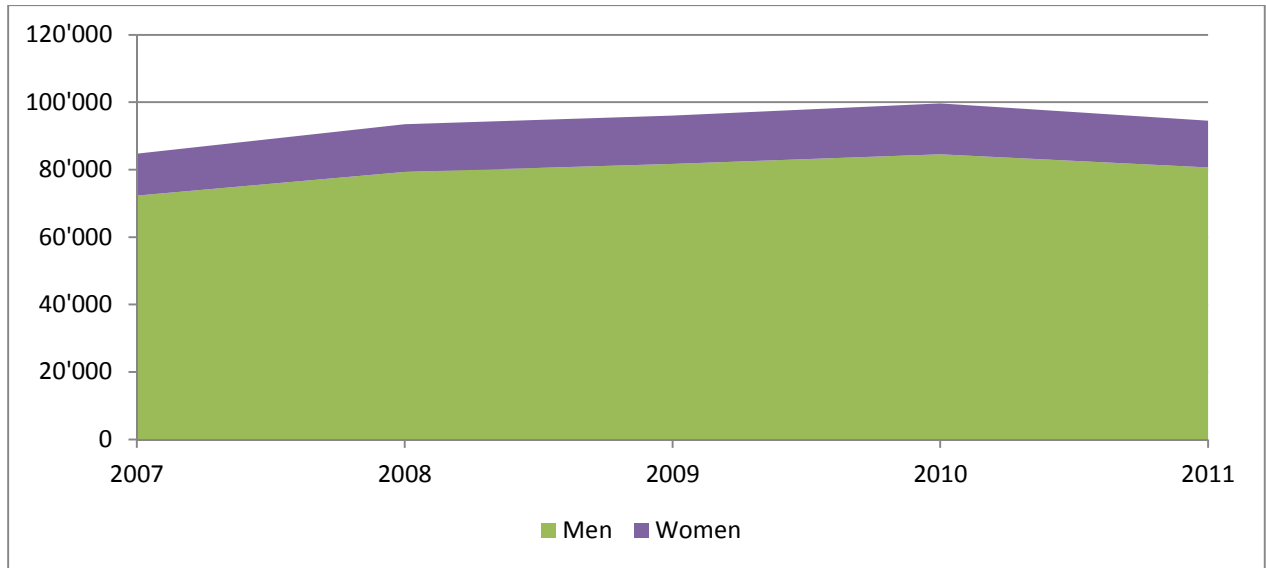


Figure 3 Convictions of adults according to gender (2007 to 2011)

