

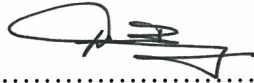
ALTERNATIVE SENTENCING: INTERMEDIATE PUNISHMENT

DOL BUNNAG

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT
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2011**

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Thesis
entitled
ALTERNATIVE SENTENCING: INTERMEDIATE PUNISHMENT



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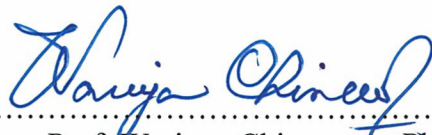
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ALTERNATIVE SENTENCING: INTERMEDIATE PUNISHMENT

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ABSTRACT

The research on “Alternative Sentencing: Intermediate Punishment” was conducted with the objectives to 1) study the form and criteria of intermediate punishments in sentencing as provided by laws of foreign countries and forms of intermediate punishment measures as specified by the international model (The Tokyo Rules) 2) identify the form and criteria of intermediate punishment measures as a model for drafting an intermediate punishment law suitable for Thailand.

The methodology combined both quantitative and qualitative research. The qualitative data were collected from relevant academic documents while the quantitative data were collected from the sample. Qualitative analysis was performed by using a material comparative analysis method while quantitative analysis was performed by determining the mean and the standard deviation of the data.

The results showed that intermediate punishments, which are appropriate for Thailand, can be attained by legislating an act prescribing measures in 10 forms, for example: Verbal Warning; Intensive Probation; and Electronic Monitoring, while the crucial criteria is that the court should impose such punishment on a defendant, whose conviction does not exceed a period of 5 years.

The research suggests that the State should allot a budget and personnel, provide pertinent officials with knowledge of alternative sentencing, and support legislation of intermediate punishments including provisions that allow courts to use due discretion. Moreover, the court should provide guidelines for judges to help implementation of the intermediate sanctions so that the court’s discretion is shaped in the same direction across the country.

KEY WORDS: ALTERNATIVE / SENTENCING / INTERMEDIATE PUNISHMENT

150 pages

ทางเลือกในการลงโทษจำเลยในคดีอาญา : มาตรการลงโทษระดับกลาง

ALTERNATIVE SENTENCING: INTERMEDIATE PUNISHMENT

ดล บุนนาค 4837084 SHCJ/D

ปร.ด. (อาชญวิทยา การบริหารงานยุติธรรมและสังคม)

คณะกรรมการที่ปรึกษาวิทยานิพนธ์: ศรีสมบัติ โชคประจักษ์ชัด, Ph.D., จิรนิติ หะวานนท์, Ph.D.,
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บทคัดย่อ

การวิจัยมีวัตถุประสงค์ 1) เพื่อศึกษารูปแบบและหลักเกณฑ์ของโทษระดับกลางในต่างประเทศและที่เป็นหลักการสากล (กฎแห่งกรุงโตเกียว) 2) เพื่อกำหนดรูปแบบและหลักเกณฑ์ของโทษระดับกลางเพื่อเป็นแนวทางในการร่างกฎหมาย ส่วนวิธีการวิจัย มีการเก็บและวิเคราะห์ข้อมูลทั้งเชิงคุณภาพจากเอกสารที่เกี่ยวข้องด้วยการวิเคราะห์เชิงเปรียบเทียบเนื้อหา และการเก็บและวิเคราะห์ข้อมูลเชิงปริมาณจากการสำรวจกลุ่มตัวอย่างโดยใช้ค่าเฉลี่ยและส่วนเบี่ยงเบนมาตรฐาน

ผลการวิจัยพบว่า โทษระดับกลางที่เหมาะสมคือ โทษแบบใหม่รวม 10 รูปแบบ เช่น ตักเตือนด้วยวาจา คุมประพฤติแบบเข้มงวด คุมขังในที่อยู่อาศัย เป็นต้น โดยตราเป็นกฎหมายกำหนดหลักเกณฑ์สำคัญ คือ ให้ศาลนำโทษระดับกลางมาใช้ในคดีที่จะลงโทษจำคุก ไม่เกิน 5 ปี

การวิจัยมีข้อเสนอแนะว่า รัฐควรเตรียมความพร้อมด้านงบประมาณ บุคลากร และให้ความรู้เรื่องการเล็งโทษจำคุกโดยใช้โทษระดับกลางและส่งเสริมให้มีกฎหมายเรื่องโทษระดับกลางที่ ให้ศาลใช้ดุลพินิจได้อย่างเหมาะสม นอกจากนี้ ศาลควรจัดทำคำแนะนำในการปฏิบัติหน้าที่เพื่อรองรับการนำมาตรการลงโทษระดับกลางมาใช้เพื่อกำหนดกรอบการใช้ดุลพินิจของศาลทั่วประเทศ ให้เป็นไปในแนวทางเดียวกัน

150 หน้า

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CHAPTER I

INTRODUCTION

1.1 Origin and Importance of the Problem

There are two major legal systems of the world: code law or civil law system as used in Thailand, Germany, France and Japan etc., and customary law or common law system as used in England, the United States of America and Australia etc. (CIA, 2009). In civil law system, the Courts must use laws and regulations enacted by the state's legislature (parliament). Therefore, the laws are made in the form of code or legislation (written law). Code law makes it easier for all parties to gain access to its context and for the public to be informed of the content of the laws.

As for common law system, it is not necessary to have written law as it is generally accepted that decisions of courts has legal bindings to future decisions according to the principle "the doctrine of stare decisi" which laid down a principle that if a similar dispute has been resolved in the past, the Court is bound to follow the reasoning used in the prior decision (Scalia, 1995: 7 and 10). Even though there are some controversies about this judge-made law concept, such system gives judges the opportunity to use their discretion in decision making, allowing the judicial procedures to adapt to the changing society without having to amend existing laws as in civil law countries.

As judges in common law countries are not bound to use laws enacted by the parliament, their judicial procedures and sentencing are therefore flexible, depending on the unique natures and circumstance in each case. Civil law system, on the other hand, may provide clear and easy access to the legal context so that the public knows in advance which action is regarded as a crime, but having to follow code laws limits judges' discretion. Thus, in civil law countries, the Courts only

render its decision when there is applicable legislation. As a result, the use of laws by courts in civil law countries cannot be specifically tailored to apply with the unique behavior of each defendant and the circumstance of the case as it takes a long time to propose and enact legislation. More often than not, such process could not be done in time to follow changing circumstances in the society.

It is generally known that there are some obstacles in the civil law system that hinder the use of criminal judicial process to effectively resolve crime problems (Merryman and Perez-Perdomo, 2007) and (Duhaime, 2010) as followed:

First, the Criminal Code and statues with criminal penalty mostly use just two types of punishment: imprisonment and fine, even though the Criminal Code Section 18 stipulates five kinds (types) of criminal punishment: execution, imprisonment, detention, fine and confiscation of property (Criminal Code, 1957). Thus, in general, the Courts cannot use any kinds of punishment to punish the defendant other than imprisonment and fine unless the applicable law stipulates otherwise. In practice, if the Court believes that the defendant is guilty and there is no cause for mitigation of punishment, the Court often gives the defendant imprisonment rather than fine. As a result, imprisonment is used as a penalty perhaps more often than necessary.

Second, Thailand does not have laws with intermediate punishment measures, that is to say laws that have criminal penalty less severe than imprisonment, while at the same time do not allow those who have committed crime to go back to the society on probation. In case the Court is of the opinion that the defendant should not go to prison, but at the same time does not deserve probation, the Court does not have any other options and is therefore forced to either imprison or put the defendant on probation.

Third, one of the purposes of criminal penalty is to improve the morals of the defendants and to ensure that they will not commit another crime. However, Thai legislation does not have a measure to support a penalty aiming to prevent the

defendant from committing another crime. Even though the Court may have the discretion to assign some conditions for those who are on probation, there are many limitations in doing so (Section 56). For example, it has to be the case that the Court decides to put the defendant on probation and that the Court was not going to give the defendant more than 3 years in prison (Criminal Code, 1957). Moreover, the probation conditions shall not overly affect the defendant's freedom as it is not a punishment. In case of petty offences which the Court may put the defendant in custody of less than 3 months (Section 23), the Court may not assign any probation condition to the defendant.

The abovementioned limitations may cause the Court to use imprisonment as a criminal penalty more often than necessary, whereas in many cases imprisonment does not serve the purpose of improving the defendant's morals and behavior. Some of the defendants who deserve to be on strict probation are free to go back to the society even though they are assigned to public work, members of the public have difficulty accepting that the law takes the underlying conduct seriously (JRank, 2010a).

In case of repeated crimes or recidivism, the Court may give the defendant imprisonment as there are no other kinds of punishment more suitable. However, the defendants who passed over the punishment have not been through any measures to improve their morals and behavior and are not truly repentant before they rejoin the society. This causes the problem of repeated crimes and also leads to overpopulation in prison.

Although the Department of Corrections implements some measures to solve the overcrowding problem in prison by using the Royal Pardon system, decreasing the prison term, enforcing probation and detention outside prison according to the Criminal Code Section 89/1 and 89/2, the number of those who are sentenced to prison keeps increasing. There have been discussions about extending, building more prisons, creating a prison system with maximum security and private prisons. However, the building and extension of prisons require high budget and

countries who have implemented such measures still have increasing number of prisoners.

One of the causes of the abovementioned problem is that the Court cannot punish the defendants according to the true purpose of criminal punishment which are to truly revenge, remedy, threaten, prevent and correct the defendants' mind and behavior as the existing laws do not allow. Moreover, the society is changing quickly together with changing technology and development, causing many behaviors that are not applicable to social control.

One of the measures the government uses to solve social problems is criminal policy. In some cases, the government solves problems by enacting laws aiming at crime control with an emphasis on increasing the penalty and more extensive criminalization. For example, specifying amphetamine as psychotropic substances type 1 has brought more defendants to the judicial system. This can be seen from the study of the Royal Thai Police which has found that there is the average of 200 people who go to prison out of the population of 100,000. While in the United States, there is the average of 748 out of the population of 100,000 (World Prison, 2010).

Even though the law has more criminalization, the regulations dealing with means of punishment aimed to correct and improve the defendants have not been well developed. This leads to repeated defendants who repeatedly go to prison, become a financial burden to the government and cause social problems. This research aims to study forms and concepts relating to intermediate punishment measures to solve or remedy such problems by trying to propose ways to amend and improve laws and regulations to offer the Court more suitable options of punishment for each defendant so that the use of prison decreases. This will improve the jail system, save government's budget and benefit the public and justice system as a whole.

1.2 Research Objectives

1.2.1 To study the forms and concepts of intermediate punishment measures used with defendants in criminal cases according to laws and regulations in foreign countries and international standards (the Tokyo Rules).

1.2.2 To designate forms and concepts of intermediate punishment measures as guidelines for the drafting of laws relating to the Court's use of intermediate punishment measures procedures which are suitable to Thailand's criminal justice system.

1.3 Research Framework

This research is the study and analysis of the concepts, theories of the objectives of criminal punishment, including relevant laws and regulations, by using Tokyo Rules as the main model as well as the study of concepts and alternatives sentencing, other than probation or other kinds of punishments prescribed by Thai laws, in the United States, Australia, England and Canada. However, it will only focus on intermediate punishments used in judicial process which are still not available under Thai laws.

1.4 Research Benefits

1.4.1 Studying principles of intermediate punishment measures in the criminal justice process will provide knowledge on forms and criterias of international intermediate punishment measures (Tokyo Rules) and such measures used in other countries.

1.4.2 Studying forms and criterias of intermediate punishment measures applicable to Thailand would result in the enforcement of a punishment measure that is in accordance with the purpose of punishment, contribute to the rehabilitation of the defendants and allow society to part take in punishing and rehabilitating the defendants.

1.4.3 The findings resulted from the study of the principles of intermediate punishment measures will provide the government with forms and criterias of intermediate sanctions which can be used in drafting Thailand's laws and regulations relating to intermediate punishment so as to provide more suitable alternatives according to unique characteristics of each criminal and crime to Thai courts.

1.5 Definitions

1.5.1 "Intermediate Punishment Programs", "Intermediate Sanctions" or "Intermediate Penalties" means the designation of criminal punishment with moderate sanction. That is to say punishments those are less severe than general imprisonment but more substantial than probation conditions (Sims & Shi, 1999). The measures of this kind are mostly used in other countries to avoid giving the defendants prison sentence (Alternatives to Prison) to solve problem of overcrowding prison. However, if the defendant violates such measures, the Court may imprison them (Center for Community Corrections, 2009).

Therefore, intermediate punishment is called differently in each country depending on the country's policy – whether it will use such measures as moderate punishment, or as an option to other kinds of punishment or as conditions used in place of imprisonment. For example, Intermediate Sanctions, Intermediate Sentencing, Intermediate Penalties, Alternative Sanctions, Alternative to Sentencing, Alternative to Prison or Conditional Sentencing etc.

1.5.2 “Sentencing” means the designation of penalty by the Court in case that the defendant is found guilty. The punishment has sanction on body, right, freedom and a person’s property, for example, execution, limitation on freedom, fine, the confiscation of assets, probation supervision, etc. The judiciary branch is the entity that is neutral and has duty to give punishment according to laws enacted by the legislative branch.

Thailand uses civil law system and the Thai Criminal Code designates five kinds of punishment (execution, imprisonment, detention, fine and confiscation of property). As a result, Thai courts may only enforce five types of punishment. As for common law countries, such as the United States, the probation supervision and conditions is deemed as criminal sentence since it has a sanction on right and freedom of a person. As (Black’s Law Dictionary, 1992) defines “Sentence” as “The judgment formally pronounced by the Court or judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine, incarceration or probation.”

1.5.3 “Alternatives to Sentencing” or “Alternative Sanctions” means the alternative that the Court has used in sentencing the defendants; mostly it is a kind of punishment other than general imprisonment. In case that the defendants do not follow the Court’s orders, they may be imprisoned.

In some countries, intermediate punishment, such as fine and probation supervision, is used in place of imprisonment. However, this research emphasizes on intermediate punishment that has not been locally legalized. Thus, fine and probation supervision, which are criminal penalty already available under the Thai Criminal Code in Section 18 and 56, are not considered as intermediate sentencing in this research.

1.5.4 “Conditional Sentencing” means the sentencing to punishment outside prison with conditions that the defendants must follow such as suspension of imprisonment with probation conditions. Otherwise, they will get general criminal

sentence, this is why, in cases where the Court (in Canada) designates conditions or any kind of sentence other than imprisonment, the form of sentencing is called conditional sentencing (Canadian Centre for Justice Statistics, 2001).

1.6 Research Questions

1.6.1 What are the universal and major forms and criteria of intermediate punishment measures in other countries?

1.6.2 What are the major forms and criteria of intermediate punishment measures that are suitable to Thailand?

CHAPTER II

LITERATURE REVIEW

Concepts, theories, researches and the documents used in this research consist of legal theories, criminal policy, research relating to alternative punishment and the forms and criteria of intermediate punishment used in other countries as followed:

2.1 Concept and the Impact of Criminal Policy

The philosophy of the government's criminal policy, whether it has an emphasis on substantive punishment or intermediate punishment, directly affects the number of prisoners.

From 2004 to 2006, the policy of many states in the United State focused on the substantive (harsh) punishment (tough on crime approaches), e.g. most states have mandatory minimum penalties in drug offences. Such approach limits judges' discretion as they are bound to enforce at least mandatory minimum penalty prescribed by law on the convicted. Moreover, the three-strike law which significantly increases the prison term for a person who repeatedly commits a crime. Besides, the parole has been abolished, the penalty on sexual offences has been increased, there has been the criminalization of new crimes, etc. (Warren 2009).

Apart from the substantive punishment, criminalization, mandatory minimum penalties and death penalty or life imprisonment, the United State also has a policy in a form of sentences that emphasizes on crime prevention and suppression, which is also an important factor for increasing or decreasing prison populations. This crime policy is called Determinate Sentences and Indeterminate Sentences.

Determinate Sentences means imprisonment with a definite timeline, having a minimum and maximum term according to the sentencing guidelines. This kind of verdict will limit the power of the parole boards and probation officers to give the defendant a parole or release the prisoner before the due date. In some places, the sentence whose period of the punishment is fixed by the sentencing guideline is called fixed sentences or structured sentences (Hall, 2009).

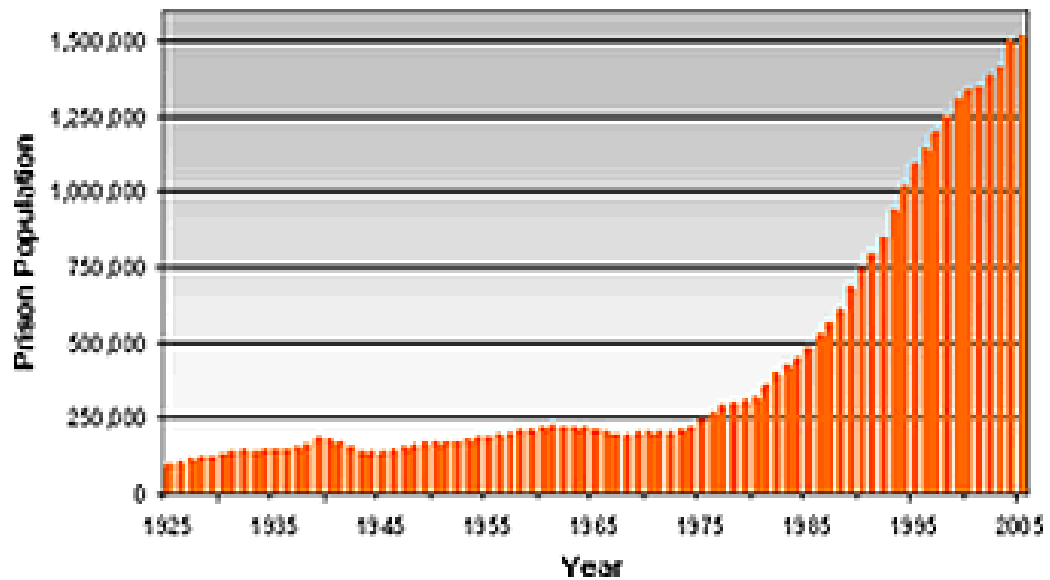
Indeterminate Sentences is a kind of sentencing that does not state the specific punishment timeframe or release date, but only a range of time with the minimum and maximum penalty. This policy allows the parole boards and probation officers to release the prisoners after they have served the minimum prison term as prescribed by the Court, giving the executive branch the power to designate a prison term to prisoners (Tapan, 1958).

As determinate sentences designate a fixed prison term, the defendants are often imprisoned for a longer period of time and the government has to spend more budgets to keep them in prison. While in case of indeterminate sentences, the defendants are imprisoned for a shorter period of time leading to the decreased number of prisoners and therefore, in a certain extent, helps solve the overcrowding problem in prison.

In Thailand, there are not as various forms of punishment as in the United States. The Thai judges give a verdict with a fixed timeframe similar to those used in determinate sentences. However, the parole boards have a power to give parole or release the prisoners with probation condition before the due date.

Due to the policy, from 2000 to 2005, the numbers of prisoners in the United States increased by 7 per cent. In the last three decades, the prison population was on the highest in the world. In 1972, after using the tough on crime approach, the number of prisoners has increased by 600 per cent (approximately 2.3 million) and is still increasing as shown in the following graph.

**State and Federal Prisoners
(1926-2005)**



The tough on crime approach leads to overcrowding problems in prisons. However, the crime rate has not decreased. Therefore, it could be said that the tough on crime approach and prison extension cannot reduce crimes in the society (Nellis&King, 2009).

The Crime Prevention and Criminal Justice report from the European Union shows that in the last two decades, the tough on crime approach has been adopted in many European countries such as The Netherlands, Belgium and Germany, e.g. by changing sentencing guidelines in accordance with the structure sentence and enforcing mandatory minimum penalty, especially in drug and sexual offences. Moreover, a report of the judiciary of England and Wales shows that the Parliament had enacted an act which increases mandatory minimum penalty as well as mandates the judges to use more sentencing guidelines. These measures have contributed to the increased number of prisoners.

The government has 3 options to deal with the overcrowding problem in prison; to expand prison capacity, to decrease the number of prisoners or to do nothing and accept the outcome. The Court of England admitted that it may have contributed to such problem by giving the defendants severe sentences (Woof, 2003).

Whereas in the United States, many states solve the problem by changing their crime policy approaches and adopting alternatives to imprisonment policy in non-violent offences. In addition, they also encourage rehabilitation and support public service organization and use imprisonment as the last resort.

The solution which evidently shows the change of crime approach is to amend and enact new legislations with an emphasis on punishment aiming to rehabilitate and to use less severe measures in 22 states, such as adding more ways to monitor the defendants on probation or parole, using diversion measure to avoid defendants in drug offenses from imprisonment, providing more alternative sentencing for less severe crimes, etc.

Alternative sentencing concept believes that if the government can control the number of prisoners, it will succeed in reforming punishment measures which will contribute to the prevention of recidivism. Such measure has been first implemented in Kentucky and then spread to other states because the new approach is able to decrease the prison's overcrowding and simultaneously protect the society from crimes (Mauer, 2009).

The samples of intermediate punishment measures used in the United States are as followed; (King, 2007: 2-3)

Arizona: 2004 implemented community monitoring as an alternative to prison measure when the Court has revoked probation supervision.

Arkansas: 2005 approved the release of prisoners before due date and had them stayed in a Half-Way Home in the communities.

California: 2005 implemented community monitoring as an alternative to prison measure when the Court has revoked probation supervision.

Connecticut: 2004 adjusted the different punishments in drug crimes, and in 2005 expanded the prison diversion program relating to drug crimes so that the

parole comes earlier and requested the Court and relevant officers to cancel the probation and parole revocation rate by 20 per cent.

Hawaii: 2004 expand the diversion program for drug offences into the rehabilitation measures. In 2006, the diversion program was covered property crimes for the first times defendants resulted from drug related. Also in 2006, the defendants, who had committed a drug offence, before July 2004, for the first times and finished the rehabilitation program, may submit a petition to remove their criminal record.

Illinois: 2005 enforced the compulsory rehabilitation measure before parole.

Indiana: 2004 added the diversion program for drug offenses.

