

The Conditional Suspended Sentences in Punitive Penal Climate

Ju-Yuan Hsieh^{*}

Abstract

The reform of Taiwan's Criminal law in 2005, has introduced the conditional suspended sentences as a solution to the oft-noted problem: the extraordinarily high incarceration rate for trivial offences. But it is unlikely that the Taiwanese judiciary will abandon over-night its historic reliance on imprisonment sentences. This paper analysed the practices of conditional suspended sentencing through judgment documents and interviews with judges, also analysed the data of conditional suspended sentencing and the rate of imprisonment related. In conclusion, the new sentencing option seemed merely widen the net of penal control. It's because the failure of legislation, the values that rely on severe punishment, and related to these values, the sentencing judges—they treat conditional suspended sentences, not as an alternative to imprisonment but rather as a sanction in its own right. This paper also makes some suggestions about how to reform, and discussed the principles and limitations of conditional suspended sentencing.

Keywords: suspended sentence, conditional sentence, absolute retributivism, probation, community service, prison over-crowded, alternatives to prison, net-widening, penal control

^{*} Associate Professor, College of Law, National Chengchi University.
E-mail: lawhjy@nccu.edu.tw