Source: BFS (www.bfs.admin.ch), state of database 06/30/2012

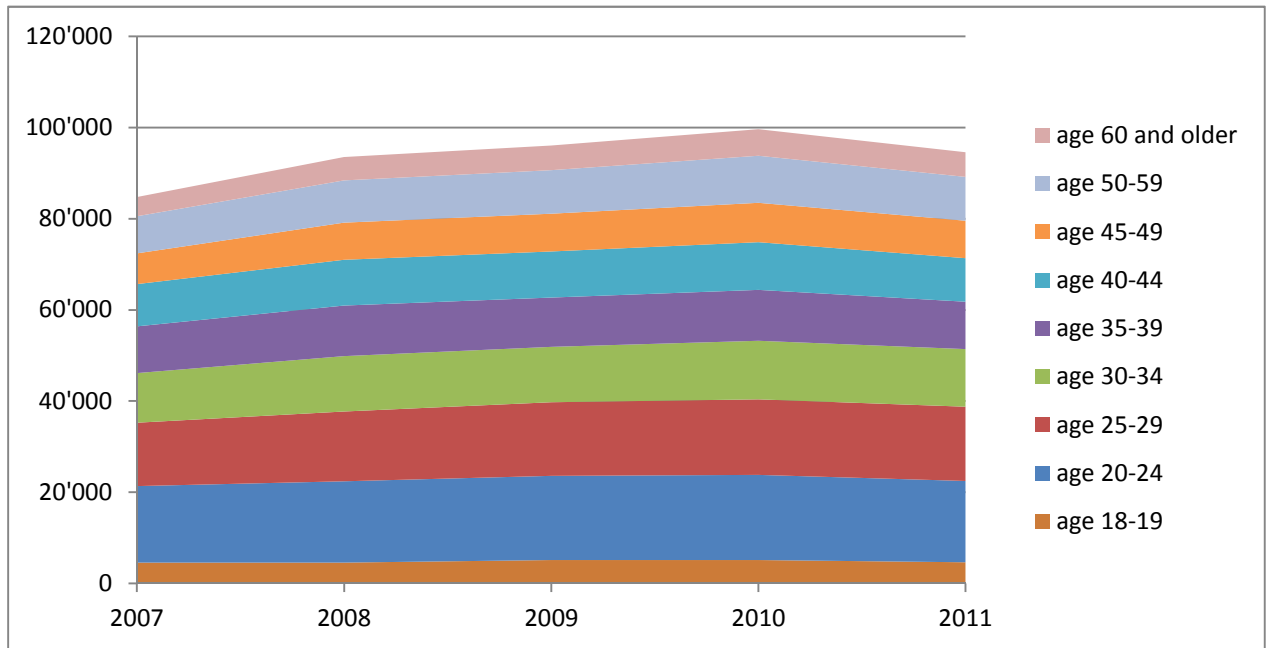


Figure 4 Convictions of adults according to age groups (2007 to 2011)

Source: BFS (www.bfs.admin.ch), state of database 06/30/2012

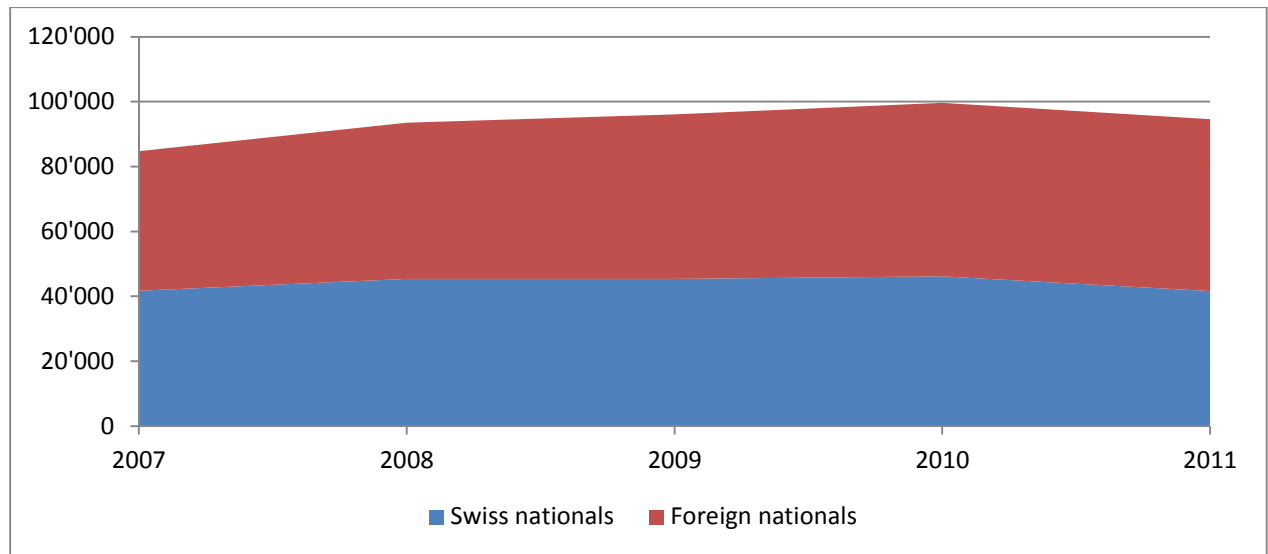


Figure 5 Convictions of adults according to nationality (2007 to 2011)

Source: BFS (www.bfs.admin.ch), state of database 06/30/2012

The statistics of convictions as well provides data on imposed out-patient measures which are of special concern regarding Offender Supervision because they often include conduct orders (see 3.1 above). The subsequent diagrams inform about the main sanctions that were sentenced when an out-patient measure was imposed. As Figure 6 indicates, out-patient measures predominantly are imposed in combination with unsuspended custodial sentences. However, since the latest revision of the Swiss Criminal Code (StGB) in 2007 other sanctions have considerably gained in importance and have partly ruled out unsuspended custodial sentences as a main sanction in combination with this kind of measure. Whereas Figure 6 presents the temporal development of imposed out-patient measures Figure 7 provides a more detailed picture of 2011 which differentiates between partially and totally suspended custodial sentences as a main sanction.