Louisiana: 2006 established the Court diversion program in drug crimes so that the Court may dismiss the case when the defendant who violates probation or parole conditions for the first times completes the rehabilitation program within 90 days.

Maryland: 2004 entitled the parole defendants to be rehabilitated in their own community and allowed them to ask for removal of their criminal record.

Michigan: 2005 established the drug court program.

Minnesota: 2004 allowed the drug offense defendants to join the parole program.

Mississippi: 2004 approved the order to suspend the revocation for community monitoring after participated in "Trusty Project", allowed terminally ill defendants to be conditional released and expended the parole program to defendants in drug cases.

Montana: 2005 allowed court to implement drug rehabilitation program.

New York: 2004/2005 amended the “Rockefeller Drug Laws” by revising the penalties, allowing court to change the punishment for those who are already imprisoned and designating community problem -solving as a part of the punishment purpose.

North Dakota: 2005 mandated an alternative sentencing in drug offences.

Oklahoma: 2004 approved public prosecutor to exercise discretion to propose defendant to be probated. In 2005, intermediate punishment program was introduced to reduce the revocation of probation order in case the defendant violates probation conditions.

Oregon: 2005, pre-sentence investigation was introduced in order to analyze data especially those concerning a chance to repetitive crime and report to the Court.

Pennsylvania: 2004, Department of Corrections was assigned to remedy and rehabilitate drug-addicted defendants by means of detention and community participation.

Texas: 2005, public prosecutor could exercise discretion to charge the defendants with petty crimes in lieu of felony and to extend restorative system for defendants who have entered Drug Court System.

Utah: 2005, options in Drug Diversion Sentencing were added.

Virginia: in 2004, Drug Treatment Courts procedure was encouraged.

Washington: in 2005, alternative punishment scheme for defender in drugs case had been extended in order that community surveillance and Electronic Monitoring could be employed for inspecting defendant in community (King, 2007: 2-3).

As for criminal policy regarding crime problem in Thailand, the researcher is of the opinion that the policy has not been clarified as it depends mostly on types of social problems occurring at a time and attitudes towards problem-solving of each government, such as problems concerning drugs, racing on highway, rape, pick-up truck larceny and so on. Thai solution typically emphasizes on substantive punishment which is believed to cease or deter delinquency which happens frequently at a time.

Thailand carries out criminal policy in solving crime problems like other countries. We therefore have laws which stipulate the Court to proportionally extend its sentence to defendants who have committed repetitive crimes within designated period by law, similar to the Three Strikes Law including the determination of Mandatory Sentencing, Criminalization and extending sentences, to name but a few.

Implementation of criminal policy aiming to tackle social problems which the researcher will take as an example is the Thai methamphetamine policy. Previously, methamphetamine was not considered as narcotics. However, when it became wide-spread, the government thus amended the law to criminalize the sale, use and possession of methamphetamine according to the Narcotics Act B.E. 2522 (1979). The problem is, however, ongoing and there have been more perpetrations. Around 2003, the government adopted the tough on crime approach which resulted in the death of numerous drug-dealers.

The drug-addict is considered as a sick person who needs therapy pursuant to the Narcotics Addict Rehabilitation Act B.E. 2545 (2002), which is to be implemented on a basis of diversion program. This means that the government had adopted the approach which emphasized more on rehabilitation of drug-addicted defendants than substantive punishment for deterrence.

Nevertheless, the government is not yet clear as to which policy it prioritizes as the Narcotics Act B.E.1979 has not been amended to provide remission, exemption or abolish crimes on use of drugs. This causes the law enforcer to

prosecute drug-addicted according to the Narcotics Act B.E.1979 and concurrently take them into the rehabilitation program according to the Narcotics Addict Rehabilitation Act B.E. 2545 (2002).

Besides, the Narcotics Addict Rehabilitation Act B.E. 2545 (2002), now in force, also has legal issues and practical problems including the government and the responsible government sector following the Act not being ready to effectively enforce the act. This results in drug-addict who is considered sick being detained in prison according to the Narcotics Addict Rehabilitation Act B.E. 2545 (2002) and in some cases, being still charged with a crime pursuant to the Narcotics Act B.E. 2522 (1979).

The tough on crime policy that Thailand has adopted renders prison packed with prisoners as happened in other countries. Details regarding the number of prisoners will be discussed where rationale and necessity for Intermediate Sanctions Program are explained later.

Criminal policy which other countries have implemented is therefore an alternative to imprisonment that perhaps can be used to benefit Thailand. Even though there may be difficulty regarding the ability to implement some alternative procedures and the inflexibility of Thai civil law system, it is possible to employ particular options which are applicable to Thailand's conditions, such as the highest number of prisoners in prison (38,027 prisoners) are those sentenced to imprisonment from 2 to 5 years etc. (Department of Corrections, 2008), as well as to amend the law to support alternative punishment.

The abovementioned criminal policy is related to a jurisprudence theory on the purpose of punishment. As the criminal punishment needs a clear objective, the government thus stipulates policy in accordance with the punishment objectives. The researcher will discuss the jurisprudence theory relevant to the research as followed:

2.2 The Purpose of Punishment Theory

Both the intermediate punishment and general punishment share the same objective: to protect the society from crimes and to promote peace. In this study, the author is going to conduct a literature review on theories concerning the punishment objective. The purpose, the intention and the spirit of punishment for criminal defendants are categorized into 3 theories;

2.2.1 Retributive Theory

This theory derived from traditional criminology theory of the Classical School by Cesare Baccaria who believed that human's behavior is under free will of individual, not the influence of external factors. Therefore, the individual should be held accountable for his own behavior and punished accordingly to compensate for his offence, negate malice and maintain justice (Greek, 2005).

Nonetheless, Retributive Theory must be in proportion with offense. In other words, Retributive Theory is based on moral rightness and therefore different from punishment for revenge which is based on emotion and satisfaction of the Court. Three principles can be drawn from this concept:

1. A person to be punished must have committed a crime and the punishment must be proportionate to the crime committed. Therefore, even though a person is dangerous to the society, if he has not committed a crime, he cannot be punished for the benefit of society as this theory does not agree with punishing the innocent even if the social benefit of such punishment.

2. Every defendant must be punished though such punishment has no benefit to the society. In other words, punishment is mandatory even if it causes damage to the community. Nevertheless, this principle is mitigated as other factors such as insanity and age etc are also taken into consideration. These persons must be punished less, but a person who committed an unconscious act will not be punished as his action is not considered as an offense.

3. The severity of punishment must be proportional to the offence committed. This is also called the Principle of Retaliation or the Principle of Proportionality. The Principle of Retaliation, or An eye for an eye, and a tooth for a tooth, means the punishment in the Roman and Islamic law which emphasize on a direct action on the defendant's body to compensate the damage he had caused to the victim (Encyclopedia Britannica, 2010) and (Kant, 1970).

The Retributive Theory is sometimes called punishment for revenge as it is a punishment to compensate emotional feeling and loss of the victim (Kant, 1887).

The researcher is of the opinion that even though the punishment is enforced to compensate for damage, the form of punishment does not necessarily have to be severe or violent. It should be enough that the society and the convicted feel that the punishment is deserving.

Thus, in a case of less severe crimes, the method of punishment that society or the punished deem harsh may possibly accomplish the goal of this theory. This is because the severity felt by society or the punished can be different. For example, shaming sentencing for littering on public way by making the defendants collect garbage around the area may be a punishment that satisfies society, adequately make the defendants dread to commit another offense and is proportionate to the offense.

This theory can be applied to the intermediate punishment measures to determine a punishment suitable for the defendant and the offence.

2.2.2 Preventive Theory

This preventive theory, sometimes called the deterrence theory, believes that the damage cannot be undone or remedied. Therefore, the purpose of punishment should be to prevent any future damage to society by punishing the defendants and teaching morals to the society to make both the defendants and other members of the society more reluctant to commit a crime. For example, even though the defendant

may have committed a crime on an impulse and is not likely to commit more crimes, he still has to be punished to serve as a warning to others.

The objective of legislation with criminal punishment is hence a threat and deterrence to prevent people from committing a crime. Punishment is in fact only a way to make law more sacred. This concept derives from free will theory which forces community to give more respect to the law. This theory is composed of the following principles:

1. The punishment must be sufficient to convince defendant that committing crime causes hardship more than satisfaction or benefit he will possibly get from it. The rational choice theory believes that defendant will consider advantages and disadvantages before acting (Scott, 2000). Therefore, punishment does not need to be more serious than it is necessary to prevent the defendant from committing another crime.

2. The punishment must be precise and timely, e.g. the defendant must be caught and speedily prosecuted so that it serves as a warning to other people. This will result in the measures being more effective in preventing more crimes.

3. Punishment should be serious and disclosed to society so that people will not imitate. This theory punishes defendant only when punishment is useful for preventive purposes.

2.2.3 Reformative Theory

On this theory, sometimes called Rehabilitative Theory, Sahathon Rattanapajitr who wrote thesis “The Objective of Criminal Punishment: a case study on Thailand in the Era of the Criminal Law and the Criminal Code” found that the reformative theory was influenced by an Italian school of thoughts and the Neo-Criminal School which study a criminal act in a scientific perspective and also collect information through the belief that crime is a result of an individual’s characteristics in combination with social factors. Therefore, a punishment should be done as a

preventive measure to protect the society and at the same time designed to suit the characteristics of each defendant so that it could effectively prevent such defendant from committing another crime. Furthermore, there should be measures to ensure that the convicted will have sufficient skills to survive by honest means after his return to the society and that he will not feel that he faces anymore social punishment. As each defendant has unique characteristics and issues, the punishment should be tailored to best suit each of them. This concept leads to many methods of punishment which can be categorized into five forms as follows;

1. To try to prevent the defendant from encountering what may undermine his good characteristics, thus the punishment should not shame him to the point that he could not return to the society.

2. To try not to use short-term imprisonment as it cannot change the behavior of the convicted and makes it difficult for him to return to the society. Therefore, other measurements such as detainment, fine, suspension of punishment or suspension of determination of punishment should apply instead.

3. The punishment must be suitable for the person, not for the crime. Besides, the prisoners who are likely to be easier to reform should be confined separately so that they do not get bad influence from other prisoners.

4. When the defendants have improved themselves, the punishment shall cease because further punishment will no longer benefit the society.

5. Vocational training, education, training on religion and morality or first aid care should be organized for the defendants serving his sentence in order to prevent them from recommitting a crime.

As can be seen, the abovementioned theories on the punishment objectives are all applicable to intermediate punishment measures as they are also criminal punishment. Nevertheless, the reformatory theory is most consistent with intermediate sentencing.

Intermediate sentencing provides an alternative for the Court to punish the defendant for purpose of rehabilitation more than the five punishment measures being used at present, which emphasize on imprisonment. As intermediate sentencing prioritizes alternative punishment and avoids the use of prison, it gives more opportunity to the defendant to reform.

Aside from the punishment objectives mentioned above, there are also theories on the relationship between the severity and form of punishment and the crime committed.

2.3 The Proportionality Theory

The proportionality theory is a legal theory based on revenge with the belief that criminal punishment does not only serve as a revenge for the victim and the society but also as a tool to punish the defendants in proportionate to the malice of such person (Guilt, Blameworthy, Malice, Mens Rea) so that the defendant repents and becomes afraid to recommit the crime in future. That is to say when a person commits a wrongdoing according to the law, it has to be considered whether such person deserves a punishment. Whether a person deserves a punishment is the same as whether he should be liable for his wrongdoing.

Apart from the fact that a punishment will create bad consequences for the one who commits the wrongdoing as in according to what they have done, it is also to make he feel that he is being punished as he deserves from what he has committed. Similarly to the others who will reckon the convicted deserves punishment as in proportionate to the crime he has committed (Apirat Petchsiri, 2005:91-92).

The aforementioned theory is in accordance with the concepts of Cesare Beccaria, an Italian Criminologist, who considers criminals as debtors to the community and suggests that the severity of punishment must be proportionate to the severity of the crime by considering the damage done to society to determine degree

of punishment the defendant deserves. The damage to society means to the action affecting the social security (Burke, 2005:24-25).

The author considers the proportionality theory as an important principle which the Court must take into consideration when determining the punishment for the defendant so as to avoid the case where the severity of the punishment exceeds the severity of the crime.

This theory serves as a tool to prevent court from imposing arbitrary penalty. Even though the form of intermediate punishment is less substantive than imprisonment and the Court has various punishment options, it should use maximum care not to punish the defendant more than he deserves.

This theory shall also apply when the Court employs intermediate punishment but the defendant later violates the order or the verdict; the Court may deem it appropriate to use other alternative punishment or altered punishment measures that have been imposed upon the defendant.

2.4 Related Researches and Academic Documents

Apart from the concept and theory regarding alternatives to apply intermediate punishment, in relevance to research which is, in general, research project, master and doctoral degree research involved are as followed:

One of the studies which most supports this research and is a research on Criminology and Theory of Punishment, the Application of Criminological Philosophy in Thai Court: Case Study of the Malice Defendants and the By chance Defendants. (Utiti Supaab 2002:28-32)

The aforementioned research studies the punishment in Thai court in case where the defendants commit a crime by malice and where the defendants commit a crime by chance. The types of the crimes and defendants can be categorized by using

criminology concepts. The study suggests that the judges must have knowledge on criminology and penology in order to apply the information gained from the investigation of the defendant's background in determining the punishment for each defendant.

In determining a punishment, the category of the defendants should be taken into account. The defendants can be categorized into three categories: those who commit a crime for the first time, those who recommit a crime and those who commit repetitive crimes or recidivist.

The proportionality theory should be applied together with the criminology theory on punishment and penology when determining a punishment for the defendants of serious and repetitive crimes to preserve justice. The preventive and reformatory theories should apply to the first time defendants and the defendants who recommit a crime so as to serve the society as a whole in crime prevention.

The research suggests that laws should give the Court flexibility in determining a punishment, e.g. the prescription of the punishment which only imposes minimum and maximum punishment (as in accordance with the verdict of foreign court called "Indeterminate Sentence" which specifies the minimum and maximum term of imprisonment so that the court or stakeholder may propose a parole or supervision probation after the prison term is served - Researcher).

In addition, the law should specify more forms of punishment to support the Court's discretion in choosing the punishment most appropriate for the crime and the defendant, e.g. imprisonment on holidays, the compensation to the victims, the house arrest or boot camp etc. The Researcher will specify the forms of punishment which are applicable in Thailand in the next chapter.

Other relevant studies touch on the informal methods of criminal procedure and the punishment reform, demonstrating various ways of criminal procedures, e.g. community mediation, the trial suspension due to the put-off of the

charge, the plea bargaining, the management of the defendants in the minority society and the avoidance of imprisonment.

In the case of measures used to avoid imprisonment, the researcher indicates that punishment should have a purpose to protect the defendants and the defendant from being revenged by the victims to prevent any future crimes. The system of punishment shall cause the least misery to achieve the aim of making the defendants repentant by suffering from the consequences of their own action. Furthermore, the punishment shall demonstrate that society appall such wrongdoing (The Reform of Punishment Form, 19).

At present, imprisonment is adopted extravagantly, causing the overcrowding problem in prisons. The main punishment problem in Thai judicial system is that there is no measure to properly treat each defendant and Thai courts punish the defendants according to the nature of the crime only.

The Researcher reckons that the outcome of the research and discussion indicate that “Thai court prescribes a punishment according to the degree of the crime only” is not absolutely accurate as the Criminal Code, Section 227 stipulates that the Court shall take into consideration the overall circumstances of the crime and shall not punish the defendant unless it is absolutely certain that he is guilty as charged.

The phrase “overall circumstances of the crime” is the facts which include all relevant legislations that are; the defendant’s character, crime record, educational backgrounds, family, physical and mental conditions and malice, the future crime prevention, the rehabilitation, damage done to the society, social security, the defendant’s repentance and compensation, the intention of the victim, exemption of penalty and crime, and the mitigation. In addition, the verdict shall not be in conflict with other decisions of the Court.

Briefly, the Court’s punishment does not solely consider the degree of the crime but also other relevant factors as presented in the proceedings in combination with the punishment objective before giving a verdict.

The research also found that imprisonment causes negative effects on the defendant. Whereas the prisons are overcrowded and cannot efficiently oversee and rehabilitate the prisoners, imprisonment is negatively affecting the prisoners by also the society as a whole.

The imprisonment is an appropriate punishment only for certain type of defendants, e.g. those who commits serious crimes or those who are dangerous to the society. However, imprisonment is not a suitable punishment to certain kind of defendants, e.g. first time defendants in less serious offences who may be applied other kind of measures which may protect the society more in the long run. (Natthee Jitsawang, 1980:11-14)

Many countries are facing the similar problem and many measures are used to avoid imprisonment and maintain public safety. The community has been more involved in the rehabilitation of the defendants. The community would provide information on whether such defendant can be reformed. This method makes use of community resources and gives the community the responsibility in solving crime problem and finding measures for social protection. Imprisonment shall be used very carefully especially short term imprisonment which does not benefit the defendants at all (Wiyada Wangwannarat, 2000:154).

In 2008, the Office of Justice Affairs and Law Faculty of Thammasart University conducted a research on the designation of levels of punishment and its application in the Criminal Code which clearly defines intermediate punishment and its measures.

This research shows that the designation of punishment levels indicates the severity level of the crime that the government and society prioritize. Crimes with the same severity levels should have the same level of punishment. Thailand has more than 30 levels of punishment. The author studies the change of punishment levels in determining the punishment.

This research suggests that there is a new form of punishment called intermediate punishment. It is called so because it is a punishment that stands between imprisonment and probation. Thus, it may be said that other measures such as fine can also be considered as intermediate punishment.

There are other intermediate punishment measures; namely, intensive probation, community service, boots camp, electronic monitoring, diversion center, half-way house and restitution. The use of intermediate punishment must be in connection with the level of punishment as the measures used in place of prison must have the same level of severity.

There have been many studies which suggest that Thailand should amend its punishment processes, especially that imprisonment should be replaced by other punishment measures as the country has faced the overcrowding problem in prisons.

In 1995, there were 102,970 prisoners in Thai prisons while its prison capacity could handle only 80,000 prisoners. In 1998, the number increased to 164,232. Clearly, the number of prisoners greatly exceeds the space and facilities available in Thai prisons. Such problem may be solved by reducing the number of prisoners.

In addition, there is the United Nations Standard Minimum Rules for Non-Custodial Measures which can be used as an alternative to imprisonment.

2.5 United Nations Standard Minimum Rules for Non-Custodial Measures

The United Nations Standard Minimum Rules for Non-Custodial Measures or Tokyo Rules 1990 (OHCHR, 1990) is adopted on 14 December 1990 at the 45th /110 session of the General Assembly of the United Nations by resolution. The present Standard Minimum Rules provide a set of basic principles to promote the use

of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. This is to ensure that there will be a proper balance between the rights of individual defendants, the rights of victims, and the concern of society for public safety and crime prevention.

The Member States have been advised to harmonize these rules into their domestic laws, particularly, where the Courts take into account to use non-custodial measures, the Courts may apply the alternative sentences which provided in section 8 (Sentencing Disposition) of the Rules as follows:

- (1) Verbal sanctions, such as admonition, reprimand and warning;
- (2) Conditional discharge;
- (3) Status penalties;
- (4) Economic sanctions and monetary penalties, such as fines and day-fines;
- (5) Confiscation or an expropriation order;
- (6) Restitution to the victim or a compensation order;
- (7) Suspended or deferred sentence;
- (8) Probation and judicial supervision;
- (9) A community service order;
- (10) Referral to an attendance centre;
- (11) House arrest;
- (12) Any other mode of non-institutional treatment;
- (13) Some combination of the measures listed above.

It can be seen that these punishment measures can be adopted as intermediate punishment in Thailand. The research will discuss more details on these measures in the next chapter.

There is a research which supports the Tokyo Rules; as it becomes the National Standards for Treatment of Defendants in the Community, it guides the Court on how to treat the defendant before a verdict is made. The main principles of the Rules are the followings;

1. The Court should examine report of on investigation background of the defendant done by the government officer before making a verdict.
2. The Court should take into account the rehabilitation of the defendant, as well as social protection and the restitution of victim. It also can be done by asking opinion of victim in case the Court decides use other alternative sentences.
3. The Court should use the sentence dispositions provided in section 8 of Tokyo Rules, in place of imprisonment.

The measures suggested in this guideline would not be practical in Thai judicial system as the Courts hardly make an investigation of the defendant's background before making a verdict although such report would be highly beneficial in deciding more appropriate punishment. However, such investigation may delay the judicial process as the government still lacks human resources to perform the task.

There are some problems in relation to the restitution of victim process, e.g. the victim refuse to appear in the Court, making it difficult for the reconciliation between the defendant and the victim. Moreover, the criminal procedure should be matter between the Government and defendant only. The verdict should not be influenced by victim's emotion as it may override public interest and social security.

At present, the Tokyo Rules have not been harmonized with domestic law, the Court, thus, cannot apply alternative punishments which provided therein. Even though there are some alternative measures available under Thai law, it does not cover all available means of intermediate sentencing recommended by the Tokyo Rules.

Numerous studies agree that the punishment should take into account the character and background of each defendant so that they are truly repentant and can return and reintegrate to the society. They have also found that short-term imprisonment cannot reform the defendant On the other hand, the defendant may get bad influence from other prisoners.

Moreover, short-term imprisonment may subject the defendant to too much shame that he cannot return to the society. Thus, the Court should intermediate punishment to short-term imprisonment. The principles of Intermediate Punishment are similar to those of the Tokyo Rules that Intensive Probation, Community Service, Boot Camp, Home Arrest, Diversion center and Half-way Home should be employed in place of imprisonment.

In addition to the Tokyo Rules, there is the Handbook of Basic Principles & Promising Practices on Alternatives to Imprisonment done by the United Nations. The aim of the Handbook is consistent with the Tokyo Rules and provides international standards and information on alternative sentencing.

2.6 Handbook of Basic Principles & Promising Practices on Alternatives to Imprisonment

This handbook is one of the Criminal Justice Handbook Series by the United Nations Office on Drugs & Crime. In practice, the overall use of imprisonment is rising throughout the world. There are now more than nine million prisoners worldwide and increasing. Growing numbers of prisoners are causing severe overcrowding and resulting in poor conditions in prisons. (Walmsley, 2005)

The increase of prisoners creates the infringement of human right in prison. Thus, the government should reduce the number of prisoners in prison by using imprisonment as the last resort (Matti & Zvekic, 1994: 1-44).

The handbook reports that, in May 2002, roughly two-third of 260,000 prisoners in Thailand were drug offenders. Out of that number, 9 per cent was under investigation, 14 per cent was in the criminal procedure, 12 per cent was in appeal process, and 13 per cent was sentenced to prison for less than 1 year and 46 per cent was sentenced to 1 – 5 years in prison. However, since Thailand has effectively applied the diversion policy, the number of prisoners has been reducing to 160,000 in August 2005 (Kittipong Kittayarak, 2005).

The handbook has restated that the principle of Tokyo Rules should be applied with defendants, particularly those who are of minors, drug users, female defendants and defendants with mental disorder. This is because they all have unique characteristics (UNODC, 2007: 12, 68-70).

The Researcher strongly agrees that the alternative punishment measures should be applied to the defendants who fall under aforementioned categories. However, apart from ensuring that each defendant receives appropriate punishment, the ultimate goal of the criminal justice system which is to achieve social order cannot be overlooked. Thus, the benefits of the individual and public interest have to equally taken into consideration at the same time (UNODC, 2007: 14-15).

Alternatives to custodial sentences which are deemed adequate have been advanced not only to relieve overcrowded prisons but also as a side benefit to reduce Government expenditure on incarcerating prisoners. However, the concept of “Restorative Justice” focuses on the victims along with securing active community participation in order to further promote and foster a unified, cooperative and consequently more peaceful community. For the procedure, there might be different from alternative punishment or intermediate punishment.

Nevertheless, it is the author’s opinion that Restorative Justice and Intermediate Punishment have, under particular circumstances, a role in providing a viable and acceptable alternative to prison. For example, the Court may determine to employ intermediate punishment as an alternative to prison if the meeting between a victim and the offender who has accepted responsibility for his criminal action results in a resolution which provides a remedy for the victim and at the same time aims at preventing recidivism of the defendant. Such an agreement must be in accordance with the principles of intermediate punishment. This measure will, simultaneously, protect the rights of the victim under the restorative justice concept as well as reduce the amount of prisoners in prison - in accordance with the alternative to prison concept. The result of which is that the defendant is afforded the opportunity to be rehabilitated outside the prison system while sufficient restitution is provided to the victim.

2.7 United Nation Handbook on Restorative Justice Programs

This handbook, one of a series of the Criminal Justice Handbook Series developed by the United Nations Office on Drugs and Crime at the UNODC meeting in Vienna in January 2006, suggests the idea of restorative justice along with appropriate potential criminal justice procedures.

The Handbook specifies that there are many terms that are and have been used to describe Restorative Justice such as Communitarian Justice, Making Amends, Positive Justice, Relational Justice, Reparative Justice, and Community Justice. Restorative Justice is a process aimed to resolve a conflict by providing the victims, defendants, social relatives of both sides, criminal justice officials and/or the community an opportunity to participate in find a resolution to the conflict. It reflects that a criminal action does not only have a negative impact on the direct victim but also on the society as a whole.

Such participation might take a number of forms including Victim-defendant Mediation, Community and Family Group Conferencing or Circle Sentencing. Most of the participations will have a collaborator, whose duty is similar to that of a facilitator namely to support and organize the remedial meeting (UNODC, 2006: 2, 6, 17-22).

The use of the concept of Restorative Justice should be appropriate to the characteristics of the defendants and cases especially as there are already local law in Thailand that support restorative justice, e.g. the Drug Rehabilitation Act B.E. 2545 and the Domestic Violence Protection Act B.E. 2550 etc. (Kiitipong Kittayarak, 2005b).

Domestic Violence Protection Act B.E. 2550 allows the Court, in its discretion, to use alternative means of punishment such as public service (also known as community service) and victim remedy etc. The Act is an important example of the intermediate punishment principle as it employs alternative means to punishment

together with Restorative Justice. Where the perpetrator and the victim can reach an agreement, the Court will have the discretion give a verdict (Kiitipong Kittayarak, 2005).

2.8 Rational and the Necessity for the Use of Intermediate punishment

It is increasingly recognized that relying on imprisonment for criminal infractions is unsatisfactory for many reasons, not least of which is the physical limitation on the prison space available. The spectre of highly overcrowded prisons is already manifested; as of B.E.2538 there were 102,970 prisoners in prisons where the maximum capacity could support only 80,000 inmates.

In B.E.2550, the number of prisoners had risen to 165,043. The bedroom is too overcrowded such that there is a need to adapt other prison's buildings, e.g. workshop and ward, (Ministry of Justice, 2008a) to be used as a bedroom. Also, the important issue of Thai punishment system is that it cannot appropriately punish the defendant individually due to the limitations of the prison facilities and the punishment system.

Office of Justice Affairs, organized a meeting in order to develop the approach for the Justice Situation Report which shows most up to date statistics of prisoner for the period 2547-2550 fiscal year. According to these statistics, a significant proportion of those incarcerated are sentenced to 2 to 5 years. Especially in B.E.2551, the highest number was 38,027 out of 132,870. The second highest cohort was for those serving between 5 to 10 years which amounted to 27,068 in 2551 (Department of Corrections, 2008).

Such statistics are indicative of the fact that a significant proportion of those are sentenced to jail are subject to short-term imprisonment, specifically those whose sentence is less than 5 years.

In addition, there are not enough correctional officers within the Department of Corrections and evidently the number of correctional officers to prisoners is wholly inadequate. From the data of the personnel and planning divisions, Correction Department, as of 1 April 2009, the proportion of the correctional officers (10,806) to prisoners (196,772) is 1:18 (Department of Corrections, 2009) while the proportion set by the United Nation was to be no greater than 1:5. Indeed for example, the proportion of correctional officers to prisoners in Singapore is a mere 1:3. This below standard provision of custodians translates into a potentially unsafe environment for prisoners and guards as well as other problems resulting from the lack of appropriate care.

The overcrowded prison is not an appropriate place for the rehabilitation of the defendant. Other countries also face overcrowding problem of prison and thus various measures have been used to avoid the imprisonment. Such measures are used as social security and are focusing on the importance of the community by providing some role for community to rehabilitate the defendant, to remedy the victim and to prevent recidivism of the defendant.

Technology has also permitted new ways of allowing for intermediate punishments to be levied, e.g. through the attachment of electronic monitoring device on the individual. Such use of technology would not only help alleviate the issue of overcrowded prison but also potentially allow for more effective categorization of those still incarcerated.

The question of civil liberties is often raised with respect to the use of house arrest and although the individual's right of movement would be limited, it would be less than if he was incarcerated. The limitation of the freedom by the decision of the Court which renders conditions regarding place and time could provide the same effect as imprisonment in preventing the defendant from committing certain crimes, e.g. drunk-driving during at least the prescribed period while at the same time allowing the defendant to live a normal and earn his living.

One significant concern often raised regarding the use of intermediate punishment is recidivism and its expense to manage. However, research conducted in England found that the defendant who was sentenced in prison had a higher rate of recommitting of crime than those detained in their domicile. Also there is a research that shows that the expense incurred from using intermediate punishment, i.e. electronic monitoring, for 3 months would cost 2,500 GBP per month; 6 months for 4,860 GBP per months, and for the total 100 cases, it would cost 3.6 Million GBP (equal to the prison's expense for 274 cases for 6 months). This could reduce the government budget by 1.7 Million GBP (Smith, 2000).

Therefore, according to the cost effectiveness research in the US, England and in Sweden, the use of electronic is cost efficient, save more budgets and is as effective as imprisonment (Courtright, *et al.*, 2000).

In Thailand, there is also a research which shows that the use of electronic monitoring system will cost less than the use of prison. The study on the electronic monitoring system found that the expenses incurred in prison is 120-150 Baht per each prisoner per day which is considered higher than the use of electronic monitoring (Sumonthip Jitsawang and Thitiya Petchmune., B.E. 2550: 32-33 and 97-98).

Intermediate punishment measures that help reduce prison overcrowding problem not only lower bottom line costs but may yield a positive externality. The less crowded prison may in turn enhance the speed of rehabilitation which is of benefit to society and the justice system as a whole.

2.9 The Use of the Intermediate Punishment Overseas

Intermediate punishment is a concept which has widely gained acceptance in many countries including United States, Australia, England, and Canada. This concept is influenced by the UN Minimum Measure Rule for a Non-Remand Measure. However, the concept itself has been widely adopted by different names in various jurisdictions (Pennsylvania Code, 2010).

Although each country uses a different name for intermediate punishment, they all share the same characteristic which is to avoid the short term imprisonment and focus more on the behavior rehabilitation of the defendant by using the community which is believed to be a criminal judicial technique consistent with legal theories and the international principles.

In the United States, the strict and harsh punishment policy created the overcrowding problem in prison. At first, the country dealt with this problem by simply expanding the number of prisons. This, however, used up a lot of the State budget. Moreover, the gravity of the criminal act cannot be clearly determined whether to sentence the defendant to prison or the supervision probation. As a result, the Court often gives the inappropriate punishment to the defendants. Thus, the society may view that such punishment too harsh as they do not feel that the defendant deserves to be imprisoned or, on the other hand, that the punishment is too soft as they feel that the defendant deserves a punishment more substantial than behavior control.

Such circumstances have prompted the United States to promote intermediate punishment measures. Although seemingly not as harsh as imprisonment, it was nevertheless harsher than mere supervision probation. Moreover, the intermediate punishment uses fewer budgets than imprisonment while at the same time preserves social security. Under the punishment concept, the intermediate punishment can be considered as a form of punishment that is more proportionate to the less serious offences (JRank, 2010a).

In Pennsylvania, there is a local law called Intermediate Punishment Act of 1990 which specified the intermediate levels of punishment, e.g. strict supervision probation, house arrest, electronic monitoring, alcohol and drug rehabilitation, victim compensation, and social service. The purposes of such law were cited as follows:

1. To protect the society and support the effectiveness and reduction of budget to rehabilitate the defendant and the prison;

2. To encourage the defendant to return as a valuable member to the society;
3. To fill the gap and solve the problem in the government rehabilitation system;
4. To present the community needs by broadening Court's sentencing measures and community service so as to develop defendant's skill and serve the society.

However, due to the limited capacity of the prison, the Court has played an important role in carefully selecting criminal defendants i.e. the one who deserves harshest penalty is to be imprisoned. By contrast, the one who deserves lesser penalty and is not as dangerous to the society will be imposed intermediate punishment in place of imprisonment. This decision takes into account their backgrounds and criminal charges (Sims& Shi, 1999: 2-8).

In Canada, the intermediate punishment, recognized as "an Alternatives Punishment with Specified Conditions," is employed so that the Court principally will not impose imprisonment without necessity. Anyhow, if the freedom is required to be restricted, electronic monitoring will be sparingly employed. Alternatives punishment with specified conditions is regarded as a means to avoid imprisonment and a new form of imprisonment. Electronic monitoring gives the defendant the opportunity to live in the community which, from the reconciliation perspective, would be more beneficial for them than being confined in prisons.

Rehabilitation and compensation brought to victims and communities will be emphasized and the defendants will be encouraged to repent. Meanwhile, alternatives punishment with specified conditions also achieves the purpose of punishment which is crime condemnation and prevention. These are the differences between the punishment with specific conditions and probation.

The punishment under specific conditions can be applied to every case, even felony. However, the Court will use this kind of punishment instead of imprisonment under following conditions:

1. The Court was going to impose the punishment of imprisonment of less than two years.
2. There is no minimum punishment for such crime.
3. The measures will not cause harm to the society.
4. The measures comply with the punishment theory.
5. The conditional punishment would not be more than two years (The Courts of Nova Scotia, 2003).

The form recognized as the intermediate punishment in the foreign countries are , for example, probation, fine, restitution, attendant center, intermittent detention, weekend imprisonment, work release, community service, suspended prosecution, half-way house, parole, home incarceration and house arrest.

As can be seen, the advantages of punishing the defendant without resorting to prison are the reduction of the congestion in the prison which has hindered the administration of the correctional training for prisoners, the reduction of the budget used in the construction of new prisons, the administrative cost, the salary of the prison staff and the prisoners' food and giving an opportunity to the defendants to raise their families without being under pressure and being influenced by bad behavior of other prisoners.

The author will give detailed explanation relating to the form of punishment widely used as followings:

2.9.1 Probation

In California, probation is regarded as an intermediate sanction which is not regarded as important in the criminal justice system. The number of defendants fulfills the conditions of behavior control amounts to 54 to 70 per cent. However, this merely illustrates that most of the defendants comply with the behavior control conditions, not that they have become good citizens. Nevertheless, behavior control helps reducing the number of detained persons. The statistics show that, approximately 50 per cent of those who are subject behavior control are also

sentenced to imprisonment (combined sentencing). In California, the number has risen to 90 per cent (Bennett, 1995).

2.9.2 Intensive Probation (ISP)

Intensive Probation means the behavior control that emphasizing on close monitoring of the defendant. ISP will be imposed on the defendants who has no psychotic symptoms and been held liable for less serious offences which are not sexuality-related offences. The defendants who are on ISP will be deprived of the freedom by being monitored day and night.

The conditions often used by the Court to monitor the defendants are as frisk, car and dwelling search, phone eavesdrop, community services, expense control, exemption from social welfare and loan, limitation of time spent at home, random drug search, employment confirmation, mandatory rehabilitation, payment by court order, liability for monitoring – related expenses, reporting to authorities 30 times per month, electronic monitoring, 6 p.m. curfew (Harlow et al., 1995).

This form of punishment has been subject to study in the State of Georgia, Massachusetts and New Jersey. ISP measure was found to be effective in reducing repetitive crimes, if employed continuously, e.g. three to four times per week.

In New Jersey, the defendants in serious crimes were given ISP in lieu of imprisonment. The research shows that ISP is more beneficial than imprisonment as it reduces the congestion in the prisons and does not increase the recidivism. Anyhow, the problem about the definition of “Intensive” still remains. (Bennett, 1995)

2.9.3 Day Fines

In normal case, the Court would order the defendant to pay fine during supervision probation by daily or monthly installments. The amount of fine depends on the income of the defendant. If the defendant does not pay the fine when he is financially capable to do so, he shall be confined.

Day fines are fines whose amount is designated according to the financial status of the defendant. Daily income of the defendant will be taken into account before the amount of fine is calculated. Thus, the defendants with higher daily income will pay more fine than the defendants with lower income, although the period during which they have to pay is the same. (Wikipedia, 2010)

The Court shall be able to designate the daily fine amount, when the information on the defendant's income is obtained. In general, the Court will take into consideration of the annual income tax paid by the defendant. Therefore, this measure is not yet applicable to Thailand where it is difficult to find out the actual income of each person.

2.9.4 House Arrest or Home Detention

House arrest or home detention is the measure used when the Court decides to imprison the defendant by gives an order that the defendant detained in his own dwelling during the prescribed period. Normally, the Court will inflict this punishment together with electronic monitoring measure under the following conditions:

- 1) The defendant shall be detained in his house for twenty four hours daily during the designated period which may last for several weeks or months.
- 2) If the defendant wishes to leave his house, the Court's permission must be obtained. The permission will be given only when there are reasonable causes such as work or emergency.

This form of punishment is widely used in the State of Alabama and Florida (Bennett, 1995).

In the United States, house arrest or home detention originates from a legislation that entitles the defendant sentenced to prison to make a request to the Court to transfer the imprisonment to the confinement in his own dwelling place. In this case, the Court may designate any conditions on the defendant. Thus, house arrest or home detention is considered as criminal punishment.

In Australia, the Court may order the first-time defendants who have pleaded guilty to be detained at his house for the same period as that of the imprisonment according to the verdict.

House Arrest is regarded as the new form of punishment which affects the fundamental rights of the defendant less than imprisonment, but is still criminal punishment, restricting the defendant's freedom in accordance with the Court's verdict. Nonetheless, house arrest does not deprive the defendant's other rights such as the right to have his backgrounds checked for applying for government bureaus or state enterprises, the right to vote and the right to be employed.

In addition, House Arrest is also consistent with the retribution theory and the proportionate theory, especially with regard to the confinement period, the Court may exercise its discretion just as it does with imprisonment. Moreover, the offence for which the Court imposes the punishment of house arrest are less severe offences; therefore, the nature of adverse effects and the punishment received by the defendant do not diminish the purpose of the punishment according to aforesaid theories.

According to the prevention and correction theory, house arrest will restrict the freedom of the detained person; as a consequence, he would not have a chance to commit other offenses such as drunken driving etc. House arrest can be imposed together with conditions on place and time of restriction. It can control the behavior of the defendants for a certain period of time and at the same time does not affect the defendant's daily life and allows the defendant's self-development as he is able to work study or take care of his family.

This form of punishment is thus the most appropriate as it is tailored according to the defendant's characteristics. The research of Kenton city from May 1985 to November 1986 shows that the recidivism rates for the person inflicted with the imprisonment and fine are as high as 20 per cent, while the recidivism rates for the person inflicted with the house arrest are just 5.7 per cent (Benja Pengdit, 2532: 61, 67, 69 and 70).

2.9.5 Electronic Monitoring

Electronic Monitoring is the method used to control the defendant according to the Court's order by restricting his freedom with the attachment of electronic tracking device in lieu of imprisonment. Mostly, it will be imposed together with the house arrest.

Home arrest with electronic monitoring means confinement or detention of the defendant who committed less serious crime in a certain place other than prison. The defendant may be able to enjoy the freedom within the limited area. He will be attached the bangle or anklet-like electronic device to prevent him from leaving the place of confinement such as home or hospital. The device will send the signal to the transmitter installed in that place.

In case the detained person is away from the transmitter more than a specific distance, it will send the signal to notify the control center. If the detained person is proved to be in intentional violation, he will be imprisoned.

The report from Workshop II on Confinement and the Use of Electronic Tracking Device in US hosted by the faculty of law, Chulalongkorn University on 13 June B.E.2531 states that, in the early 1980s judges in the United States introduced the concept of Electronic Monitoring called "EM" developed by the private company. It is a bangle and anklet-like device used to trace the movement of the defendant. It is used together with house arrest.

In 1971, EM was the new form of punishment tested in the State of St. Louis for minor defendants. In 1983, it was applied to adult defendants in the State of Florida. In the same year, it was the first time in the world that the Court gave the order to attach EM to the defendants whose punishment had been suspended, but later violated the punishment conditions. By 1987, there were about 30 states employing this form of punishment, and measure was introduced in England, Canada and Australia.

The popularity of EM is a result of community-based sanction relating to a policy aiming to reduce the number of prisoners. EM is served as primary sentencing. Instead of being imprisoned, the defendant is confined in his own house. EM is still one of the forms used widely in the United States to restrict the defendant's freedom, and regarded as less severe penalty than imprisonment though harsher than probation. In 1998, there were about 19,677 defendants inflicted with EM.

There are some remarks on the use of EM in the State of Kentucky are as follows:

- 1) EM shall not be applied to the defendant sentenced for severe offences or the attempt to commit a severe offence and have been punished for such offence for five years or less.

- 2) Electronic monitoring machine should be certified by Department of Corrections and should neither record nor examine any pictures, voice, communications, movement or other activities occurring in the place of confinement.

- 3) EM could be substituted for the sentence of less than six month incarceration.

- 4) The defendant could request for the use of EM making a direct payment to concerning authority.

- 5) The defendant violating the Court's EM conditions is guilty of escape and crimes relating to custody.

- 6) The Court's condition is based on defendants' consent and is regarded as a part of the verdict.

To apply EM in defendant's residence, the United States Supreme Court rulings affirmed that the prisoner is entitled to constitutional protection but some rights will be restricted according to the penalty, it is therefore not considered to be the violation rights of privacy (U.S *Cumbey V. Meachum*, 1984: 684).

According to the evaluation studies conducted after applying EM in three Sheriff Courts from August 1998 to 2000, type of charges and kind of defendants which are appropriate for EM remain questionable. Nevertheless, it is expected that

the estimation of using EM in lieu of incarceration will increase by 40 percent of all cases. EM is worth its value, and found satisfactory by the defendants and their family in general.

The expense of EM usage per unit estimated in year 2000 is 2,500 pounds for three- month period and 4,860 pounds for six-month period. Total cost for 100 cases is 3.68 million pound (equals to the cost of six months incarceration for 274 cases). The implementation of EM saves approximately save the cost by 1.7 million pounds compared to incarceration (Smith, 2003).

The author suggests that the use of EM in Thailand will alleviate a large number of prisoners. As mentioned in 2.6, more than 50 per cent of prisoners are sentenced to less than five-year imprisonment. Thus, if the EM is used both before passing the sentences and as an alternative to punishment, it will alleviate overcrowding problem in prison and enhance the rehabilitation and reform of the defendants. However, the relevant laws and legislation have to be amended (Blach&Smith, 2003).

The confinement by EM is an appropriate punishment measure which could replace short-term imprisonment and could be used to supplement probation measures in Thailand since it neither affects individual right of privacy nor defendant's right. It is also compatible with the theory of punishment which states that short-term imprisonment could not reform an defendant (Prasert Jantravech, 1972:126-127).

The disadvantage of incarceration is that defendants' rights is restricted and consequently affect their career and lifestyle at the end of punishment. Meanwhile, supervision probation with conditions has limitations that make it difficult to control or separate the defendant from the environment, association or community for the effective reform and prevention (Benja Pengdit, 1989:3).

2.9.6 Halfway Houses

This process originates from the integration problem faced by the prisoners who have served his turn and are ready to go back to the society. Halfway houses provide transitional services for defendants before returning to their community. Studies found that the defendants participated in halfway houses have less problem to adapt themselves to the community than those participated the probation program after their release. Only few studies in Florida in 1980 found that the halfway houses participants perceive less human dignity and that some defendants are not unhappy with this system since they are still being controlled after their punishment is over (Bennett, 1995).

2.9.7 Treatment for Alcoholism and Drug Addicted.

In California, this treatment is regarded as criminal protection measure. It is believed people commit a crime because of the need of drug. Thus, their symptoms should be treated by short-term imprisonment and followed by intensive rehabilitation program. However, studies show that treatment program has become less substantive and become more like probation.