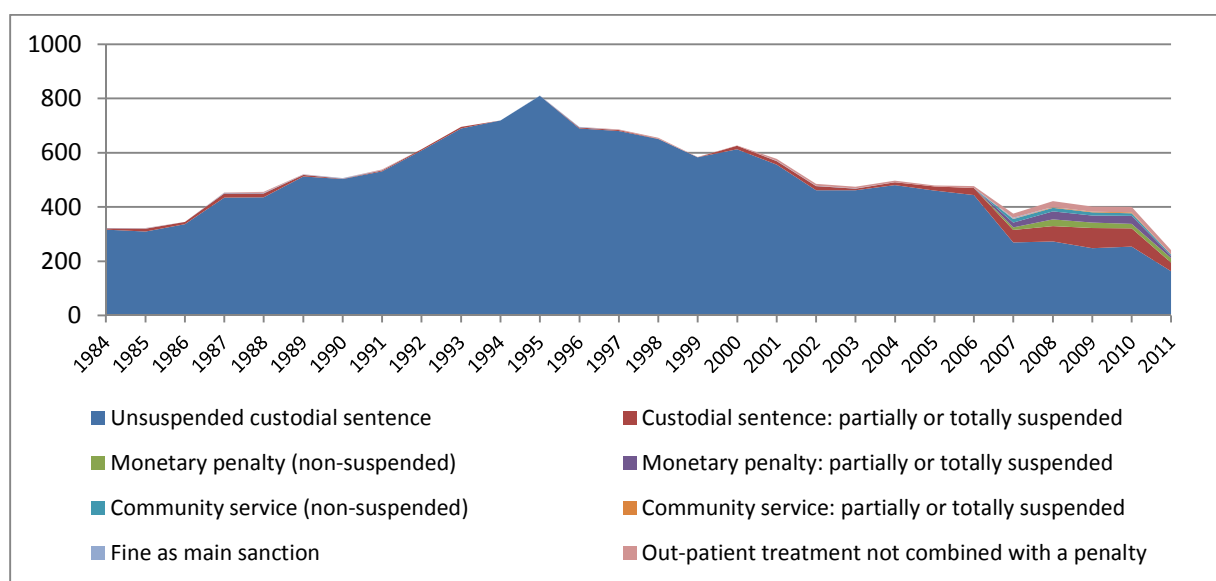


Figure 6 Amount of out-patient treatments according to the main sanctions (1984 to 2011)

Source: BFS (www.bfs.admin.ch), state of database 06/30/2012

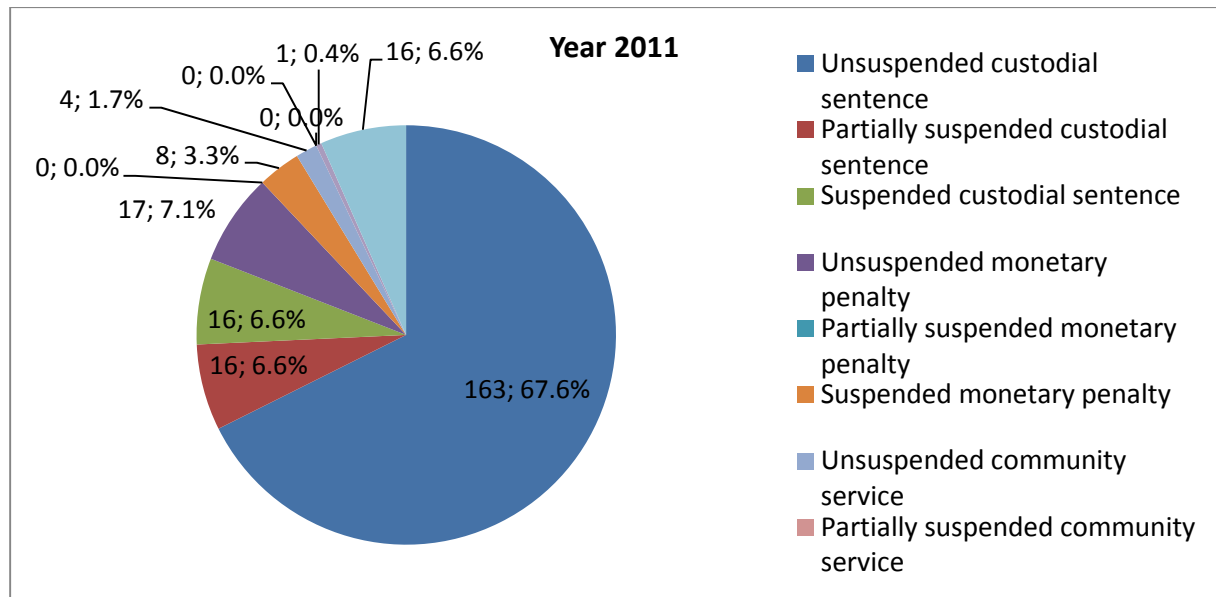


Figure 7 Amount of out-patient treatments in 2011 according to the main sanctions (with differentiation between suspended and partially suspended penalties)

Source: BFS (www.bfs.admin.ch), state of database 06/30/2012

4 Execution of sentences

The following section is concerned with custodial sanctions and the forms of their execution as allowed by Swiss law.