2.9.8 Boot Camps

Although the use of boot camps is now widespread, there were no studies affirming that they could reduce the recidivism rate (Bennett, 1995).

2.9.9 Shaming Sentencing

Shaming sentencing is a punishment done publicly in order to make the defendants feel ashamed and afraid to recommit a crime. One typical example is by having the defendant stood or walked in public, holding a sign stated his or her offence. For example, the judge may require person guilty of mail theft to spend a day standing outside a post office wearing a signboard stating, "I stole mail. This is my punishment." The defendant's attorney appeals that the punishment was unconstitutional since it was cruel and unethical. The Appeal Court affirmed that the punishment was not cruel and did not violate any constitutional right.

Shaming punishment has been used for decades. For those who committed adultery would be punished by carrying a stone and walk around the church. In Kentucky, the Court once set a condition on which the defendant had to visit the church ten times in lieu of rehabilitation for drug addicted. In Texas, a defendant was charged with an abuse to his stepchild by forcing him to go to bed early in 2003. The Court sentenced the defendant to stay in dog stable for 30 nights as an alternative to 30 days in prison (Turley, 2005).

The United States courts have applied various kinds of shaming sentencing. However, it can be categorized into four categories:

1. Stigmatizing Publicity is the most widespread means of shaming punishment. It is the punishment which denounces defendant by announcing his crime to the public in general. For example, printing the defendant's name and his crime on different kind of media such as newspaper, billboard or community-access television channels. This kind of penalty is sometimes used for men who are convicted of soliciting prostitute;

2. Literal Stigmatization is used to condemn defendants by stamping or symbolizing his commitment in ridiculous ways such as an order for thief to wear T-shirt printing their crimes on it, sometimes drunk drivers have to show a special license plates or bumper stickers, or those who is convicted of sexual assault may have to announce their offence in front of their residence as a warning to others.

3. Self-debasement is a penalty which the criminal has to be disgraced in public. Some communities require defendants to simply stand in community spaces (such as the Courthouse). In Tennessee, burglars were ordered to allow their victims to bring out any items from defendant's home;

4. Contrition penalties focus on making defendant feels ashamed by expressing their responsibility. It comes in two forms as follows:

- 4.1) Defendants publicize their own convictions, declaring their crimes with their own words. These penalties integrate stigmatizing publicity with self-debasement and mostly apply to remorseful defendants; and

4.2) The apology ritual is when juvenile defendants are to apologize on their hands and knees. Defendants are released from confinement only if their victims and government officials are persuaded to believe that the defendant is sincerely repentant. Some use community-based sanctions that include public apologies and appropriate reparations. This form of penalty is likely to be used in cases where the defendant and the victim are family or have closed community ties (JRank, 2010b).

It is obvious that shaming sentencing is various and depends on the Court discretion. This kind of punishment has both drawbacks and advantages;

Disadvantages of shaming sentencing are that it violates human rights and may not be appropriate especially for dedicated person since the punishment will have a strong emotional effect. However, for some criminals, shaming sentencing seems not to be a punishment at all. The outcome regarding crime suppression still differs from case to case, also the sentence is inconstant. Importantly, there is no research affirming that shaming sentencing effectively deters crimes (Book, 1999).

On the other hand, shaming is an alternative punishment which is lighter than imprisonment. Defendant can choose between shaming punishment and imprisonment. Shaming sentencing also decreases Government's budget. Furthermore, community is satisfied the defendant is punished before their eyes. Lastly, the Courts will have more alternatives and could tailor shaming sentence to best match each defendant.

Even though the benefit of shaming sentencing on crime prevention was not supported by any studies, Michael Cicconetti, an American judge from Ohio confirmed that shaming sentencing is an effective punishment. For some defendants, being imprisoned does not mean any hardship as the saying "It's the hot and a cot." (Berman & Saxbe, 2005).

For the challenge that shaming sentencing is unconstitutional and that it violates human rights for its cruelty and infringement of human-dignity, it is long believed that human are equal except for some reasons, the commitment of crime provide sufficient reason for the society to treat the defendants differently (Flanders, 2006).

Regarding the punishment system in Thailand, since Thai judges lack of the statutory authority, shaming sentencing does not exist in the Thai justice system. However, parties in some criminal cases may agree to use shaming as a punishment, such as to publicize in newspaper the apology for defamation cases. Those condemnations are the agreements between parties and were not directly contributed from judgment. To apply alternative punishment in Thailand, shaming sentencing should be explored.

2.9.10 Intermittence Imprisonment

Intermittence imprisonment is also regarded as intermediate punishment in some countries.

In general, defendants are imprisoned only on public holidays in order that they can work normally on weekdays. The defendants have to report themselves to the prison on Friday evening and be confined until Sunday evening continuously. During the confinement, defendants are not allowed to be visited or joined any recreation activities but they are permitted to make one phone call. The prison is liable for all expenses.

In some countries, enforcement of incarceration in prison does not comply with the Rules for Non-Custodial Measures, but community control and a short period rehabilitation outside prison are provided. Although the disadvantage is that the defendant may learn in prison the way to commit other crimes, this form of sanction has been found to be suitable for some defendants. For example, the defendants who has been in prison and recommit a crime, or when the Court is of the opinion that the being punished in prison will make defendant feel chastened and act as a deterrent to others. Thus, the benefit outweighs the disadvantage.

Moreover, intermittence imprisonment is one of the alternatives which may be appropriate for some defendants or situations. This widens court discretion to optimize their sentence.

2.9.11 Sanctions in case of Court Order Violation

The condition or criterion that all countries would mostly impose if defendants violate the conditional sentence is imprisonment. Normally, the judges have to investigate whether there is a reasonable ground (over 50 per cent certainty) that defendants intend to violate the Court order and then decide whether to continue or extend former punishment, apply other measures, or revoke intermediate punishment and have it replaced by imprisonment (Turley, 2005) (Caputo, 2004) (Washington County Court of Common Pleas) and (Pennsylvania Code, Title 37 Law, Chapter 97, Sec., 97.113. 2005). This sanction complies with the Tokyo Rules which require an incarceration as the last resort (OHCHR, 1990).

Concepts and principles on the application of intermediate punishment in other countries and intermediate punishment principles appropriate for Thailand's social conditions and legal system will be explored in the next chapter.

CHAPTER III

METHODOLOGY

The research on “Alternative Sentencing: Intermediate Punishment” employs a mixed methodology between qualitative and quantitative approach to gathering both primary and secondary data. The conceptual framework is derived from the review of literatures related to criminal policies and other related jurisprudential philosophies as well as the other related articles, academic journals, research findings, textbooks and information technology, both Thai and international publications, have been reviewed in order to compare and contrast based on an international framework of the United Nations. All information compiled has been summarized to form a type and criterion to use as a model of intermediate punishment for further quantitative researches.

After a model is derived from the qualitative research, a survey research was conducted using a quantitative approach, i.e. the model is interpreted into a questionnaire pursuant to the research methodology. The data obtained was analyzed through a process, and then comparative analysis on concepts, philosophy and information has been conducted by taking into account of Thai legal contexts as well as Thai society. After that discussion and conclusion are drawn as an appropriate form and criterion of intermediate punishment for Thai legal system.

The details about population and the sample frame, sampling, research instruments, data collection, data analysis as well as statistics used in conducting this research are describing further in this chapter.

3.1 Population and Sample Frame the Research

Population of the research on “Alternative Sentencing: Intermediate Punishment” includes judges who have passed the judgments on criminal cases in the Court of First Instance and the Court of Appeal located in Bangkok Metropolitan Region during the period of data collection. These judges were selected as the targeted respondents of this research as they are the personnel in the criminal justice, who have a direct duty on the case trials, the Court order and/or sentencing for punishments; so the data obtained is more correlated with the research than the others. Moreover, it is expected that the results of the data analysis will be the most consistent with the research objectives.

3.2 Respondents Selection

The total respondent of this research is 386 persons, which is derived from determining the sample size of the entire number of populations. Since those judges were the qualified persons directly responsible for sentencing and the entire number of populations is not so large; the targeted respondents are specifically selected based on researcher judgment by the following procedure:

3.2.1 The sample size is calculated and selected using a purposive sampling approach, which includes 386 judges who are actively working in the following courts:

1. The Criminal Court	40	judges
2. The Criminal Court of Southern Bangkok	31	judges
3. The Thonburi Criminal Court	20	judges
4. Phra Khanong Provincial Court	34	judges
5. Talingchan Provincial Court	38	judges
6. Minburi Provincial Court	10	judges
7. The Bangkok North Municipal Court	30	judges

8. The Bangkok South Municipal Court	22	judges
9. The Central Intellectual Property and International Trade Court	23	judges
10. The Central Juvenile and Family Court	21	judges
11. The Pathumthani Provincial Court	19	judges
12. The Samutprakan Provincial Court	25	judges
13. The Court of Appeals, the Court of Appeal Region 3, 6 and 8	73	judges

3.2.2 To further select the respondents to reach the total number of sample size determined for each group, the questionnaires were delivered by post to all respondents twice.

3.3 Research Instruments

The questionnaire is used for collecting data for this research. The details of questionnaire construction are as follows:

3.3.1 Reviewing the literature relating to this research based on the provisions of laws, theories and conceptual frameworks, references, textbooks and theses in respect to the intermediate punishment.

3.3.2 Reviewing the social research methodologies and research statistics in order to have correct and appropriate understanding about the construction of questionnaire and statistics used in conducting the research.

3.3.3 The concepts from the literature review pursuant to Item 3.3.1 and 3.3.2 are used for the constructing the questionnaire to measure the attitude of the respondents. The questions are covering the issues on the form and criterion of

intermediate punishment and other issues to be examined. The questions ask whether the respondents are agreed or disagreed to the statements using interval scale.

3.3.4 After the questionnaire was initially constructed, it has been verified and edited by the advisors who have the expertise in the methodology and the subjects in order to conduct the content validity and obtain language accuracy for further revision. The revised questionnaire is used for gathering the data.

3.3.5 The revised questionnaire was pre-tested with 30 judges whose demographic characteristics were similar to the targeted respondents of this research. The pre-test was aim at analyze the questionnaire reliability by using Cronbach's Alpha Coefficient based on SPSS program (Statistical Package). The result showed that the questionnaire has alpha value at 0.848, which means this questionnaire reliability is at a high level.

The questionnaire consists of closed-ended questions as well as open-ended questions allowing the respondents to express their opinions independently. The questionnaire comprised 4 main parts:

Part 1: Information on demographic data of the judges

Part 2: Information on working experiences of the judges

Part 3: Background knowledge of the judge on the research issues

Part 4: Opinion of the judge towards the form, criterion and other related issues on using the intermediate punishment measures as the alternative sentencing in the criminal cases.

3.4 Data Collection

The data collection of this research consists of 2 different approaches:

3.4.1 The secondary data collection or documentary research was conducted by reviewing the concepts on the criminal policy and related jurisprudent

philosophies, as well as academic textbooks, articles, documents, research papers and other related information, both Thai and international publications

3.4.2 The primary data collection was conducted using the questionnaire to survey the opinions of the judges who have passed the judgments on the criminal cases in the Court of First Instance and the Court of Appeal located in Bangkok Metropolitan Region, which included the judges in the Criminal Court, the Criminal Court of Southern Bangkok, the Thonburi Criminal Court, Phra Khanong Provincial Court, Talingchan Provincial Court, Minburi Provincial Court, the Bangkok North Municipal Court, the Bangkok South Municipal Court, the Central Intellectual Property and International Trade Court, the Central Juvenile and Family Court, the Pathumthani Provincial Court, the Samutprakan Provincial Court, the Court of Appeals, the Court of Appeal Region 3, 6 and 8 in the total of 386 judges.

3.5 Data analysis

3.5.1 After receiving the completed questionnaires, all questionnaires were assigned with an identification number and were arranged and selected so that they are suitable for the data analysis.

3.5.2 A code book has been created prior to prepare and code each questionnaire for the computer-based data analysis.

3.5.3 The coded data was recorded into the computer system for the data analysis by using the SPSS^{PC} (Statistical Package for the Social Science).

3.6 Statistics Used in Analyzing the Data and Data Analysis

This research employed certain statistical methods to explain the nature of the respondents' data as well as to find the correlation as follows:

3.6.1 The descriptive statistics are used to explain about demographic data, working experience, and knowledge on the research issues and presented in a tabulated form using percentage. Meanwhile, the information and opinions toward the form, criterion and issues relating to the use of intermediate punishment as the alternative sentencing in the criminal cases was also tabulated using Mean and Standard Deviation.

3.6.2 The range of scores for the agreeable opinions towards the form, criterion and issues relating to the use of intermediate punishment measures was analyzed. The scores were divided into: Totally agree (2), Agree (1), Neutral (0), Disagree (-1), and totally disagree (-2).

3.6.3 The data obtained was analyzed using the Mean and Standard Deviation in order to the describe respondents' characteristics in compared to other related issues using the mathematical interpretation as follows:

Level of Opinions and Scores	Interpretation of Opinions
Level +2 = 1.51 to 2.00	Totally agree
Level +1 = 0.51 to 1.50	Agree
Level 0 = -0.50 to 0.50	Neutral
Level -1 = -0.51 to -1.50	Disagree
Level -2 = -1.51 to -2.00	Totally disagree

3.7 Research Procedures

The research has been conducted for 11 months, from January 2010 to November 2010. It was divided into 6 following steps:

Step 1: Setting up the scope of the research by having discussions with the thesis advisors to develop the research framework, the scope and analysis framework, during the period of January 2010.

Step 2: Setting up a plan for the data collection, on February 2010.

Step 3: Data collection was divided into 2 parts, which includes primary and secondary data collection. The first part was to gather the secondary data collection from the documents, textbooks, articles, research papers, statistics and other related electronic sources, which was conducted from February to April 2010.

Step 4: The information and documents were analyzed to develop a model for the questionnaire construction, from April to June 2010.

Step 5: The primary data collection was obtained using the questionnaires, which were distributed to the targeted respondents, as selected by the specified method, who were the judges in courts located in Bangkok Metropolitan Region. The questionnaire-based data collection was obtained during June to July 2010.

Step 6: The data analysis and discussion of the research findings were done during the period of July to November 2010.

3.8 Ethical Concerned

This research has regarded certain important ethical issues, i.e., the data collection necessarily obtained the consent from the respondents via responses to the questionnaire. Moreover, this research is conduct anonymously so that its results would not cause any direct and negative impact to the data providers. In addition, this research was approved by Mahidol Institutional Review Board according to the project code, MU-IRB 2009/257.0210. The Mahidol Institutional Review Board passed the resolution of approval for the continuation of this research under the code: COA. No. MU_IRB 2009/281 on 19 November 2009.

CHAPTER IV

THE RESEARCH FINDING

This chapter will discuss the research results in accordance with objectives of the research divided into 2 parts.

Part 1 will present the result of the document research by comparing forms and criteria for intermediate punishment measures in foreign countries implementing the idea and alternatives for avoiding imposition of imprisonment or detention, which are international practices that follow United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) as indexes of the analysis and draw to preliminary conclusion that the Model of forms and criteria for intermediate punishment measures, which are considerable for adoption to be implemented in Thailand should constitute what forms and criteria.

Part 2 will present the result of the survey research, which brings the model from the result of the research in Part 1 to produce the questionnaires for analyzing and synthesizing their results to designate forms and criteria for intermediate punishment measures that are suitable for Thailand in Chapter 5.

4.1 Part 1 Synthesizing the Document Information

The Researcher has studied, explored and compared many academic documents concerning forms of intermediate punishment measures and criteria for imposition of intermediate punishment measures in foreign countries as discussed in Chapter 2 by studying in comparison of United Nations Standard Minimum Rules for Non-Custodial Measures. The Researcher then applied the result to design models of intermediate punishment measures to answer the objective of the research in Chapter

1, Topic 1.2.1 that aims to study and find forms and criteria for intermediate punishment measures in sentencing the convicted, and international standard forms in order to answer the objective of the research in Chapter 1, Topic 1.2.2, which intends to propose forms and criteria for intermediate punishment measures appropriate for implementation in Thailand. Thus, the author has come up with the following results.

4.1.1 Analysis for Intermediate Punishment Measures Suitable for Thailand

Henceforth, the Researcher will analyze intermediate punishment measures for finding which are suitable for Thailand in order to design models by separating into an analysis of forms of intermediate punishment measures and an analysis of criteria for intermediate punishment measures, which should serve as models for basing statistical data in the survey research as followed.

1. Forms of Intermediate Punishment Measures to Serve as Models

Concerned about the forms, Thailand criminal process already contains some of punishments or measures that conform with intermediate punishment measures in foreign countries, for example, fine, deferred sentence, probation and suspended punishment. Since these measures have approaches to and criteria for imposition as definitely governed by Thai law, they have not been considered as forms to serve as models of intermediate punishments in this part.

When forms of Non-Custodial Measures prescribed by the Tokyo Rules are combined with forms of intermediate punishment measures applied in foreign countries, and the forms already applied in Thailand are excluded (deferred sentence or sentencing, probation, fine and suspended punishment), it may be concluded that procedures of intermediate punishments are: verbal warning; forfeiture of certain rights, monetary penalties such as compensation to the victim, confiscation or an expropriation of property, intensive probation, community or public service, educational training, house arrest and electronic monitoring, deferred prosecution,

intermittent imprisonment such as during holiday or some part of day, confinement in community shelter at night (half-way house) and condemnation.

Next, the Researcher will analyze the above forms for exclusively selected measures that should be suitable to be implemented in Thailand by nominating them as preliminary information of models of forms, or methods of intermediate punishment measures as followed.

1) Verbal Warning

Verbal warning is normally a measure implemented by the Court in a case that the defendant is a juvenile, according to Criminal Code, Section 74 (1), and not considered for any of the 5 punishments prescribed in Criminal Code, Section 18, namely: death, imprisonment, confinement, fine and forfeiture of property.

Thus, verbal warning may be applied as an intermediate punishment measure that imposes the most lenient sanction upon the defendant, and is appropriate for the defendant, who has a weak conscience or a ground of not to be punished conventionally, such as a juvenile, who does not yet have a good sense of responsibility or a clear understanding of consequences of his or her own action, and a punishment by other forms may inflict unusually negative effects.

2) Forfeiture of Certain Rights

Forfeiting certain rights of the defendant is a sanction with respect to limitation of certain rights or freedom of the defendant in order to maintain safety of the defendant and other persons, such as forfeiture of rights to buy alcohol or tobacco, to drive a vehicle or to board an aircraft.

This form of punishment is suitable for the defendant who has committed a small offense or an offense against his or her own well being or that of other persons, such as a habitually intoxicated driving or a rampage behavior. However, it should be noted that the Court should determine the

expiration of the forfeiture in order to avoid unreasonably excessive limitation of rights.

3) Punishments against Property

Normally, Thai law prescribes a definite punishment method against property, namely forfeiture of property under Criminal Code. When the Court passes judgment to forfeit a property, the property shall not only be vested to the Government, the Court may also give judgment to destroy such property. However, punishment methods against property in forms of intermediate punishment are not only limited to forfeiture of property, but also include orders to pay compensation to the victim, or contribution to public charitable organization.

These forms of measures are suitable for commission of an offense that inflicts a damage which can be calculated into monetary currency, and emotional distress but not a serious crime, for example: mischief, theft, misappropriation of property that is not substantially valuable, whereby the Court shall order the defendant to pay some amount of money, hand over a property to the victim or donate some contribution to a charity organization. An order to destroy property of the defendant has not been prescribed by law in Thailand except for forfeited property vested in the Government.

4) Intensive Probation

Generally, in a case that the Court passes judgment deferring the sentence or deferring the punishment, the Court may order an injunction for intensive probation of the defendant and specifying some conditions to be performed by the defendant, which is in accordance with currently enforced law.

However, in this form of intensive probation, the Court may also specify conditions, which are more burdensome to the defendant, or more limitation of rights of the defendant, such as specifying daily report to the officer in person or on telephone, notification to the officer when the defendant departs from or arrives at a designated area, random visit or telephone call up to residence of the defendant or examination for narcotics or alcohol. This form is

suitable for being imposed in the same manner as a punishment for a crime that the Court finds no requirement of deferred sentence or punishment.

Measure that is likely to be suitable to be implemented in Thailand as intensive report to the officer because Department of Probation has provided training for voluntary probation officers who are ordinary people in communities throughout the country standing by to receive reports from defendants under such injunctions.

5) Community Service

Community service is a non-remuneration work, in some cases the defendant may undergo heavy labor work intended to raise awareness of the defendant about responsibility to the society, such as hospital work, taking care of the handicapped, painting or cleaning public offices, building road-side pavilions, assisting traffic police or teaching.

At present, community service is not a punishment prescribed by law but a measure that shall be imposed on the defendant who is punished with a fine and does not paid the designated amount, whereby the defendant shall submit a request to the Court. However, this method may be imposed as an intermediate punishment in a form of the Court order or judgment because the measure produces positive effect in many aspects, such as the Government can save some expense, the society benefits from the service, other persons perceive an example of offense commission consequence, the defendant feels more responsible to the society and learns about damage and impact of his or her commission of offense.

6) Educational Training

This form is a punishment that is appropriate for rehabilitation of the defendant. In a case that the defendant commits the offense because he or she is unemployed, addicted to alcohol or drugs, has no income, no knowledge, a wrong attitude, a mental disorder or psychological a problem, lack of education, disciplinary training, medical attention, consultancy, treatment, vocational

training and attitude training that can lead the defendant to be more capable of self-controlling to avoid recidivism. However, this form may need a systematic coordination among agencies that provide relevant services, and the Government may need to carry a burden of expenses of such performance.

7) House Arrest in Some or All Time

This form is a measure suitable for an defendant who is not considered dangerous to the society and has high responsibilities to himself, herself or to other persons, for example, an defendant who needs to take care of his or her family members, go to school, earn income to support himself, herself or family members. This form is often imposed under conditions such as, transport route, usual address of residence and time in combination of an electronic monitoring device. This measure avoids stigmatizing the defendant by not putting the defendant in a correction institution.

For suitability of Thailand, even this form features a merit as being limitation of freedom without imprisonment, although it also features difficulties in cost and installation of the electronic monitoring device, whereby the author will discuss and analyze its details in the next chapter.

8) Deferred Prosecution

Deferred prosecution is a case that the public attorney does not prosecute the suspect who consents to be under probation by deferring the prosecution until the suspect fully complies with the conditions. This form is not a punishment determined by the Court but a measure to avoid imprisonment applied by the public attorney and is not currently governed by a definite legal prescription along with required delicate consideration. Thus, it may not be suitable for being imposed as an intermediate punishment measure in Thailand.

9) Confinement in a Community Shelter at Night

In foreign countries, the shelter in this form is referred to as Half-way House and, in some case; it serves as a shelter for a newly released inmate in order to be reintegrated into the community. This measure is

beneficial but requires the Government to provide premises to serve as permanent or temporary shelter as determined by the Court injunction, whereby it constitutes a high expense and requires personnel for management similar to the system in prison. In foreign countries, most of half-way houses are operated by the private sector or the communities but, in Thailand, this idea is not popular and still lacks support from the Government. Thus, this form may not be suitable for being applied as an intermediate punishment measure by Thai Court.

10) Intermittent Imprisonment or Imprisonment during Holiday or Day Time

This form of imprisonment is considered the most severe intermediate punishment measure because the defendant still needs to be imprisoned but is given an opportunity to reintegrate into the community in order to intermittently adapt and develop him or herself. This form may be suitable for the defendant who is required to be partly punished with imprisonment, such as the defendant who has committed a serious crime but is not normally dangerous to the society as whole, and has duties or needs to occasionally be in the community. This form can be an alternative for the Court in sentencing an defendant, who should not be imprisoned for all the time in order to avoid learning other negative habits from other inmates, reduce the Government expense, allow the defendant to learn and be developed in non-prison environment and give the defendant a chance to generate income to provide remedy for the victim.

11) Condemnation Punishment (Shaming Sentence)

This form punishes the defendant by rendering any measure that makes the defendant feel ashamed and remorseful for his or her crime, whereby this form has both advantages and disadvantages as discussed in preceding chapters. However, it is considered that adoption of this punishment form may be an alternative that diversifies the punishment list and is suitable for some types of defendants. Although it produces negative effects, it features many positive aspects as well.

12) Multi-Measure Combination

The aforementioned measures have different advantages and forms. Application of different forms to suit defendants different in characteristics and circumstances of cases shall provide the Court a variety of punishment options, thus enabling the Court to choose to apply a combination of these measures so that will be fully beneficial on rehabilitation of the defendants and restoration of safety in the society. However, it should be noted that every punishment must be imposed proportionally to the gravity of crime. Thus, the Court should not excessively impose a combination unnecessary measure on the defendant, nor impose the combination as to unreasonably limit the defendant's rights and freedom overweighing his or her guilt.

Furthermore, in a case that the defendant is in breach of conditions, injunctions and judgment given by the Court to apply intermediate punishment measures and the Court needs to impose the deferred or suspended imprisonment, the Court should properly determine the duration of the imprisonment term based on some part of intermediate punishment that has already been imposed on the defendant.

From the comparative study, it is found that the following 11 intermediate punishment measures are suitable for implementation in Thailand and considerable for serving as models for basing statistical data in the survey research.

1. Verbal warning
2. Forfeiture of certain rights
3. Punishment against property
4. Intensive probation supervision (IPS/ISP)
5. Community service
6. Training
7. House arrest (in some or all time)
8. Intermittent imprisonment or imprisonment during holiday
or day time
9. Electronic monitoring

10. Commission or omission of some action in order to raise the defendant's conscience and awareness of consequence of the crime or avoid Recidivism

11. Multi-Measure Combination

2. Criteria for Intermediate Punishment Measures to Serve as Models

Other than forms of intermediate punishment measures that are suitable for Thailand, it is also still necessary to consider details of criteria or conditions for implementation of the intermediate punishment measures in Thailand because it is essential for the Court to have a standard to decide which case to apply these measures.

From information in Chapter 2, analyzing criteria for implementing intermediate punishment measures in foreign countries can draw to a conclusion that many countries use common criteria, which are that the Court shall apply intermediate punishment measures to substitute for custody in prison by considering the background of the defendant and the nature of the offense regarding consistency of penological theory. Thus, the measures are imposed on the defendant who is convicted for the first time and pleaded guilty. The defendant that breaches conditions set by the Court shall be guilty as a fugitive for escaping judicial confinement. As for specifying duration term of such intermediate punishment, the Court shall implement intermediate punishment measures in a term not exceeding 2 years. The Court shall not apply an intermediate punishment to a serious crime or a crime that has minimum penalty provided.

However, in some countries such as Canada, intermediate punishment measures can be applied to all patterns of crime even the crime is punishable by severe penalty. The Court shall apply intermediate punishments in a case that the defendant is sentenced to no more than 2 year imprisonment when the defendant is not considered harmful to the society.

As to application of electronic monitoring device, the Court shall impose it on first time defendant or one who has been imprisoned for not exceeding 5 years. This form of intermediate punishment is not applied to a convict of a serious crime. Mostly, it shall be applied to an imprisonment of not exceeding 6 months whereby the defendant needs to submit a request to the Court to allow an application of electronic monitoring device and pay the fee to the agency that administers the electronic monitoring and the Court shall specify the duration of electronic monitoring equally to the imprisonment term sentenced by the judgment.

When criteria of application in these foreign countries are considered, it can conclude the criterion categories, which should be considered for serving as models in the Part 2 Research as followed.

1) Criterion of Case Pattern

In the United States of America, majorly, intermediate punishment measures are not applied to serious crimes (crimes that are punishable by death or imprisonment of no less than 10 years) because the application of such measures has a purpose in substituting short term imprisonment, which is mostly imposed to patterns of crimes that are not serious.

Whereas in Canada, the Court shall apply the measures to every pattern of cases except for crimes that have minimum penalties provided. For crimes that has minimum penalties, it can be inferred that the State regards the crimes with high importance and wants the Court to punish in such way, thus the Court does not apply the measures to these crimes.

For implementation in Thailand, the Court should widely apply intermediate punishment measures with a purpose of reducing prison inmates and a purpose of rehabilitating the defendant in the community environment by taking safety of the society into account. As of concerns that the intermediate punishment measures have too lenient sanctions as not to be feared or chastened by the defendant and may be harmful to the society, the author opines that the measures proposed for

implementation in Thailand are diverse in severity that the Court can choose to apply properly to the nature of a serious crime whereby applying the form of most extensive limitation of rights and freedom, such as intermittent imprisonment in combination with electronic monitoring.

Thus, in Thailand, intermediate punishment measures may be applied to every pattern of cases whether they are serious or small crimes, or have minimum penalties provided.

2) Criterion of Recidivism

In foreign countries, recidivism or first time commission is a substantial factor in consideration for applying intermediate punishment measures.

In some countries, intermediate punishment measures must not be applied to the defendant that has been previously convicted. In other words, the measures are not applied to recidivist or habitual defendants. However, in some other countries, the Court can apply the measures to the defendant who has been previously sentenced to imprisonment, or who is a recidivist but the imprisonment term in the previous case must not exceed 5 years. Viz, the Court shall impose the measures on a recidivist or habitual defendant who has not committed a serious crime.

For proposing criteria to be used in Thailand, the Researcher opines that in a case where the defendant has been imprisoned or is a recidivist or habitual defendant but the offense is not a serious crime, application of intermediate punishment measures in order to rehabilitate the defendant in the community environment may be more beneficial than imprisonment, which may induce the defendant to learn more crimes.

Even the defendant has been convicted of a serious crime or imprisoned for more than 5 years before, although to apply these measures, the Court must have considered that the defendant is not harmful to the society and the Court may also set some conditions as social protection in such measure. Furthermore, giving a recidivist another chance not to be imprisoned is also conforming to Labeling

Theory by giving the defendant a chance to reintegrate into the society as well. Thus, the Court should be allowed to impose intermediate punishment measures on a recidivist.

3) Criterion of Offense Seriousness

Intermediate punishment measures are substitutes for full custody in prison, the Court must convict the defendant and sentence a term of imprisonment and then convert the sentenced imprisonment into intermediate punishment measures instead.

In some countries, the Court shall apply these measures to the defendant sentenced to imprisonment of not exceeding 6 months but in some other countries, the Court shall apply the measures in a case where the imprisonment term is not exceeding 2 years.

In Thailand, imprisonment of not exceeding 3 years is not considered a severe punishment because the Court is still allowed to defer the punishment or sentence by the provisions of Criminal Code, Section 56. Whereby the legislative branch deems that the defendant sentenced to not exceeding 3 years of imprisonment by the Court, is not so harmful to the society and has not committed so serious a crime as to be completely banned or detained from the society.

As discussed in Chapter 2 that Department of Corrections collected statistics of convicted prisoners, who were categorized by imprisonment warrants issued by the Court, from 2006 thenceforth, it appears that convicted prisoners, who were sentenced to imprisonment of exceeding 2 and not exceeding 5 years, comprised the largest population in the prison, particularly in 2008, representing the highest number of 38,027 persons out of all 132,870 convicted prisoners (the second largest category was convicted prisoners, who were sentenced to imprisonment of exceeding 5 and not exceeding 10 years, constituting 27,068 persons) (Department of Corrections, 2008).

The above statistics show that number of the prisoners mainly comprised of convicts whom the Court sentenced to imprisonment of 1 to 5 years. In a case where the Court applies these measures to the defendant whom the Court sentences to imprisonment of not exceeding 5 years, the problem of prison overcrowding shall be significantly relieved.

4) Criterion of Duration Term of the Measures as Substitute for Punishment

In foreign countries, the Court shall order application of an electronic monitoring measure for a duration equal to the imprisonment term sentenced by the judgment but in some countries (such as Canada), the Court shall apply intermediate punishment measures for a duration not exceeding 2 years.

When a theory that the punishment must be proportional to the crime is considered, application of intermediate punishment measures to substitute for custody in prison shall not be imposing any sanction more severe than the imprisonment that the Court sentences the defendant. Thus, duration of measures that the Court shall apply substituting for imprisonment should not be set to outlast the sentenced imprisonment term. This principle is conforming to the Tokyo Rules, article 3.10, which provides that **“In the implementation of non-custodial measures, the defendant's rights shall not be restricted further than was authorized by competent authority that rendered the original decision.”**

5) Criterion of Expense Burden

In foreign countries, the defendant who submits a request to the Court for allowing an application of electronic monitoring device is obliged to pay the fee to the agency that administers the electronic monitoring.

But in Thailand, many defendants do have economic status (are financially poor) and application of intermediate punishment measures is subject to the Court's discretion that shall consider for appropriateness of case circumstances and the defendant's nature so it is not the defendant's right. If the Court orders the

defendant to pay such expense, the defendant's burden shall be escalated and it shall seem as if the imposition of punishments sentenced by the Court in the process of criminal justice is subject to the defendant's economic status, whereas the expenses of all other punishment imposition are the responsibilities of the State, for example, expenses for maintenance of inmates in prisons, probation or forfeiture of property.

Thus, Thailand should take the issue of expenses into account, whereby providing that the expenses for enforcing intermediate punishment measures are the responsibilities of the Government.

Conclusively, it could be said that the legal criteria of intermediate punishment measures suitable for serving as models in further survey research consist in 5 key criteria as follows.

1. The Court should apply intermediate punishment measures to every pattern of cases;
2. The Court may apply intermediate punishment measures to the defendant who is a recidivist or has been imprisoned;
3. The Court should apply intermediate punishment measures to the defendant whom the Court would sentence to imprisonment of not exceeding 5 years;
4. In a case where the Court applies intermediate punishment measures, the duration should not be set to outlast the term that the Court sentences the defendant to imprisonment; and
5. In a case where the Court applies intermediate punishment measures, the competent government agency must be responsible for expenses arising from imposition of such punishment.

4.1.2 Monitor and Report and Sanction on Violation of the Court's Order

Application of intermediate punishment measures appropriate for Thailand must have a supporting organization in order to administer the enforcement of judgment or injunction and report to the Court on whether the judgment or injunction

is fully complied or immediately report to the Court on violation of the intermediate punishment measures for the Court to consider modifying, altering, supplementing, revoking or withdrawing the order or impose the sentenced punishment on the defendant. These approaches are conforming with the Tokyo Rules provided in Article 14.1 that “A breach of the conditions to be observed by the defendant may result in a modification or revocation of the non-custodial measure.” and Article 14.4 that “In the event of modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives” (OHCHR, 1990).

In a general case when the Court delivers a judgment sentencing any person to imprisonment, the Government agency which performs the major function of enforcing the imprisonment is Department of Corrections, whereas the Court delivers a judgment deferring the punishment or sentence and supervising the defendant's behavior under specific conditions, the Government agency which performs the major function of enforcing the probation conditions is Department of Probation.

In a case that the Court delivers a judgment applying intermediate punishment measures to substitute for imprisonment, there is a problem that the Government agency is responsible for imposing the punishment, supervising and monitoring the imposition and reporting on the result to the Court.

Once the 11 proposed forms of intermediate punishments are appropriate for Thailand, it is found that roles to those forms of punishments, which need an organization to support the enforcement of judgment, can be categorized into 5 groups as followed.

Group 1. Order to perform or prohibit any action consisting of 5 forms, namely: punishment against property; intensive probation; community service; forced training; and electronic monitoring - It can be seen that roles in this group focus on

developing and rehabilitating the defendant under injunction or conditions set by the Court. Thus, the roles in this group should be the responsibilities of Department of Probation because the missions are similar or analogous to missions currently performed by Department of Probation.

Group 2. Custody in Prison, namely: a form of intermittent imprisonment or imprisonment during holiday or day time – roles in this group are corresponding to roles of Department of Corrections, thus they should be prescribed to be the responsibilities of Department of Corrections.

Group 3. Custody in Private Accommodation, namely: house arrest in some or all time – roles in this group are different from duties of Department of Corrections and not the role of Department of Probation. However, when objectives of this form of measures are considered, it is found that they are to give the defendant a chance of rehabilitation and reform in the community environments, which are closely analogous to missions of Department of Probation. Moreover, Department of Probation also has voluntary probation officers who are ordinary people in communities throughout the country and capable of performing duties related to supervising and monitoring enforcement of judgment and receiving reports from the defendant. Therefore, Department of Probation should be responsible for this form of measures.

Group 4. Forfeiture of Some Rights of the Defendant for example: License to Operate Business or Distribute or Provide Service; or Driving License – Roles in this group are not corresponding to roles of Department of Probation or Department of Corrections because currently existing law is lacking clarity in forfeiture of rights by the Court's order, such as in a case that the Court issues an order to revoke a driving license when the defendant commits violation of law on land transport.

The competent agency, which is responsible for issuance or renewal of such license or collection of such fee, should have a great deal of information about the defendant and power over such matter of the defendant's right, thus it should perform

duties to enforce the judgment of right forfeiture. However, because there are so many agencies responsible for license matters, when the Court delivers a judgment imposing forfeiture of the defendant's right in any matter, the Court must issue a written notification to such agency in order to enforce the judgment of the Court.

Therefore, the agency, which should support imposition of an intermediate punishment measure in the form of forfeiture of rights, should be an agency that sanctions issuance or renewal of each license or collection of fee for each matter.

Group 5. Roles of several agencies in a case where the Court applies multiple forms of intermediate punishment measures – The competent agencies with roles as described in the 4 groups above must be responsible for monitoring and reporting the result to the Court as per their concerned roles.

The document research in this part brings about ideas of forms and criteria for intermediate punishment measures prescribed by law in foreign countries and forms of intermediate punishment measures regarded as international principles along with propose that the 11 forms and 6 criteria are measures and consideration which the Court should examine before application of intermediate punishment measures in Thailand. Thus, results of the research in Part 1 are able to directly and completely answer the objectives of the Research in Chapter 1, Topic 1.2.1 and Topic 1.2.2

4.2 Part 2 The Result of the Survey Research

The research on Alternative Sentencing: Intermediate Punishment has a research objective, item 1.2.3 to indicate forms and criteria for intermediate punishment measures, which shall be approaches to drafting a new law and answer some parts of the research questions, item 1.6.2 “What should be forms of the Court's alternative sentencing other than prescribed by criminal law?” and item 1.6.3 “What should be criteria and substantive matters of law on intermediate punishment measures suitable for implementation in Thailand?”

In Part 2, the author has used the result of the research from Part 1 (the result of the document research), especially the models of forms and criteria for application of intermediate punishment measures, in production of questionnaires for studying about whether the respondents agree with the models or not and what suitable forms and criteria for application intermediate punishment measures should be.

In presentation of the result of the survey research, data and information shall be demonstrated in manners that are corresponding to the research objectives and the research questions mentioned above by separating the presentation into multiple sections.

The first section shall demonstrate data and information of the respondents comprised of personal data (gender, age and education) information about past work experience, such as duration of employment and job responsibilities, and information about experience of work exclusively related to intermediate punishment measures.

The subsequent part shall demonstrate data and information of opinions toward intermediate punishment measures, namely toward forms, criteria and other matters, such as administration, concepts, amendment of law and advantages of intermediate punishment measures.

Subsection of opinions toward intermediate punishment measures shall demonstrate by a sequence of following items:

- Forms of intermediate punishment measures;
- Criteria for patterns of cases to which intermediate punishment measures shall apply;
- Criteria for severity of imprisonment to which intermediate punishment measures shall apply;
- Administration and sanctions on violation;
- Expense for application of electronic monitoring devices;

-Approaches to drafting a law on intermediate punishment measures; and

-Advantages of intermediate punishment measures.

4.2.1 General Information

1. Personal Data

The majority of the respondents are males between age 25-30 years and have completed master degrees as the highest education, have work experience in legal field for 1-5 years by holding public offices as judges for 1-5 years and most current positions are not judges who perform administrative works, as appeared in Schedules 1, 2, 3 and 4 respectively.

Schedule 1. The Number and Percentage of Personal Data

Demographic data	Number (360)	Percentage (100.0)
1. Gender:		
Male	214	59.4
Female	146	40.6
2. Age		
25 - 30 Years	129	35.8
31 – 35 Years	73	20.3
36 – 40 Years	36	10.0
41 – 45 Years	46	12.8
46 Years and above	76	21.1
3. Highest Education		
Bachelor Degree	123	34.2
Master Degree	233	64.7
Doctorate Degree	4	1.1

Schedule 2. The Number and Percentage of Work Experience

Information about Past Work Experience	Number (360)	Percentage (100.0)
Professions prior to holding public offices as judges		
Legal Field	312	86.7
Non-Legal Field	48	13.3

Schedule 3. The Number and Percentage of Work Experience

Information about Past Work Experience	Number (360)	Percentage (100.0)
1. Work experience prior to holding public offices		
1 – 5 Years		
6 -10 Years	267	74.2
11 Years and Above	68	18.9
The shortest work experience is 1 year, the longest is 33 years, the mean is 4.8 years.	25	6.9
2. Work experience as judges		
1 – 5 Years	213	59.2
6 -10 Years	58	16.1
11- 15 Years	38	10.6
16-20 Years	23	6.4
21 Years and Above	28	7.8
The shortest work experience is 1 year, the longest is 43 years, the mean is 6.7 years.		

Schedule 4. The Number and Percentage Current Positions

Information about Current Positions	Number (353)	Percentage (100.0)
Judges, holding administrative positions	250	70.8
Judges	103	29.2
(7 respondents do not specify current positions.)		

2. Information about Experience of Work Exclusively Related to Intermediate Punishment Measures

The majority of the respondents have never felt distressed to use discretion in sentencing the defendants, concerning between imprisonment, which may be too severe, and deferred punishment, which may be too lenient, have never known about the problem of prison overcrowding or congestion of inmates population in prison but have known about a concept of avoiding custody in prison or the Tokyo Rules that encourage the Court to impose imprisonment as a last resort punishment, and have heard or been informed about intermediate punishment measures, as appeared in Schedule 5.

Schedule 5. The Number and Percentage of Work Experience and Basic Information about Intermediate Punishment Measures

Information about Work Experience	Have	Haven't
1. Felt distressed to use discretion in sentencing the defendants, concerning between imprisonment, which may be too severe, and deferred punishment, which may be too lenient	87 (24.2)	273 (75.8)
2. Heard or been informed about intermediate punishment measures	184 (51.1)	176 (48.9)
3. known about a concept of avoiding custody in prison or the Tokyo Rules that encourage the Court to impose imprisonment as a last resort of punishment	247 (68.6)	113 (31.4)
4. known about the problem of prison overcrowding or congestion of inmates population in prison	7 (1.9)	353 (98.1)

4.2.2 Data of Opinions toward Intermediate Punishment Measures

1. Forms of Intermediate Punishment Measures

Concerning about forms of intermediate punishment imposition, the respondents agree that 10 forms are the ones that Thai Court may implement but have no attitude toward (neutral) punishment forms: 1 – verbal

warning; and 8 - intermittent imprisonment or imprisonment during holiday or day time, as well as have no attitude toward (neutral) punishment forms that orders the defendant to destroy his or her own property, and an order requiring commission or omission of some action in order to raise the defendant's conscience and awareness of consequence of the crime (such as condemnation), as appear in Schedule 6.