To begin with a somehow striking fact: available historical data about the development of detention capacities in Switzerland reveal a remarkable stability since the end of the 19th century (see Figure 8). Thus, it has to be concluded that the considerable growth of population, which has occurred since then, obviously did not result in a corresponding increase in the number of detainees.

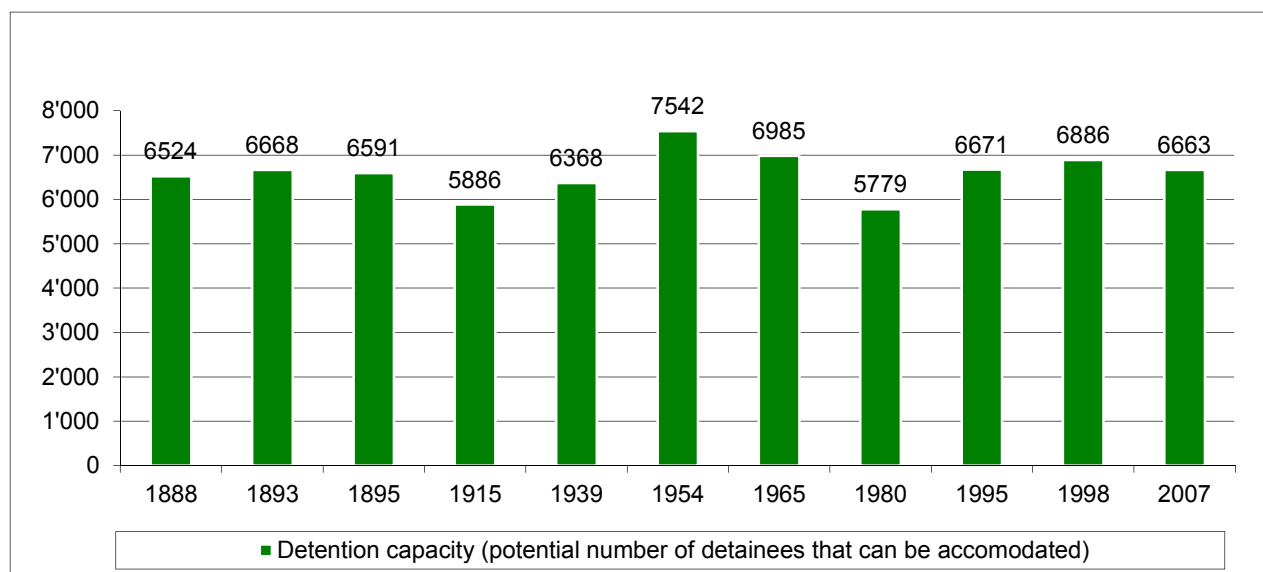


Figure 8 Development of detention capacity in Switzerland 1888 to 2007

Source: BFS (www.bfs.admin.ch), Inventaires nationaux des établissements de privation de liberté et des places de détention de 1888 à 2007, Neuchâtel, 3/30/2009.

Data on the form of execution of custodial sanctions available for the period 1984 to 2011 are depicted in Figure 9 (absolute terms) and Figure 10 (percentages). As the data suggest, starting from 1996, there was a shift from custodial sentences that were executed by semi-detention (the inmate continues working outside and spend the night inside the detention facility) to the execution in the (by the then newly introduced) form of community service. Between 2002 and 2006 the number of individuals engaged in community service increased parallel with those who served their time in normal detention. Of special interest, however, is the fact that after the revision of the Swiss Criminal Code (StGB) when community service was introduced as an alternative to a custodial sentence (and not only as alternative form of execution of custodial sentences) the number of cases with community service decreased substantially.

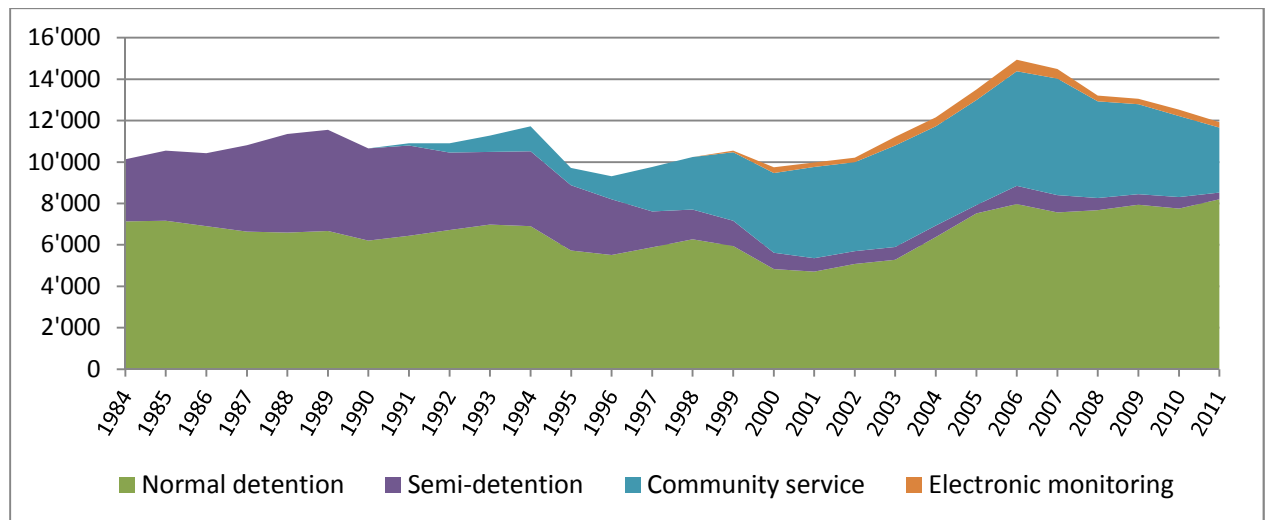


Figure 9 Custodial sanctions according to the form of execution (1984 to 2011)

Source: BFS (www.bfs.admin.ch), state of database 08/16/2012

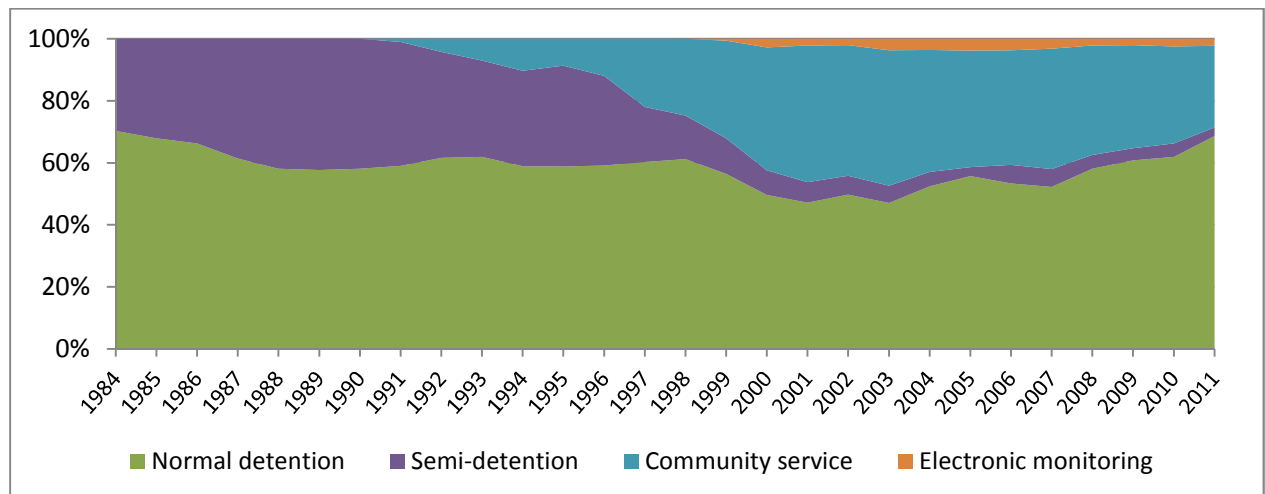


Figure 10 Custodial sanctions according to the form of execution (1984 to 2011) in percentages

Source: BFS (www.bfs.admin.ch), state of database 08/16/2012

Since 1996 data on the execution of community services have been collected. These statistics are reported in the tables below. Table 1 contains demographic information about gender and nationality of the clients. As regards the information about gender the data point at a growing share

of female clients. This share is considerably higher than the share of female inmates in penal institutions which was 5 per cent in 2011 (BFS: www.bfs.admin.ch, state of database 08/16/2012). In Table 2 data is reported about the age of those who were doing community services between 1996 and 2011. These data reveal that older offenders are a bit more represented in community service in comparison to serving time in a penal institution.