Schedule 6. The Mean and Standard Deviation of Data of Opinions toward Forms of Intermediate Punishment Measures

Messages	Assessment Results		
	Mean	SD	Result Interpretation
1. 10 forms of intermediate punishment measures that Thai Court may implement, comprised:			
1) Verbal Warning	-.17	1.15	Neutral
2) 1.Forfeiture of Some Rights, such as business license or driving license	1.11	.69	Agreeing
3) 1.Punishment Against Property	1.15	.68	Agreeing
4) 1.Intensive Probation Supervision (IPS/ISP) such as frequent report or random narcotic examination	1.17	.67	Agreeing
5) Community Service	1.18	.70	Agreeing
6) 1.Forced Training or Disciplinary Training Camp (Boot Camp), Alcohol Detoxification, etc.	1.26	.62	Agreeing
7) House Arrest (in Some or All Time)	.64	.97	Agreeing
8) Intermittent Imprisonment or Imprisonment During Holiday or Day Time	.20	1.10	Neutral
9) Application of Electronic Monitoring Device in Order to Ground in Specific Area	.73	1.00	Agreeing

Schedule 6. The Mean and Standard Deviation of Data of Opinions toward Forms of Intermediate Punishment Measures (Continued)

Messages	Assessment Results		
	Mean	SD	Result Interpretation
10) Commission or Omission of Some Action in Order to Raise the Defendant Conscience and Awareness of Consequence of the Crime or Avoid Recidivism such as Standing beside the road with a sign for violation the traffic law	.07	1.25	Neutral
2. The Court may order application of multiple forms of intermediate punishment measures.	1.18	.63	Agreeing
3. House Arrest (in Some or All Time) (House Arrest) the Court must obtain consents of the accommodation owner prior to the application.	.90	.94	Agreeing
4. A type or nature of a community service, which is an intermediate punishment, should be determined by the Court without the defendant's consents.	.76	.99	Agreeing
5. Punishment against Property including an order requiring the defendant to hand over a property to the victim, pay or donate a sum of money to a Government agency, religious organization or non-profit organization	.75	.94	Agreeing
6. Punishment against Property including an order requiring the defendant to destroy her or his own property	-.11	1.04	Neutral

2. Criteria for application of intermediate punishment measures

1) Case Pattern

Concerning about the criteria for intermediate punishment measures, the respondents agree that intermediate punishment measures should be applied when the Court finds the measures more advantageous than custody in prison, but should not be applied to a case of death or life sentence or imposed on the defendant who is a habitual or professional defendant or socially harmful, or the defendant who has been imprisoned.

However, the respondents have no attitude toward (neutral) application to a case, where the defendant confesses or commits the first crime, and application to every pattern of cases regardless of seriousness of whether having minimum penalties provided, as appear in Schedule 7

Schedule 7. The Mean and Standard Deviation of Data of Opinions toward Criteria for Patterns of Cases to Which Intermediate Punishment Measures Shall Apply

Messages	Assessment Results		
	Mean	SD	Result Interpretation
1. Intermediate punishment measures should be applied only when the Court finds the measures more advantageous than custody in prison.	1.41	.60	Agreeing
2. Intermediate punishment measures should not be applied to a case of death or life sentence.	1.35	.86	Agreeing
3. Intermediate punishment measures should not be imposed on the defendant, who is a habitual or professional defendant or socially harmful.	1.25	.90	Agreeing
4. Intermediate punishment measures should not be imposed on the defendant who has been imprisoned.	.52	1.12	Agreeing
5. Intermediate punishment measures should be applied to a case only where the defendant confesses or commits the first crime.	.47	1.06	Neutral
6. Intermediate punishment measures may be applied to every pattern of cases, whether they are serious or have minimum penalties provided.	-.22	1.14	Neutral

2) Gravity of Case

Concerning about criteria for the severity of imprisonment to which intermediate punishment measures shall apply, the respondents agree that intermediate punishment measures should be applied to a case where imprisonment of not exceeding 3 years is sentenced by the Court, and the measures duration must not outlast the original imprisonment term but have no attitude toward (neutral) application to a case where the where imprisonment of not exceeding 5 years is sentenced by the Court, as appeared in Schedule 8.

Schedule 8. The Mean and Standard Deviation of Data of Opinions toward Criteria for Severity of Imprisonment to which Intermediate Punishment Measures shall Apply

Messages	Assessment Result		
	Mean	SD	Result Interpretation
1. Intermediate punishment measures should be applied to substitute for imprisonment of the defendant only in a case where the Court would impose imprisonment of not exceeding 3 years.	.64	.96	Agreeing
2. Intermediate punishment measures should be applied to substitute for imprisonment of the defendant only in a case where the Court would impose imprisonment of not exceeding 5 years.	-.15	1.03	Neutral
3. When the Court applies intermediate punishment measures to a case, the measure duration should not be set to outlast the original imprisonment term to serve by the defendant.	.58	1.0	Agreeing

3. Other Matters Concerning Intermediate Punishment Measures

Besides the criteria for patterns and seriousness of cases, studies for additional information have also been conducted on other matters, namely monitor and report, expenses for application of electronic monitoring device, approaches to drafting a law on intermediate punishment measures and advantages of intermediate punishment measures, as the following details.

1) Monitor and Report and Sanction on Violation of the Order

As of the matters of monitor and report in compliance with intermediate punishment measures and Sanction on Violation of the Court's Order, the respondents agree that when the defendant violates intermediate punishment measures, the Court may summon the defendant to receive warning, modify punishment measures or impose the originally sentenced imprisonment.

Moreover, they also agree that there should be agencies to monitor and report on results to the Court, and enforce any measures as missions required in such measures, namely Department of Corrections, Department of Probation and other concerned agencies, such as an agency, which is responsible for issuance of a license, whereby Department of Probation should be the key agency in observing, monitoring and reporting the Court.

As for an administration center for monitor, control and inspection, there should be establishment of the center for monitor, control, inspection and observation of the Court's injunction applying electronic monitoring device, whereby within Ministry of Justice, as appeared in Schedule 9.

Schedule 9. The Mean and Standard Deviation of Data of Opinions toward Monitor and Report on Application of Intermediate Punishment Measures

Messages	Assessment Result		
	Mean	SD	Result Interpretation
1. Application of intermediate punishment measures should designate an agency to administer, monitor and report on the results to the Court and enforce the measures as missions required in such measures, namely Department of Corrections, Department of Probation, and an agency that sanctions issuance or renewal of each license or collection of fee for each matter, for example, Department of Probation must monitor an injunction ordering Community Service or application of electronic monitoring device while an agency that issues a license to a right must observe the Court's injunction of right forfeiture.	1.3	.57	Agreeing
2. Department of Probation is the key agency that is responsible for monitoring, observing and reporting the compliance with the injunction.	1.09	.63	Agreeing
3. A center that is responsible for administering, controlling and inspecting the violation of the Court's order requiring application of Electronic Monitoring Device to the defendant should be a subordinate organ of Minister of Justice.	.67	.82	Agreeing
4. When the defendant violates intermediate punishment measures, the Court may summon the defendant to receive warning, order a modification of measures or impose the originally sentenced imprisonment on the defendant.	1.29	.63	Agreeing

2) *Expenses for Electronic Monitoring*

As to a problem of whether expenses for application of electronic monitoring device should be burdens to the Government or the defendant, the respondents have no attitude toward (neutral) it, as appeared in Schedule 10.

Schedule 10. The Mean and Standard Deviation of Data of Opinions toward Expenses for Application of Electronic Monitoring Device

Messages	Assessment Result		
	Mean	SD	Result Interpretation
1. Expenses for Application of Electronic Monitoring Devices should be burdens to the Government.	-.03	1.23	Neutral
2. 1. Expenses for Application of Electronic Monitoring Devices should be burdens to the defendant.	.31	1.14	Neutral

3) *Approaches to Drafting a Law on Intermediate*

Punishment Measures

As for approaches to drafting a new law, the respondent agree that the law should be drafted as an amendment of Criminal Code or legislated as a Parliamentary Act on introduction of intermediate punishment measures and prescribe intermediate punishment measures as punishment under Criminal Code or as the Court's alternative measures to substitute for imprisonment, as appeared in Schedule 11.

Schedule 11. The Mean and Standard Deviation of Data of Opinions toward Approaches to Drafting a Law on Intermediate Punishment Measures

Messages	Assessment Result		
	Mean	SD	Result Interpretation
1. Intermediate punishment measures should be prescribed as punishments under Criminal Code in order that the Court shall render a judgment or injunction without requirement of the defendant's consents.	.84	.97	Agreeing
2. Intermediate punishment measures should not be prescribed as punishment but should be prescribed as special measures, which are the Court's alternatives to substitute for imprisonment. If the defendant does not consent to be applied with the alternatives, the Court may impose the sentenced imprisonment on the defendant.	.64	.99	Agreeing
3. Criminal Code should be amended to support implementation of intermediate punishment measures to substitute for imprisonment.	.92	.85	Agreeing
4. A Parliamentary Act should be legislated to prescribe for application of intermediate punishment measures to substitute for imprisonment so that the measures shall be subject to discretion of the judge, who may apply such measures to substitute for imprisonment under Criminal Code.	.67	.96	Agreeing

4) *Advantages of Intermediate Punishment Measures*

As to opinions toward the advantages of intermediate punishment measures, the respondents agree that intermediate punishment measures contain many advantages, such as intermediate punishment measures that enable the Court to better sentence the defendant who deserves

rehabilitation, and to utilize the prison to suppress recidivism and punish the defendant who materially deserves imprisonment, as appeared in Schedule 12.

Schedule 12. The Mean and Standard Deviation of Data of Opinions toward Advantages of Intermediate Punishment Measures

Messages	Assessment Result		
	Mean	SD	Result Interpretation
1. Intermediate punishment measures avail the Court alternative sentencing, whereby more conforming to the sentencing purposes.	1.24	.60	Agreeing
2. Intermediate punishment measures avail the Court alternative sentencing more suitable for the defendant's nature and circumstances of the case.	1.34	.57	Agreeing
3. Intermediate punishment measures avail the Court opportunities to better the defendant who deserves rehabilitation.	1.35	.57	Agreeing
4. Intermediate punishment measures enable the Court to categorize punishments suitable for the defendant, and utilize the prison to inhibit recidivism (Incapacitation) and punish the defendant who materially deserves imprisonment.	1.35	.59	Agreeing
5. Intermediate punishment measures reduce the number of inmates, enable the prison to develop efficiency of inmate administration and significantly reduce expenses of the Government for inmate administration.	1.30	.61	Agreeing
6. Intermediate punishment measures incorporate varieties of sanctions, thus may be applied to various natures of crimes in order to conform to the sentencing purposes of: Retribution; Deterrence; and Rehabilitation in particular cases.	1.18	.67	Agreeing

4. Opinions and Suggestions about Application of Intermediate Punishment Measures to Substitute for Imprisonment

The respondents express their opinions and give their suggestions about intermediate punishment measures that the measures should be applied as to be suitable for natures and circumstances of each defendant, and should affect in deterrence of crimes as well.

Furthermore, it must be aware of a problem that the measures may be applied without conformity as occurred in discretion whether to defer the punishment or not. Thus, to apply the measures, the law should be amended in order to bring about clarity in using discretion.

Some respondents are concerned that intermediate punishment measures may be too soft as not to make the defendant contrite and chastened. From a perspective, intermediate punishment measures may not be necessary because there has already been a law on measures of safety and probation on which the Court can set any condition.

As to a matter of administration, it is considered important to be strict with the inspection system, thus the Office of Court of Justice should be the agency in charge.

Conclusively, the majorities of the respondents agree with, or have neutral attitudes toward forms of and criteria for application of intermediate punishment measures as well as other issues, such as approaches to drafting a new law and administration of the measures whereby the author will bring the survey data into analysis in next chapters.

CHAPTER V

DISCUSSION OF THE RESULTS

This Chapter shall be discussion of results of the research, whereby synthesizing results of the document research that are found from comparative studies on criteria for application of intermediate punishment measures prescribed by laws of foreign countries and related academic researches in combination with United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) and Handbook of Basic Principles & Promising Practices on Alternatives to Imprisonment to create models of such forms and criteria, which were used in production of the questionnaires for the survey research.

When results of the survey research as presented in Chapter 4 have been acquired, the Researcher, thenceforth, would analyze and synthesize results of the document research and results of the survey research found in the questionnaires by using method of discussion whether and how the results are in consistency with the models as to conclude forms and criteria for and approaches to drafting a new law on intermediate punishment measures suitable for implementation in Thailand.

According to results of the document and survey researches in Chapter 4, the research results shall be discussed at issues as the following sequence.

5.1 Sample Group Personal Information

Results of the survey research that were obtained from the sample group of the respondents which are judges, show that, generally, when a judge accumulate more experience, he or she will encounter the dilemma to sentence the defendant and, in some case, sentencing the defendant to imprisonment may be perceived as to severe

while deferring the imprisonment may be too lenient to be proportional to the crime or may not be able to rehabilitate the defendant or the defendant is not appropriate to be imprisoned but there is no suitable measure or punishment prescribed by law to receive.

Results of the survey concerning personal information and information about work experience indicate that the respondents have never faced such situation and never known about problems of prison overcrowding (Schedule 5) whereby constituting 75.8% and 98.1% sequentially.

Considering personal information in Schedule 1, it is found that the majority of the respondents age between 25-30 years and have experience in working as judges for 1-5 years (Schedule 4). In spite of sufficiently having skills and experience in deliberating cases, they have not directly been in charges of problem solving like some other agencies in the criminal justice system, thus the respondents have had no chance to know or learn about such problems in the criminal justice system.

5.2 Results of the Research concerning Forms of Intermediate Punishment Measures

As from results of the document research in Chapter 4, models for basing the survey research on forms of intermediate punishment measures comprised of totally 10 forms, namely: Verbal Warning; Forfeiture of some Rights; Punishment against Property; Intensive Probation Supervision (IPS/ISP); Community Service, Boot Camp; House Arrest or; Intermittent Imprisonment such as during holiday or some part of day; Electronic Monitoring; and Multi-Measure Combination.

Next shall be discussion of all results of the researches regarding forms of intermediate punishment measures whether they are consistent with the models and suitable for implementation in Thailand, whereby, results of the document research conclusively find that forms of intermediate punishment measures, which were proposed as models, are mostly acceptable to the respondents. Thus, it can be summed up that the models are consistent with opinions of the respondents. Consequently, the models should be suitable for implementation in Thailand but there are some remarks made on Forms 1), 3), 7), 8), 9) and 10) as follows.

5.2.1 Forms 1. Verbal Warning

According to the survey results of the sample group of 386 judges, the vast of those answering the questionnaires, express neutral attitudes toward (neutral) this form of punishment, without indicating whether agreement or disagreement to this forms. Considering only data obtained from the survey result, a proposal of Verbal Warning as intermediate punishment measures to be implemented in Thailand may not be able to reach definite solution. According to answers to open-ended questions, this may imply that the respondents opine that a punishment form of verbal warning is not as severe in comparison with other punishments being imposed in the present and are concerned that the defendant may not feel contrite or chastened for the crime.

Thai criminal law does not provide that verbal warning is a punishment in Criminal Code. However, there are some provisions currently in effect, which empower the Court or law enforcement authority to impose Verbal Warning on the defendant as an alternative punishment. For example, Section 74 of Criminal Code prescribes “Whenever a child over seven years but not yet over fourteen years commits what is provided by the law to be an offense, he shall not be punished, but the Court shall has the power as follows: (1) To admonish the child and then discharge him, and the Court may, if it thinks fit, summon the parents or the guardian of the child or the person with whom the child is residing to be given an admonition as well ...” (Criminal Code, Section 74) and Land Traffic Act B.E. 2522 provides “Whenever the traffic authority or official finds that a person is in violation or noncompliance with this Act or other law concerning such automobile, the authority

or official may verbally reprimand the motorist or issue a traffic ticket requiring the motorist to pay fine.” (Land Traffic Act B.E., 2522, Section 140.)

These laws show that Thailand has forms of Verbal Warning as punishments in specific laws but this form of punishment does not apply to other offenses and is theoretically unclear that this is a punishment under Thai law. Providing a form of Verbal Warning as an intermediate punishment measure applicable to other offenses in Thai criminal laws may still be feasible.

The Researcher opines that even though Verbal Warning is the most lenient forms of proposed intermediate punishments in Thailand, it may fit some defendant who has highly senses of responsibility and commits a petty offense for the first time or mistakenly, in feeling chastened or contrite. Provisions of Verbal Warning as the most lenient level among other intermediate punishments may be beneficial to rehabilitation of the defendant, who commits a small crime for the first time, especially who does not deserve to be incapacitated from the society. In some cases, light punishment may be consistent with punishment purposes of restoration, furthermore, conforming with practices proposed by the Tokyo Rules, Article 8.2 “Sentencing authorities may dispose of cases in the following ways: (a) Verbal sanctions, such as admonition, reprimand or warning;...” (Ohchr, 1990).

5.2.2 Form 3. Punishment against Property

The majority of the respondents express neutral attitudes toward (neutral) the punishment form that the Court may order the defendant to destroy his or her own property (Schedule 6).

The Researcher opines that a punishment against property, whereby the Court orders the defendant to destroy her or his own property, is an intermediate punishment measure that can apply to a case that the sentence would not be so severe if the order of property destruction would also be consistent with the punishment purposes for conditioning the defendant, who commits a crime out of greed or offense against property such as theft, fraud or misappropriation, to realize the suffering of

the property owner, learn its consequence and avoid the recidivism, thus may be more beneficial to the correctional system and the criminal justice system.

Even the form of this punishment has not been so clearly materialized in foreign countries, though this form of punishment is consistent with the principle of punitive damages, which is often be applied to a civil case whereby determining the damages to be more than the actual damages as a penalty and a deterrence hindering the defendant from inflicting such damage again. A Theory of Punitive Damages as an Intermediate Sanction) in criminal case may serve a punishment purpose of the Preventive Theory as to prevent the defendant from recidivism as well (Markel, 2009).

Thus, if this punishment form is duly imposed, it may be advantageous to criminal justice system. However, detailed criteria may have been stipulated. For example, this form is merely applicable to the defendant, who commits an offense against property, the offended property must not be high valuable and the property to be destroyed must be as valuable as the offended property.

This idea is consistent with information obtained from expressed opinions answering the open-ended question that the intermediate punishment, which would serve deterrence and prevention, should be applied to nature and behavior of each defendant.

5.2.3 Form 7. House Arrest (in some or all time), Form 8 Intermittent Imprisonment or Imprisonment during Holiday or Day Time and Form 9 Electronic Monitoring

The majority of the participant, who answer the questionnaires, approve Forms 7 and 9 but some information from expression of opinions answering open-ended questions indicate disapproval of such forms because of high expenses as being concerned that they would not be cost efficient and problems of administering violation of the Court's order may occur.

As for Form 8 proposing methods of Intermittent Imprisonment or Imprisonment during Holiday or Day Time, the respondents express neutral attitude toward (neutral) it.

The researcher understand a form of intermittent imprisonment as a new concept of imprisonment giving a chance to the defendant to live outside the prison and in normal society environment but requiring the defendant to be imprisoned sporadically as defined by the Court. This form may be suitable for the defendant, who deserves to be imprisoned but also has necessity to perform some duties or actions outside the prison. Thus, the Court may order the defendant to be imprisoned only during a period of time that does not affect the defendant's way of life. However, the respondents may perceive that, in practices, competent authorities may not be used to it and the respondents may also be concerned that problems of administration and management may arise, therefore they express neutral attitudes.

As most respondents did not give supportive or objecting opinions toward this punishment it may be caused by they are unsure of how this punishment would impact to the society.

The Researcher was of view that, in using the Electronic Monitoring (EM), the Courts have usually sentenced to equip the EM with the defendant, together with house arrested or intermittent imprisonment to pose the defendant's residence in which have been widely used in the foreign countries.

However, according to research studies conducted in the United States, Sweden and the United Kingdom on the cost-effectiveness of the EM usage by comparing with the total cost of each defendant imprisoned in jail. It was found that the cost of restraining the defendant in the prison was higher than that of attaching the EM with the defendant. The EM attachment helped the government to reduce the budget allocated for the prisons about 1.7 million British Pounds. In addition, according to research conducted by the Ministry of Justice as a part of the project of monitoring and evaluation of EM system utilization among the defendants, it was

found that the use of EM is more cost-effective than the imprisonment in jail (Sumonthip Jitsawang and Thitiya Petchmune, 2007).

While the system supervision requires cooperation between the government bodies and other related bodies to help solving the problem, so that the monitoring and supervision system to compliance with the Court order becomes more efficient and trustful for the society.

5.2.4 Form 10: Order to act or omission so that the defendant has the sense of responsibility in the outcome, or the recidivism may be prevented.

Most respondents had neutral opinions toward this punishment because, this form, generally, is contradiction to the Principle of Human Rights because it degrades dignity of the defendant. Nowadays, it is apparent that any defendants are treated differently, by the government, from other individuals, e.g. restraint, compelling to wear the prisoner uniform or hair-cutting subject to the prison rules, disseminating the offences and personal information of defendants, which are viewed by the society that such treats are common and give some benefits in terms of protecting the society, and making the society learn what are the effects resulted by those offenses.

One advantage of this shaming punishment is that it may be used for the defendant whose reputation and social status are of importance (mostly in case the defendant is a juristic person). Hence, he or she feels ashamed if his or her information and behaviors are disclosed to the public. This punishment may cause some defendants dread and not to commit any offense again; for example, the defendant who commits an offense in the charge of public fraud as entrusted by the public, or a person who is widely recognized in the society. The condemnation is suitable to punish the reputation of the defendant who is a juristic person (Voramanai Chaikomin, 2010: 138).

If shaming penalty is used as an intermediate punishment, it should be greatly concerned by the criminal policy makers because the fundamental rights and liberty of those defendants must be regarded. The benefits from the punishment given to the defendants must be in conformity with the theory of punishment purposes; the rate of recidivism must be decreasing, and it can forbid (deter) any other persons to imitate those offenses.

In case this punishment form is determined as an intermediate punishment, it would give more benefits, but the implementation by the Court should also involve the consideration of subsequent impacts, apart from the efficiency of the punishment system in the criminal justice.

As aforementioned, when considered all these 10 forms of the intermediate punishment, they all may be used as the intermediate punishments in Thailand.

5.3 Results of the Criteria on applying the Intermediate Punishment Measure

The information on the criteria of the intermediate punishment measures that was used and constructed the questionnaire is the model derived from the qualitative research. When the questionnaire was verified for its acceptance, it was found that all respondents had the consistent agreement with the model, i.e., they rated the level of agreement as “agree” or “neutral”, but they was no “disagree” opinions toward the proposed principle. Thus, it was deemed that the criteria of intermediate punishment measures used as the model of this research was consistent with the respondents’ opinions; so it was appropriate for the further use.

After that, the criteria of intermediate punishment measures was classified into 2 parts, which are (1) the criteria in respect to pattern of cases, and (2) the criteria in respect to case severities. The findings of this research were further discussed below.

5.3.1 Criteria in respect to patterns of cases

The opinion of respondents are neutral for the questions 5 and 6 (See Table 7) “Should the intermediate punishment measures be used in the case where the defendant makes a confession for his/her first offense?”, and “Should the intermediate punishment measures be used for all patterns of cases?” The respondents did not give the supportive opinions toward these two questions. In the Researcher’s point of views, these respondents may be unsure of the potential impacts caused by the use of both principles.