Table 1 Community service according to gender and nationality (1996 to 2011)

| Year | Total | Gender | | Nationality | |
|------|-------|--------|--------|-------------|---------|
| | | Male | Female | Swiss | Foreign |
| 1996 | 1 111 | 88.4% | 11.6% | 78.8% | 21.2% |
| 1997 | 2 142 | 90.5% | 9.5% | 74.4% | 25.6% |
| 1998 | 2 543 | 91.0% | 9.0% | 73.3% | 26.7% |
| 1999 | 3 317 | 87.5% | 12.5% | 70.6% | 29.4% |
| 2000 | 3 855 | 88.3% | 11.7% | 70.0% | 30.0% |
| 2001 | 4 401 | 88.8% | 11.2% | 67.3% | 32.7% |
| 2002 | 4 291 | 89.2% | 10.8% | 66.1% | 33.9% |
| 2003 | 4 900 | 88.6% | 11.4% | 62.6% | 37.4% |
| 2004 | 4 792 | 88.1% | 11.9% | 61.8% | 38.2% |
| 2005 | 5 069 | 86.1% | 13.9% | 62.3% | 37.7% |
| 2006 | 5 533 | 86.2% | 13.8% | 61.1% | 38.9% |
| 2007 | 5 625 | 84.9% | 15.1% | 62.2% | 37.8% |
| 2008 | 4 665 | 80.1% | 19.9% | 66.8% | 33.2% |
| 2009 | 4 347 | 79.2% | 20.8% | 65.7% | 34.3% |
| 2010 | 3 913 | 81.0% | 19.0% | 63.7% | 36.3% |
| 2011 | 3 132 | 79.6% | 20.4% | 63.3% | 36.7% |

Source: BFS (www.bfs.admin.ch), state of database 08/16/2012

Table 2 Community service according to age (1996 to 2011)

| Year | Total | Age | | | |
|------|-------|-------|-------|-------|-------|
| | | <25 | 25-34 | 35-44 | >44 |
| 1996 | 1 111 | 14.1% | 40.0% | 27.2% | 18.7% |
| 1997 | 2 142 | 10.7% | 40.4% | 26.4% | 22.5% |
| 1998 | 2 543 | 11.9% | 38.9% | 27.4% | 21.9% |
| 1999 | 3 317 | 11.3% | 40.6% | 27.6% | 20.4% |
| 2000 | 3 855 | 11.5% | 36.9% | 29.3% | 22.3% |
| 2001 | 4 401 | 14.2% | 36.2% | 27.8% | 21.7% |
| 2002 | 4 291 | 13.9% | 34.8% | 29.8% | 21.5% |
| 2003 | 4 900 | 17.9% | 33.2% | 27.5% | 21.4% |
| 2004 | 4 792 | 18.7% | 33.9% | 27.3% | 20.2% |
| 2005 | 5 069 | 18.4% | 32.7% | 27.9% | 21.0% |
| 2006 | 5 533 | 19.0% | 30.7% | 28.4% | 21.9% |
| 2007 | 5 625 | 18.6% | 30.2% | 27.7% | 23.5% |
| 2008 | 4 665 | 20.1% | 27.0% | 28.4% | 24.6% |
| 2009 | 4 347 | 21.7% | 26.5% | 25.7% | 26.2% |
| 2010 | 3 913 | 20.3% | 28.6% | 25.0% | 26.1% |
| 2011 | 3 132 | 18.7% | 27.9% | 25.1% | 28.3% |

Source: BFS (www.bfs.admin.ch), state of database 08/16/2012

With respect to the share of foreign nationals the community service statistics report lower shares of clients with foreign nationality. In 2011 the corresponding share was 36.7 per cent whereas penal institutions hosted 65.1 per cent inmates of foreign nationality (ibid.). In 2011 a community service lasted on average 85 hours which corresponds to 21.25 service days. Fifty per cent of the services, however, did not last longer than 31 hours (median). Nearly 10 per cent of the community services were terminated irregularly (ibid.).

4.1 Electronically monitored home detention

In seven cantons (Bern, Basel-City, Basel-Country, Solothurn, Geneva, Vaud, Ticino) short custodial sentences of no more than 12 months can be executed as electronically monitored home detention if specific requirements are fulfilled. The person convicted must submit an application. The execution authority decides on that application.

Furthermore in these cantons a part of the external accommodation within long custodial sentences (Article 77a paragraph 3 StGB) may be executed in the form of electronically monitored home detention. The prison inmate is required to serve half of his custodial sentence in a penal institution, at least. The execution period of electronically monitored home detention may not exceed 12 months. The ordering is made by the execution authority.

The following two tables contain the same information as the two foregoing tables, however this time concerning electronically monitored home detention. The average time that a convicted offender is electronically monitored was 100 days in 2011. The median in this very year was 87 days (BFS: www.bfs.admin.ch, state of database 08/16/2012).

Table 3 Electronically monitored home detention according to gender and nationality (1999 to 2011)

| Year | Total | Gender | | Nationality | |
|------|-------|--------|--------|-------------|---------|
| | | Male | Female | Swiss | Foreign |
| 1999 | 3 317 | 86.4% | 13.6% | 77.3% | 22.7% |
| 2000 | 3 855 | 94.9% | 5.1% | 71.8% | 28.2% |
| 2001 | 4 401 | 92.2% | 7.8% | 65.8% | 34.2% |
| 2002 | 4 291 | 91.0% | 9.0% | 68.4% | 31.6% |
| 2003 | 4 900 | 92.7% | 7.3% | 69.7% | 30.3% |
| 2004 | 4 792 | 91.0% | 9.0% | 65.9% | 34.1% |
| 2005 | 5 069 | 92.4% | 7.6% | 67.2% | 32.8% |
| 2006 | 5 533 | 94.9% | 5.1% | 63.0% | 37.0% |
| 2007 | 5 625 | 91.4% | 8.6% | 59.0% | 41.0% |
| 2008 | 4 665 | 93.3% | 6.7% | 57.7% | 42.3% |
| 2009 | 4 347 | 91.8% | 8.2% | 52.8% | 47.2% |
| 2010 | 3 913 | 88.5% | 11.5% | 62.4% | 37.6% |
| 2011 | 3 132 | 89.1% | 10.9% | 60.5% | 39.5% |

Source: BFS (www.bfs.admin.ch), state of database 08/16/2012

Table 4 Electronically monitored home detention according to age classes (1999 to 2011)

| Year | Total | Age | | | |
|------|-------|-------|-------|-------|-------|
| | | <25 | 25-34 | 35-44 | >44 |
| 1999 | 3 317 | 1.5% | 27.3% | 43.9% | 27.3% |
| 2000 | 3 855 | 8.8% | 33.3% | 31.9% | 26.0% |
| 2001 | 4 401 | 9.1% | 38.4% | 31.1% | 21.5% |
| 2002 | 4 291 | 6.1% | 34.9% | 32.1% | 26.9% |
| 2003 | 4 900 | 10.4% | 29.8% | 35.1% | 24.7% |
| 2004 | 4 792 | 13.4% | 27.9% | 30.2% | 28.6% |
| 2005 | 5 069 | 11.3% | 35.0% | 24.5% | 29.3% |
| 2006 | 5 533 | 11.8% | 31.9% | 30.4% | 25.9% |
| 2007 | 5 625 | 11.2% | 33.3% | 31.8% | 23.8% |
| 2008 | 4 665 | 15.1% | 30.6% | 25.4% | 28.9% |
| 2009 | 4 347 | 11.9% | 33.5% | 28.6% | 26.0% |
| 2010 | 3 913 | 10.8% | 37.6% | 29.0% | 22.6% |
| 2011 | 3 132 | 8.3% | 36.2% | 29.7% | 25.7% |

Source: BFS (www.bfs.admin.ch), state of database 08/16/2012

4.2 Probation: suspended penalties and releases on parole

As Figure 11 show probation services are mainly concerned with the social supervision of prison inmates. In 2011 more than half of the assignments handed to the probation services concerned this kind of activity. About a quarter of the assignments refer to releases on parole: If the prison inmate has served two thirds of his sentence, he can be released on parole (Article 86 StGB). The execution authority decides on parole and defines a probationary period of 1 to 5 years (Article 87 paragraph 1 StGB). The execution authority may additionally impose probation assistance and conduct orders for the duration of the probationary period (Article 87 paragraph 2 StGB). In particular, conduct orders may concern the practice of a profession, the place of residence, medical and psychological therapy (Article 94 StGB).

Supervision of offenders convicted to a totally or at least partially suspended penalty account for round 14 per cent of the probation assignments, and the remaining 9 per cent concern the supervision of convicted offenders in out-patient treatment.