The Researcher is of view that, in the use of intermediate punishment measures, the patterns of cases or the rate of penalties (case severity) should not be mainly considered since the intermediate punishment is a supplementary sanction measures beyond the normal punishment system. The intermediate punishment should be applied to particular defendants, and in a specific circumstance of the case for the benefits of defendants’ rehabilitation and protections of the society. Thus, the intermediate punishment should be posed in a broad scope in order to be applied suitably by the Court.

The alternative sentencing is similar to the Conditional Sentence Options employed in Canada, which have been used by the Canadian courts in all patterns of cases. For the cases to which the laws impose the minimum penalty or the death penalty or life imprisonment, although the legislature views that such offenses are the felonies, the Court should have chance to apply his due discretion to select the punishment suitable for any defendants of the case; so that the defendants are able to integrate into the community, and not to be labeled and estranged by the society.

For a concern that the intermediate punishment seems a lenient sanction, which is not proportional to the offence committed, this is untrue because, prior to the application of these measures, the Court must take into account of all penalties or measures to be consistent with the Theory of the Proportionality.

However, eventually, the Court that has best perceived the fact and circumstances of the case will have the discretion to the extent of the punishment that defendant should receive by mainly having regard to the social safety and the suitable proportion between the offense (guilt) and the punishment pursuant to the Theory. If the Court observes that the circumstances of the case could not fit the intermediate punishment, the Court will return a sentencing to the defendants pursuant to the basic forms of punishment as prescribed in the Criminal Code.

5.3.2 Criteria in respect to the case severities (gravity of the case)

General, as a prerequisite, the Court must first render a judgment to sentence the defendant to imprisonment for his or her offense prior to applying the intermediate punishment as an alternative to the such imprisonment. In this case, most respondents had the consistent viewpoints that the intermediate punishment to be used by the Court should not be longer than the imprisonment term imposed by the Court (Mean equals to 0.58 while the level of opinions and scores of agreement is equal to 0.51 and above).

For the question of “Should the intermediate punishment be used in case that the Court imposes the imprisonment to the defendant no longer than 3 years or 5 years?” most respondents agreed to the use of intermediate punishment for the imprisonment term of not more than 3 years. But, for the imprisonment term of no longer than 5 years, the opinions of the respondents were neutral.

In the Researcher’s point of view, this may be caused by the respondents felt unsure of the use of the intermediate punishment for the imprisonment term of longer than 3 years due to the availability of other measure, called “suspend of the imprisonment”, prescribed in the Section 56 of the Criminal Code that the Court may suspend the execution of the imprisonment for a term no longer than 3 years. This also addresses that the legislature is of view that the imprisonment term of not exceeding 3 years is not so serious to allow the Court to exercise his discretion to call off the imprisonment if there is reasonably ground (stipulated in the Section 56). Therefore, the respondents felt unsure whether, when the Court imposes the

imprisonment for longer than 3 years, it is appropriate to substitute such imprisonment by the intermediate punishment.

In many countries, it is latent that the main reason for applying the intermediate punishment measures is to levitate the prison-overcrowded. These measures can also moderate the government's burden of expenses in the prisons expand, and yet prevent some defendants who do not deserve punishments in prisons.

After considering the circumstances and problems occurred in the prisons in Thailand as mentioned in Chapter 2 as well as the information of the Department of Corrections about the proportion of prisoners and the correctional officers at 1 per 18, which was below the standard proportion determined by the United Nations at 1 per 5, these indicate that Thailand's prisons are confronting the problem of prison administration, which unavoidably results in tremendous expenditure, prison and officers safety, prisoners welfare and efficiency of overseeing and rehabilitating the prisoners.

According to the statistic records on convicted prisoners collected by the Department of Corrections in 2008, the highest number of prisoners was the convicted prisoners with the imprisonment term of 1-5 years (38,027 prisoners). Given those conditions in Thailand when compared with the United Nations Standard Minimum Rules for Non-Custodial Measures, and the United Nations' Handbook of Basic Principles & Promising Practices on Alternatives to Imprisonment, as well as the United Nations' Handbook on Restorative Justice Programs, they all do not give the definition of the serious case, felony, severity of the case or gravity of the case and they do not contend to the use of such measures in the serious cases.

Though, the survey results show that most respondents agreed with the application of these measures for the imprisonment of not exceeding 3 years and had the indifferent opinion (neutral) in case of the imprisonment for up to 5 years, when considered the number of prisoners in Thai jails, which is one of main factor as well as the said international principles, the Researcher would like to discuss that the

intermediate punishment measures should be use as an alternative sanction when the Court sentences the defendant to imprisonment of not exceeding 5 years as this would greatly helps reduce the prison congestion as well as engenders other benefits. For example, the government can reduce spending money for prison's maintenance, at the same time; prison can increase more safety and rehabilitation to the prisoners.

For a concern that if the defendants are diverted into community, they might trigger more social problems; this should be the roles and responsibilities of the Court that must take into the account of the potential impacts and social safety before making order on the use of any measures or several measures.

5.3.3 Monitoring and sanction in case of violation of order

Regarding the monitoring and supervision on the compliance with the intermediate punishment ordered by the Court, the respondents agreed that the Department of Probation should be in charge of monitoring and reporting the defendants' compliance to the Court. However, if any punishment measures are under the responsibilities of other bodies, such monitoring and supervision as well as report to the Court should remain their duties. For example, the intermittent imprisonment is responsibility of the Department of Corrections. But, if the Court make orders about the derogation of rights, and it informs of such order to any related bodies as required by law, those bodies must conform to the Court order in monitoring, supervising and reporting the compliance with the Court order, etc.

In the case that it is necessary to establish the EM control center, this system arrangement should be under responsibilities of the Ministry of Justice. In this regard, there were some opinions from an open-ended question that this center should be under the supervision of the Office of the Court of Justice. The Researcher is of view that, in general, the administrators of the Ministry of Justice should have a main function of the execution of the Court's judgments or orders. The Office of the Court of Justice is the administrative unit of the Court only, therefore, it functions to assist and support the Court's roles in adjudication. Regarding the execution of the orders, nowadays, it is not a duty of the Office of the Court of Justice. Nevertheless, the

Ministry of Justice, as a representative of the executive branch, should aware that the execution of the Court's judgments or orders is one of important duties of the justice system, and it is as important as the implementation of the executive branch's policy.

The Ministry of Justice or the executive branch should set up the management framework to be in line with the duty of complying with or executing the Court orders or judgments; so that the justice process is not obstructed. The Office of the Court of Justice may be empowered for the execution of the Court orders only if the executive branch does not carry on its duty on such execution.

In case the Court applies the intermediate punishment to a case, but the defendant did not comply with it, the respondents viewed that the Court may call the defendant for queries, give warnings, and/or modify the measures, or revoke the order and then execute the imprisonment term which sentenced earlier. This opinion was consistent with other international principles, and the Tokyo Rules, which provide that a breach of the conditions to be observed by the defendant, may result in a modification or revocation of the non-custodial measure by the Court (The Tokyo Rules, Clause 14.1 and 14.4).

However, the Researcher is of view that if the Court has passed the sentence of imprisonment to the defendant in case that such defendant violates the Court order, before imposing a new punishment for imprisonment, the Court must take into account of the intermediate punishment partially received by the defendant as well as the length of such punishment in order to preventing the over penalty pursuant to the Theory of Proportionality and the inconsistency to the Theory of the Punishment Purposes.

5.3.4 Cost of EM installation

EM must be attached to an defendant while some partial devices must be installed at the defendant's residence as required by the Court. As a result, the installation of EM by the Court order needs some maintenance costs for such electronic equipment. In the United States, the United Kingdom and Sweden, a defendant must bear this maintenance cost.

If the EM system is used in Thailand, the opinion of the respondents is neutral, that is, the installation cost could be borne by either the government or the defendant.

The Researcher is of view that some foreign countries determine that the cost of the EM installation should be borne by the defendants because this alternative sentencing furnishes the benefits to the defendants whose rights and liberty are less affected than the sentencing to imprisonment. In addition, the defendants can request for the measure by filing petition to the Court (in Kentucky, United States); so the defendants must bear the cost of the EM installation by making the payment to the EM Control Center.

In Thailand, there are some differences because the intermediate punishment is under the Court's discretion according to rules required by law, as well as specific characteristics of each defendant, circumstances of the case and social safety. Hence, the intermediate punishment is a punishment characteristic or sanction used by the Court to substitute the imprisonment, not the punishment per se or conditional sentencing in the United States.

Currently, the law enforcement of penalties in Thailand is still somewhat unequal as to the economic disparity among defendants. If the expense becomes a crucial condition of penalty execution, it may cause some problems for the defendants who have the inferior economic status. For example, in case of the detention for not paying fine or the grant on bail release, etc. Such economic differences may make the enforcement of criminal sanction unequal because the persons in better economic status are not criminally enforced like those in worse economic status.

Thus, if it is required that a defendant bears the cost of the EM installation, in case that such defendant does not have enough money for the EM installation cost, there will lead to other questions like if the application of EM still shall be deem appropriate to the case. Or she will be compelled to install the EM device as per the Court order. In case that the EM device is already installed, but the defendant did not

pay for the EM installation, how the defendant is compelled, and if this shall be deemed a ground for the Court's sentence to imprisonment.

Furthermore, the expenses related to other criminal sanctions and the cost of the criminal sanction system are the direct responsibility of the government such as those of incarceration facilities, etc. The intermediate punishment measures are one of the criminal sanctions by those measures deem the direct responsibility of the government like other common enforcement of penalties; so the government should not push this burden to the defendants.

Nevertheless, the Researcher would like to emphasize that, basically, the government should bear the EM installation expenses, except the Court considers that any defendants have adequate income or capability in making that payment, and the use of such measures will benefit those defendants. The Court may determine that the defendants bear the entire or partial expenses. This is to relieve the government's budget burden, and it deems the criminal enforcement for equality among defendants who have different economic status.

Compelling the defendants receiving the intermediate punishment to pay for the EM installation may deem a property punishment measure to be ordered by the Court so that the measure looks intense. The neutral attitudes is to give the punishment suitable for an offense, and to enhance the deterrence of recidivism.

5.3.5 Guideline of drafting the law on the intermediate punishment measures

After identifying the forms, criteria and other issues related to the intermediate punishment, the following are 2 concepts on drafting such law:

- 1. The intermediate punishment measures should be imposed as the supplementary punishment apart from the other 5 punishment forms prescribed by the Criminal Code, e.g. death, imprisonment, detention, fine**

and forfeiture of property. The Criminal Code should be amended to include these 10 intermediate punishment measures as well as all related conditions; so that this principle is explicit, and the Court could use them publicly.

However, this action has an disadvantage that the amendment of the Criminal Code shall compel the Court to comply with the law; although the Court considers that these intermediate punishment measures should not be used for the defendant of that case. This may cause the problem of violation whether other punishments may be given or not.

Further, the amendment of provisions set out in the Criminal Code is crucial because it is the important criminal law. The amendment may affect to other provisions set out in the Criminal Code and other related laws prescribing the criminal punishments. As a result, the process of criminal law amendment may be complicated and it needs a careful consideration; this may engender some obstacles or delays in the stages of drafting, consideration by the Council of Ministers, the Juridical Council, and the National Assembly.

2. The intermediate punishment measures should not be imposed in the Criminal Code, but it should be enacted as the Intermediate Punishment Act as the alternatives to substitute the punishment of imprisonment according to the Criminal Code. This will be the same to the Domestic Violence Victim Protection Act, B.E. 2550 prescribing the Court to use other alternative punishments rather than the imprisonment.

However, the enactment may raise an issue, that is, this law may not be used in the enforcement because it is an alternative law, not the provisions requiring the Court's compliance like the law on unfair contract term, etc. But, this issue could be solved by explicitly stating in the Court's Sentencing Manual that in which case the Court may enforce the intermediate punishment law. This not only enables the Court to use various measures, the Court's discretion will be consistent as well. This will be the same to other countries imposing the intermediate punishment measures in the Sentencing Guideline (Tonry, 1997 and Caputo, 2004).

The enactment seems not complicated like the amendment; so the process of enactment should be quicker and more convenient.

In addition, the enactment of the Intermediate Punishment Bill as the alternative sentencing shall be deemed an alternative law that may or may not be used by the Court depending on the circumstances of the case. The Court will be able to administer the cases by arranging the treatment meeting in form of restorative justice to avoid the punishment of imprisonment by setting up the conditions in deviating from the punishment of imprisonment. This measure helps cure the injured persons, and make the system more trustful that the defendants would not have recidivism.

The enactment as an alternative law is to focus on an apparent pace of revising the criminal justice to be more standardized, and it is also consistent with the concept of intermediate punishment measures, which furnishes another alternative of punishment to the Court that is more relevant to the punishment neutral attitudes. If a defendant violates any intermediate punishment measures, the Court may order the punishment earlier imposed to that defendant. Thus, the intermediate punishment measures are more apparent sanctions than the enforcement of punishment in accordance with the Criminal Code, which may cause a confusion that the sanction, in case of the violation, is a duplicate punishment with the penalty prescribed by law or not.

Regarding this issue, the respondents have agreed with all 4 proposed guidelines because they viewed that those proposed guidelines were useful.

Although the result did not show the respondents' objections to any of the guidelines, if considering the reasons mentioned above, the enactment on the intermediate punishment measures should entail more advantages and possibilities than specifying the intermediate punishment measures in the Criminal Code.

5.3.6 Benefits of Intermediate punishments

According to the qualitative research subject to the documentary compilation regarding the use of intermediate punishment measures in other countries as well as results of various research conducted in Thailand, it was found that the intermediate punishment gives several benefits in viewpoints of the criminal justice, government and defendants.

Six benefits of intermediate punishment measures were presented in Table 12. The results showed that the respondents agreed with the potential benefits resulted from the use of intermediate punishment measures in Thailand, which were summarized into 3 issues below:

1. The intermediate punishment measures give the alternative to the Court to impose the punishment to be relevant to the punishment neutral attitudes (retribution, deterrence, incapacitation and rehabilitation) as well as to be suitable for the defendant's specific characteristics and circumstances of the case, which are proportional to the offence committed.

2. The intermediate punishment measures are neither the maximum punishment in form of imprisonment nor minimum punishment, but they aim at rehabilitating the defendants until they could integrate into the society, and have self-improvement by having regard to the safety of the society.

3. The government's expenses in taking care of the prisoners are reduced so that the prisons will engage more efficient management in respect with in prison safety, and rehabilitation of prisoners.

Furthermore, if the concept of restorative justice is set as a condition that if a defendant has an agreement of remedy with an injured person, the Court may use the intermediate punishment instead of imprisonment; there will be some benefits from this concept of restorative justice. For example, if an agreement on the prevention of recidivism is made between a community and other related persons, the injured persons will receive the rehabilitation relevant to their requirement whereas all

related parties have more satisfaction, understanding and sympathy because *“the concept of restorative justice considers the crime that it is an act to the Stage, which not only affects the public order, but also affects the interpersonal relationship. Thus, all parties getting effect from crime, either injured person, defendants or communities, must take roles and be involved in solving this problem together”* (Kittipong Kittiyarak, 2002).

The use of restorative justice is relevant to the use of conditional alternative punishment used in Canada under the consideration that this conditional punishment is a measure of deviating from the punishment of imprisonment, of combining with a new form of imprisonment that the convicted person can live in the society. This should be more efficient than the imprisonment in jail in the viewpoint of restorative justice. This conditional alternative punishment is used for all patterns of cases, despite serious cases. This shows that, in the restorative justice of Canada, it is used by the Court for all patterns of cases, not only petty cases, which is consistent with the result of this research.

In the United States, there is a punishment method that the Court may make order to the defendant to take any act, which makes his or her shameful. This is the contrition penalty by ordering the defendant to openly give apologies to the injured person. If the injured person and related officers believe that the child repents of and give the apologies sincerely, the Court will release that child. Some government may use the community-based sanctions by ordering the defendants to give apologies to the community, and to have remedies as appropriate. This is a clear evidence of combining the restorative justice with the intermediate punishment measures.

5.4 Results obtained by the open-ended questionnaire

The respondents showed opinions and gave suggestions about the intermediate punishment measures, which were summarized and discussed as follows:

1. The intermediate punishment could be too lenient sanction that it cannot result in deterrence or incapacitation in committing any offense. Finally, the defendant will not have any regret and not dread.

The Researcher would like to point out that; in fact, the intermediate punishment holds the same sanction to the common punishment because it takes effect to the rights and liberty of the defendants. Although the punishment is not as serious as the imprisonment, it is set up to be relevant to each defendant and circumstances of the case.

The sanction resulted by retribution, deterrence, and incapacitation needs not to be the imprisonment or the like because each defendant has the different attitude and mind in perceiving the torture and horror at the different levels. These must be considered along with the offence each defendant commits.

If the Court considered that the measures launched cannot make the defendant dread or curb his recidivism, the Court may impose other additional measures simultaneously, or the Court may consider that the intermediate punishment should not be used, but passes the judgment of punishment pursuant to the Criminal Code. If the Court has the discretion appropriate for the case and defendant, the intermediate punishment may not be so soft sanction that the punishment neutral opinions could not be attained.

For this issue, there was a psychological research conducted in the United States on the attitude toward the intermediate punishments. The result showed that the intermediate punishment was the same punishment to the punishment for retribution. Using the intermediate punishment as the alternative sentencing would not cause dissatisfaction in general people. This is different from the case that the Court gives the sentence of probation, which is considered as lenient sanction (Harlow et al., 1995: 87).

2. The EM device may be too expensive that it is not cost-effective to be used in Thailand whereas the monitoring and supervision may not be efficient. The half-way house system may substitute.

The Researcher would like to discuss that the half-way house system has been used in other countries by governments and private bodies under a systematic administration. But, this system has not yet been used in Thailand. If this measure is determined as the intermediate punishment, the government must spend some budget for further implementation. The establishment and personnel must comprise specific knowledge and expertise. However, most private bodies in Thailand have not yet received the adequate supports from the government. The implementation of this measure must be carried out systematically to serve the Court order all over the country. Thus, the Researcher does not consider the half-way house system as an appropriate intermediate punishment to be used in Thailand.

The EM system needs some budget for the establishment of the control center as well as for supplies of the EM devices. The cost-effectiveness of this system does not concern about money only; a number of local and international research similarly indicated that the use of the EM system engendered more cost-effectiveness than the use of prison system for custody.

However, the EM system may be implemented in Thailand in the future through one of possible channels; for example, the EM system may be a service system invested by the private sector, or the devices and system may be purchased from other foreign countries, or the system may be developed by any government bodies by improving the existing devices. The actual use of the EM system should be the government's duty in evaluating the existing alternatives so that the expenditure of installing such system is not higher than the actual amount. Regarding the inefficiency of supervision and monitoring system, it should be focused by the government as mentioned in Clause 5.3.3.

3. The use of intermediate punishment may cause the different discretion among judges. Hence, this should be explicitly specified in the law on discretion.

The Researcher would like to discuss that the discretion for the intermediate punishment is the same to that of common punishment, that is, the Court must take into account of various factors, e.g. specific characteristics and evil intentions of the defendant, circumstances of offense and damages occurred, etc.

The use of discretion to determine the punishment is delicate, which is different up to each case composing of different facts. Therefore, the law should broadly restrain the use of discretion; for example, in which case the Court could use the intermediate punishment measures and so on. Establishing the forms and criteria on patterns of cases and severities is an essential principle to be explicitly prescribed by the law. Apart from such principle, the Court should be permitted to use the discretion as much as possible for the equality to all involving persons.

In general, the Court holds the sentencing guidelines as the implementation guidelines of using the discretion for punishment so that the Courts have similar sentences of punishment. If the intermediate punishment is used, the Court should have the sentencing guideline for the intermediate punishment as well so that the Court's discretion is consistent and goes on in the same direction.

4. The intermediate punishment may not be used because it will redundant to the provision on the measures for safety which have been already prescribed in Thai law.

The Researcher would like to indicate that the provision on the measure for safety as prescribed in the Criminal Code is not the punishment as specified by law, but a measure determined by the government to protect the society before the committing of any offence, e.g. detention or compelling persons to attain the training, etc.

Although some types of measures for the safety may be similar to the intermediate punishment measures, the intention and implementation process is different as explained above.

The measures for the safety, e.g. detention, are to prevent the society from harm by the ones the Court considers that he or she may cause any danger to the society. Regarding the detention, the public prosecutor must file a petition for the Court order. But, the intermediate punishment is the criminal punishment that is not a full punishment of imprisonment, but it is used if the Court considers that the defendant is convicted and must receive the punishment of imprisonment only.

The main intention of intermediate punishment is to punish the defendant to be in line with the punishment neutral attitudes with a focus on rehabilitating the defendant. Thus, the measure of safety cannot substitute the imprisonment penalty like the intermediate punishment.

5. The intermediate punishment is a criminal measure, which has some duplicate characters with the conditional probations because the Court usually determines some measures, claimed as the intermediate punishment, as the probation conditions; so the laws should not be enacted repeatedly.

The Researcher would like to point that the intermediate punishment is the same sanction to the punishment replacing the imprisonment. If the intermediate punishment is used, it means that the Court thinks it is reasonable to give the punishment of imprisonment, but such imprisonment in jail may entail less benefit; so the intermediate punishment is used instead.

The probation is a less serious case because the Court considers that the defendant should not be punished. In setting up the probation conditions for the defendant, they may, in some cases, restrict the defendant's rights and liberty.

However, in Thailand, it is not deemed that the probation is the punishment. The compliance with the probation conditions, e.g. community service is subject to the defendant's willingness so that he will not be punished for imprisonment. In performing the community service, the defendant is also able to select which community or public service he wants to perform.

Similar to other common punishment measures, e.g. imprisonment, detention, fine, etc, the intensive probation and other forms of the intermediate punishment are the compulsory sanctions in which a defendant has to comply with without having regard whether the defendant feels, willing or agrees to comply with it or not.

Moreover, the intermediate punishment takes more effect to the rights and liberty than the conditional probations imposed as the punishment by the Court. The compliance with the probation conditions focuses on the rehabilitation; so the rights and liberty are not strictly restrained like the measures in the intermediate punishment.