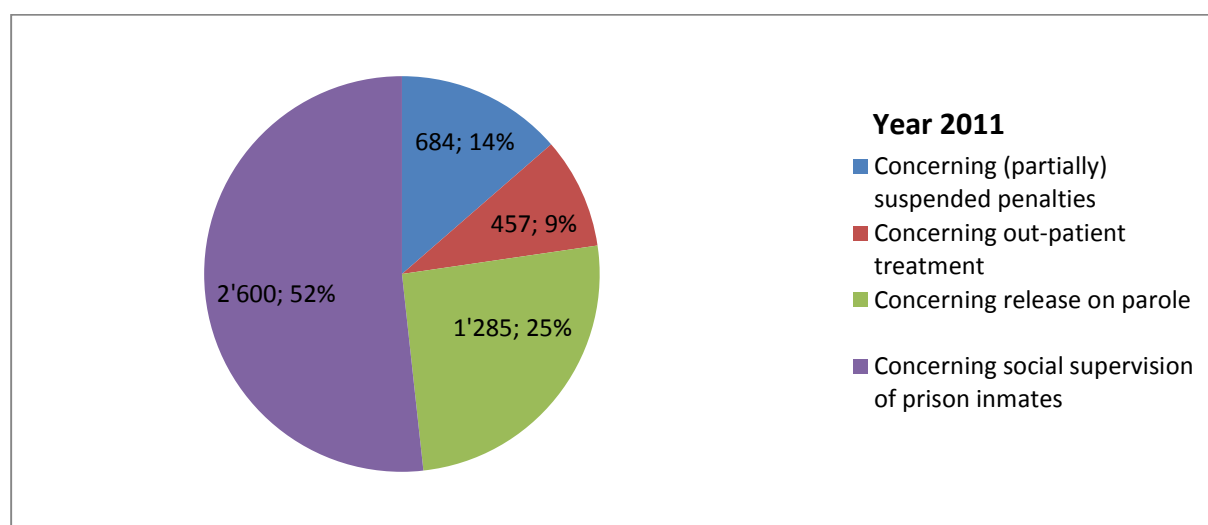


Figure 11 Total of supervision assignments at the end of the year 2011

Source: BFS 2013, Freiheitsentzug, Strafvollzug - Daten, Indikatoren (www.bfs.admin.ch)

In 2011 the human resources of the probation services consisted of 192 appointments (in full time equivalents); thereof 124 relate to personnel with education in social work. The supervision rate of social worker, i.e. the number of assignments and additional tasks per client, was 51; including community services and electronic monitoring the rate amounts to 64.

5 Private law

With the Article 28b the Swiss Civil Code regulates the protection of victims from violence, threats or harassment. According to this regulation, the court may order the offender to refrain from approaching the victim, from being close to its dwelling (paragraph 1 no. 1), from frequenting specified locations, notably particular streets, squares or districts (paragraph 1 no. 2) or from making contact with the victim, especially by telephone, in writing or electronically (paragraph 1 no. 3). If the victim lives in the same dwelling as the offender, the court may order the offender to leave the joint dwelling for a specified period (paragraph 2). The responsibility to order these measures is subject to the civil courts. The cantons are to designate an authority, which may order the immediate expulsion of the offender from the joint dwelling in urgent cases (paragraph 4). Most cantons appointed the police as the agency responsible for such cases.

6 Empirical Studies / Research

Only a few studies have so far examined Offender Supervision. There are some empirical studies related to pilot projects on community service orders and electronically monitored home detention. None of these studies addressed decision-making as an issue at all. So far previous studies mainly focused on recidivism, integration and costs.

Studies on community service orders

- Killias, Martin (1997). *Le travail d'intérêt général dans le canton de Vaud. Rapport sur le TIG avec une comparaison entre un groupe expérimental et un groupe-témoin randomisés.* Lausanne: Université de Lausanne, Institut de police scientifique et de criminologie (IPSC)
- Justizdepartement des Kantons Luzern & Caritas Schweiz (1996). *Bericht über das Projekt «Gemeinnützige Arbeit von straffälligen Erwachsenen» im Kanton Luzern. Schlussbericht zum Modellversuch*
- Justizdepartement des Kantons Luzern (1996). *Ergänzungsbericht zum Schlussbericht des Modellversuchs «Gemeinnützige Arbeit von straffälligen Erwachsenen» im Kanton Luzern*
- Schmid, J. & Boddenberg Schmid, G. (1996). *Neue Formen im Strafvollzug. Pilotversuch Kanton Luzern. Schlussbericht der Evaluation.* In: Justizdepartement des Kantons Luzern & Caritas Schweiz (1996). *Bericht über das Projekt «Gemeinnützige Arbeit von straffälligen Erwachsenen» im Kanton Luzern. Schlussbericht zum Modellversuch*
- e&e Entwicklung & Evaluation im Sozialwesen (1998). *Gemeinnützige Arbeit für dissoziale Arbeitslose. Modellversuch 1993–1995. Schlussbericht vom September 1997 (mit eingearbeiteten Ergänzungen vom Mai 1998 und November 1998)*
- Kunz, Karl-Ludwig; von Witzleben, Thomazine (1996). *Gemeinnützige Arbeit – Modellversuch im Kanton Bern. Auswertungsbericht.* Schweizerische kriminologische Untersuchungen Band 8, Haupt Verlag, Bern, ISBN 3-258-05368-5
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Studies on electronically monitored home detention

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