CHAPTER VI

CONCLUSION AND RECOMMENDATIONS

After depicting of problems on imposing the appropriate punishment, the prison overcrowded, and shortage of alternative sentencing to imprisonment, the research on “Alternative Sentencing: Intermediate Punishment” was conducted aiming to propose the new alternative of solving such problems. The following are the summary of results and suggestions in conjunction with the problem-solving.

6.1 Research Conclusions

According to the documentary and survey research on “Alternative Sentencing: Intermediate Punishment, it led to a conclusion on the types (forms) and criteria of intermediate punishment to be used in Thailand. The problems about improper punishment for defendants, or overcrowding of prisons are not those of any agency because each problem copes with several factors. All related parties, especially court, government and other criminal justice bodies must be involved to solve them.

The results showed obviously that the new paradigms of criminal justice, e.g. the alternative to imprisonment, intermediate punishment, restorative justice, and diversions, etc. that have been shifting by social development are acceptable and ready to be carried out if served by specific laws, and the Government bears the burden to support them seriously.

The Government should amend relevant and enact certain laws to support those measures so that the Court eagerly uses them without reluctance due to lacking of applicable laws, especially the criteria of measure implementation. The law on

intermediate punishment should be enacted so that the Act shall be flexibly used by the Court, as it deems appropriate to substitute the imprisonment.

There are 10 suitable intermediate punishment forms; namely, verbal warning, deprivation, property, intensive probation, community or public service, training, home detention, intermittent imprisonment, installation of electronic monitoring device, and order to act or omission.

The essences of intermediate punishment are that prior to using the intermediate punishment, the sentencing of not exceeding than 5 years imprisonment term must be rendered, and the Court deems that the intermediate punishment shall be more useful than prison to the defendant, even it is a serious or no guilty pleads case, there is a minimum imprisonment requirement, or the defendant has a recidivism record.

However, any intermediate punishment measures used must not be longer than the length of the imprisonment sentenced. If the Court order is violated, the Court may give warning, use other alternative measures or revoke the intermediate sanction and impose the predetermined imprisonment. In addition, there should be a government body, directly involving the measures launched by the Court order, assigned to supervise, monitor and report the results to the Court. If it is not clear which entity should be responsible for this function, the Department of Probation may be a key entity for this matter.

If the Electronic Monitoring (EM) device is used, it is necessary to establish the EM center to be responsible for controlling and monitoring the violation against or compliance with the Court order. This center will be under the supervision of the Ministry of Justice.

However, the expenses and maintenance costs of the device installation at the defendant's body and his residence shall be borne by the Government like the enforcement of punishment in other forms of punishment, unless the Court may

considers that if some defendant is capable of making such payment, such defendant may bear partial or entire expenses.

The intermediate punishment, by the Researcher's viewpoint, is the optional or alternative to penalty. Therefore, a judgment of sentencing to imprisonment must be the pre-requisite but after considering the whole circumstances of the case, the Court deems appropriate to change the imprisonment into other measure, i.e. intermediate punishment.

Though measures are not one of the forms of penalty prescribed by the Section 18 of the Criminal Code, such measures imposed by the Court shall be considered the sanction like those prescribed by the Section 18 because such they restrain the rights and liberty of the defendant and still remain conformity with the punishment neutral attitudes in retribution, deterrence, incapacitation and rehabilitation. Thus, prior to using such measures, the Court must anticipate the results of the punishment in accordance with the theory of punishment like other common cases.

In using the intermediate punishment, the theory of punishment must be concerned, either at the stage of considering the alternative punishment, or of hearing the case once the defendant breaks the Court order after entirely or partially receiving such sanction. In particular, the Theory of Proportionality must be regarded by the Court so that the defendant's punishment is proportional to his guilt or offense committed, not too harsh or too gentle and adequate to attain the punishment objectives.

The results of this research, in general, found that all theories of punishment objective can be applied to the intermediate punishment because the intermediate punishment is the same form of criminal punishment. The concept of reformatory punishment is the most relevant to the application of intermediate punishment.

Presumed that the intermediate punishment is considered as an appropriate device, to punish the defendants, used by the Court, whether the crime suppression is put into the Government's criminal policy or no matter how many prisoners are in the prisons, using intermediate punishment is still beneficial to provide fairness to the parties and the society. Even if higher number of prisoners causes by the Government policy, the intermediate punishment still gives a benefit of reducing the budget to be allocated to the prisons.

Presumed that the intermediate punishment is considered as the diversion of criminal justice, this diversion used by court is still consistent with the international standards. If the restorative justice concept is applied to this measure, by acknowledging the remedy among the victim, the defendant and community, as a requirement for diversion, it still provokes some advantages to many people impacted by the offense, e.g. injured person, community, etc.

As the intermediate punishment is not the form of penalty prescribed in the Criminal Code, using this intermediate punishment, thus, requires some special reasons which are suitable with each defendant and circumstances of the case. So, it is necessary to set up other conditions, forms or criteria as a specific provision.

The punishment form and criterion obtained from most results of this research were consistent with the international forms and criteria, and subject to the international principles indicated in the Tokyo Rules, and the United Nations' Manuals. The differences between the result of this research and those standards which have been excluded from the proposed result were the forms and criteria already prescribed by Thai laws, e.g. fine, suspension of the imprisonment, or the restitution, etc.

According to other related researches, the results are that the circumstances of the cases and defendants are different; therefore, the Court has to consider what is the suitable punishment or treatment for each defendant. It is agreed that, for Thailand, the criminal justice system should be reformed to have more

measures as the alternatives to imprisonment, and to give the Court more power in order to determine the duly punishment for each offense such as providing imprisonment duration without the minimum imprisonment and more optional punishments.

Imprisonment is a last resort punishment and merely suitable for some certain kind of defendants, e.g. defendants in the serious crime or the defendants who might be harm to the social safety.

In the Researcher's viewpoint, the higher number of prisoners is an important problem impact to the whole criminal justice system because, apart from the human right violation due to the overcrowding and under-standard condition of prisons, the prison system, actually, has not been able to classify and rehabilitate the prisoners efficiently before they return to the society. On the contrary, the prison system allows some prisoners to learn to become a criminal. The expansion of prisons or increasing the number of prisons facilities takes effect to a huge amount of budget; however, they cannot guarantee such problems will be wiped out.

Solving those problems by the use of intermediate punishment deems the policy alternative in problem-solving that requires the least time and budget because it uses the existing judicial system and personnel. The intermediate punishment should greatly help relieve such problems. If the Government does not take any act to solve the problems efficiently, they may be spreading. Solving these problems in the future may consume much more time and huge budget. Although the problems may be solved, a great number of damages have occurred. The sector most affected is our society and what difficultly cured and is the trust and faith given by the public to the entire criminal justice system.

From the results of this research, it could be concluded based on the documentary and survey research as described in Chapter 4 and the discussion in Chapter 5 which is enabled us to understand and develop the form and criterion of intermediate punishment measures, which are suitable for Thailand, and are the

guideline of drafting the law on the intermediate punishment, which is appropriate and suitable for the criminal justice. Therefore, this research could relevantly and completely answer the research questions in Clause 1.6.2, which is consistent with the research objectives in Clause 1.2.2.

6.2 Recommendations

Based on the finding of the research on “Alternative Sentencing: Intermediate Punishment”, the following are suggestions for the possible implementation of intermediate punishment in Thailand, that could actually solve related problems with the highest efficiency. The suggestions are given to 3 following groups:

6.2.1 Government

The Government has a direct duty on development and the implementation of the important policies, which take effect to the criminal justice, as seen in the setting of criminal policies in other countries (Tough on Crime) and in Thailand placing emphasis on the crime control rather than the rehabilitation. This is a main cause of current overcrowded prisons.

1. The Government should place emphasis on setting up the criminal policy or other policies in the form of campaign or enactment, which will entail the impact. The potential impact and alternatives policy should be studied both before and after the use of every policy in order to enhance the policy clarity and consistency. The Government should have preparedness and be ready to solve the subsequent outcomes such as no promptness or ambiguity of policy on solving the narcotic problems in Thailand as mentioned in the topic of “Concepts and Impact of the Criminal Policy (Clause 2.1).

2. The Government should take actions to have laws supporting the concept of alternative sentencing by enacting the intermediate punishment

measures, determining the alternative sentencing forms, and other related criteria to be used by the Court as detailed in the topic of “Summary of the Results” (Clause 6.1)

3. The Government should place the policy supporting the Court to use such law to enhance benefits required. The Government must regard the possible advantages when the Court is entrusted to independently use the discretion to determine the punishment suitable for characters of each offense and defendant; provided that the Court’s discretion is not limited too much, e.g. the high minimum imprisonment, or criminalization, restriction of the method of punishment, etc. because the Court may not be able to use the laws to be relevant to the concepts and objectives of punishment.

4. The Government should have preparedness of the organization management, budget, personnel and action plans on the establishment of the EM system or the coordinating center for deprivation’s orders, etc. prior to the enactment of this law. All related bodies should be educated about the alternative sentencing that it is a new alternative not affecting or contradicting the existing criminal justice so that all related parties, including the community and private organizations, will be participated in solving the problems, and in developing the criminal justice system simultaneously.

The correct knowledge base is essential as Kittipong Kittayarak (Kittipong Kittayarak, 2002) stated that the research makes the criminal justice tangible, but there must also be the knowledge base, social movement to enhance the assembly, and the effort leading to the changes of important policies.

However, the application of the knowledge based on the alternative sentencing or intermediate punishment measures used in foreign countries should regard the context, limitations, possibilities and appropriateness to Thailand. For instance, it is required in other countries that the defendant bears the cost of installation and usage of the EM device; this principle may not be suitable in Thailand. Or, the use of EM tool should regard the cost-effectiveness and saving, that

is, in stead of purchasing or procuring the EM system from a foreign countries, but we may hire a Thai university staff or assign a government agency to design and install this system, or the Court may order the defendant to make a report via the mobile phone equipped with GPS or GPRS, which may furnish a good result, and save a lot of budget.

6.2.2 Related organizations and bodies

The organizations and bodies directly involving in this matter, e.g. the Ministry of Justice, the Department of Probation, the Department of Youth Observation and Protection, the Department of Corrections, and the Royal Thai Police or other institutions, e.g. the Parliament, the Council of Ministers, the Office of the Council of State, and private organizations, etc. should have the consistent understanding about the problems and concepts of alternative sentencing, roles of each agency, cooperation and procedures in respect with the intermediate punishment in order to shape the problem-solving and enforcement of law in the same direction and in conformity with the aims of the law.

The Ministry of Justice should be a central agency coordinating between related entities. The Ministry of Justice, as the supervising body of other criminal justice bodies, should takes roles and set up the policy of the intermediate punishment apparently. It should also generate good understanding and preparedness for the supervised bodies to enhance the coordination and strict compliance with the Court order, and efficient problem-solving.

The Department of Probation and other bodies relating to the monitoring of compliance with the Court order should compile the information about the types of community or public services, characters of intensive or strict probations, types of training, and implementations of each related agency, which shall be submitted for the Court's consideration before the issuance of related orders so that the Court order is consistent with the implementation guideline of all related bodies, and it does not contradict the practice.

6.2.3 Court

The Court takes a key role in using the intermediate punishment, and it must have good understanding on problems, concepts as well as procedure of using the intermediate punishment as the alternative sentencing. Recommendations are as follows:

1. The judges should be provided information on this new paradigm, and they should have good understanding about their roles, responsibilities and problems occurred in the criminal justice in other bodies and that any problems take effect to the criminal justice system, and they endanger to the society; therefore every party should be responsible for and have a duty to help solving the problems together.

2. The training courses should be held for judges at all levels so that all judges have the knowledge on theories and concepts of alternative sentencing and intermediate punishment measures so that their functioning and discretion are accurate whereas the punishment theories are used appropriately and consistently with the intent of intermediate punishment measures.

3. The sentencing guidelines should be provided in a variety of penalties, and to cover all of the punishment objectives, e.g. retribution, deterrence, incapacitation and rehabilitation, by having regard to the punishment suitable for each defendant. The sentencing guidelines must indicate the rate of penalties subject to the objectives of that punishment, the rate of penalties to be reasonably substituted by the intermediate punishment, the rate of penalties when the restorative justice is used, and the rate of penalties in case of violating the Court order for the use of the intermediate punishment, etc.

Since the intermediate punishment consists of various punishment measures, and it needs the proper discretion, the sentencing guidelines must be clear to encourage the Court to apply the intermediate punishment sanctions actually, and to prevent the Court's inconsistent discretion.

4. Apart from the sentencing guidelines, there should be some recommendations, from the President of the Supreme Court on using the intermediate punishment measures in various cases. Such advice should specify, in details, certain important legal criteria, implementation guideline, and coordination with other related bodies. For example, in the property punishment, there should be the criteria on property value or price, or in any cases the Court should give the punishment in form of verbal warning, or in any case the Court makes order about strict probation or house arrest, or in any case that the defendant violates the Court order after receiving partial intermediate punishment, or in the case of sentencing certain targeted groups who should not be imprisoned (children and youth, narcotic addicts, mental or intellectual disorder persons, women, etc.), what kind of punishment should be.

5. The Court must have information on each defendant and circumstances of the case before making order on the intermediate punishment so that the Court could consider the reasonable criteria and punishment forms most suitable for each defendant, as well as additional conditions. Thus, if the intermediate punishment is used for any defendant, the Court should order the probation officers to investigate and report to the Court the profile and circumstances of the case, as well as other related information, accompanied with the probation officers' opinions so that the Court is able to render the appropriate punishment and condition to every defendant, and this gives best benefit to the criminal justice.

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APPENDIX

QUESTIONNAIRE

TOPIC:

ALTERNATIVE SENTENCING: INTERMEDIATE PUNISHMENT

General Information

1. Personal Data

Demographic data	
1. Gender Male Female	
2. Age 25-30 years old 31-35 years old 36-40 years old 41-45 years old Older than 46 years old	
3. Level of Education attained Bachelor degree Master degree Doctorate degree	
Information on Working Experience Your occupation before working in the government service as a judge Lawyers Non-lawyers	
1. Length of working before working in the government service 1-5 years 6-10 years More than 11 years	

1. Personal Data (Continued)

Demographic data	
2. How long have you been working as a judge? 1-5 years 6-10 years 11-15 years 16-20 years More than 21 years	
Information on your current position Judges acting in the position of Administrative Judge Judges	

2. Information on working experience relating to the intermediate punishment

Information on working experience	Yes	No
1. You have hesitated in using the discretion to sentencing between the imprisonment and the suspended imprisonment because you consider that the punishment of imprisonment may be too severe while the punishment of fine may be too lenient.		
2. You have heard or perceived the information about the intermediate punishment.		
3. You have heard about the concept of diversion or the Tokyo Rules, which encourages the Court to use the imprisonment as the last resort.		
4. You have learnt about the problems on the overcrowded prisons or congested prisons.		

Opinions on the intermediate punishment

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
<p>1. There are 10 types (forms) of intermediate punishment to be used by Thai Court</p> <p>1) Verbal warning</p> <p>2) Deprivation, e.g. right to business operation or driving license, etc.</p> <p>3) Property punishment, e.g. compensation or handover of property</p> <p>4) Intensive probations, e.g. frequent report, narcotics sampling probability</p> <p>5) Orders for the community or public service</p> <p>6) Orders for training or participating in the disciplinary camping to cure the alcohol addiction, etc.</p> <p>7) Full-time or intermittent house arrest</p>						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
<p>8) Intermittent imprisonment or imprisonment on weekends or on daytime</p> <p>9) Installation of Electronic Monitoring to control the convict in any specific area</p> <p>10) Act or omission so that the convict repents to the effect occurred, or the recidivism is prevented; for example, standing at the roadside with a sign hanging on the neck to condemn his violation of traffic law, etc.</p>						
<p>2. The intermediate punishment should be prescribed as forms of punishment in the Criminal Code so that the Court sentences or orders without relying on the defendant's willingness or consent.</p>						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
3. The intermediate punishment should not be imposed as the penalty, but special alternative to imprisonment. If the defendant does not agree, imprisonment imposed earlier may be applied to the defendant.						
4. The intermediate punishment shall be applied in case the Court sentencing is not exceeding 3 years.						
5. The intermediate punishment shall be applied in case the Court sentencing is not exceeding 5 years.						
6. The intermediate punishment shall not be applied to the death penalty or life imprisonment case.						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
7. The intermediate punishment shall not be applied to the professional criminals or defendants who are dangerous for the society.						
8. The intermediate punishment shall not be applied to the recidivists.						
9. The intermediate punishment shall be applied only when the Court deems it is more useful than the imprisonment.						
10. The intermediate punishment shall be applied when the defendant who is the first time defendant and pleads guilty.						
11. The Criminal Code should be amended that the intermediate punishment shall be the alternative to imprisonment.						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
12. The specific Act of intermediate punishment should enact as an option penalty, apart from that in Criminal Code, for judge to impose as deems appropriate.						
13. The Court may make orders to use several forms of intermediate punishment.						
14. For the full-time or intermittent house arrest, the Court must first ask for the residence owner's willingness before applying this measure.						
15. The expense on the installation of EM device should be borne by the government.						
16. The expense on the installation of EM device should be borne by the defendant.						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
17. The Center, responsible for controlling and monitoring the violation of the Court order to equip Electronic Monitoring, should be in the supervision of the Ministry of Justice.						
18. The Department of Probation should be a key agency assigned to monitor, watch and report the defendant's compliance with the Court order.						
19. For ordering the community or public service, the Court is able to make order on type or nature of service without the defendant's consent.						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
20. When the defendant violates the Court order, the Court may call the defendant to give the verbal warning, modify the measure, or sentence to imprisonment earlier imposed.						
21. The intermediate punishment shall be applied for all patterns of case, even serious or non-serious, and cases with minimum imprisonment.						
22. The property punishment should include the order to the defendant to hand over his or her properties to the injured person, to pay or donate some money to a government body, religious organization or non-profit organization.						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
23. The property punishment may include the order to the defendant to destroy his or her own properties.						
24. The intermediate punishment furnishes some punishment alternatives to the Court so that the punishment is more consistent with the punishment purposes.						
25. The intermediate punishment furnishes some punishment alternatives to the Court that are more appropriate for the defendant's characters and circumstances of the case.						
26. The intermediate punishment furnishes more opportunities to the Court to sentence the defendant who suits rehabilitating.						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
27. The intermediate punishment enables the Court to classify defendants, and to use the prison only for who suits to the incapacitation purpose.						
28. The intermediate punishment helps reduce the number of prisoners; as a result, the prisons could improve the efficiency of overseeing prisoners while the government's expenses of maintenance the prisons are so reduced.						
29. The intermediate punishment contains various sanctions, which may be used in several types of offenses to be in line with the punishment purposes at retribution, deterrence, incapacitation and rehabilitation subject to the circumstances of the case.						

Opinions on the intermediate punishment (Continued)

Opinions on the intermediate punishment	Totally agree	Agree	Neutral	Disagree	Totally disagree	N/A
<p>30. When the intermediate punishment is used, the Court shall not prescribe the length of such intermediate punishment longer than the length of imprisonment imposed for that defendant.</p>						
<p>31. If the intermediate punishment is used, there shall be certain bodies with duties of supervising, monitoring and reporting the outcome to the Court, of enforcing the measures, and of following up the duties determined in those measures, e.g. the Department of Correction, the Department of Probation, and other bodies in charge of issuing the licenses, renewing the licenses or receiving the payment for fees. For example, the Department of Probation must monitor the community or public service according to the Court order, or the EM installation. The bodies issuing the licenses for any right must take care of when the Court makes the order of deprivation, etc.</p>						

The Tokyo Rules

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990).

I. GENERAL PRINCIPLES

1. Fundamental aims

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of defendants, as well as to promote among defendants a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual defendants, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the defendant.

2. The scope of non-custodial measures

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the

Rules, these persons are referred to as "defendants", irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the defendant and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with defendants in the community avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards depolarization and decriminalization instead of interfering with or delaying efforts in that direction.

3. Legal safeguards

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the defendant, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the defendant, applied before or instead of formal proceedings or trial, shall require the defendant's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the defendant.

3.6 The defendant shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the defendant.

3.9 The dignity of the defendant subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the defendant's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the defendant's right to privacy shall be respected, as shall be the right to privacy of the defendant's family.

3.12 The defendant's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the defendant's case or to other duly authorized persons.

4. Saving clause

4.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment or any other human rights instruments and standards recognized by the international community and relating to the treatment of defendants and the protection of their basic human rights.

II. PRE-TRIAL STAGE

5. Pre-trial dispositions

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the defendant if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable noncustodial measures, as appropriate.

6. Avoidance of pre-trial detention

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The defendant shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

III. TRIAL AND SENTENCING STAGE

7. Social inquiry reports

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency . The report should contain social information on the defendant that is relevant to the person's characteristic of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a range of noncustodial measures, should take into consideration in making its decision the rehabilitative needs of the defendant, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;

(l) Any other mode of non-institutional treatment;

(m) Some combination of the measures listed above.

IV. POST-SENTENCING STAGE

9. Post-sentencing dispositions

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist defendants in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

- (a) Furlough and half-way houses;
- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the defendant.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

10. Supervision

10.1 The purpose of supervision is to reduce reoffending and to assist the defendant's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the defendant to work on his or her offending. Supervision and treatment should be intermittently reviewed and adjusted as necessary.

10.4 Defendants should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

11. Duration

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the defendant has responded favorably to it.

12. Conditions

12.1 If the competent authority shall determine the conditions to be observed by the defendant, it should take into account both the needs of society and the needs and rights of the defendant and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and be aimed at reducing the likelihood of an defendant relapsing into criminal behaviour and of increasing the defendant's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the defendant shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the defendant's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the defendant.

13. Treatment process

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of defendants, should be developed to meet the needs of defendants more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the defendant's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each defendant, a case record shall be established and maintained by the competent authority.

14. Discipline and breach of conditions

14.1 A breach of the conditions to be observed by the defendant may result in a modification or revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the defendant.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the defendant under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the defendant shall have the right to appeal to a judicial or other competent independent authority.

VI. STAFF

15. Recruitment

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the defendants to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

16. Staff training

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the defendant, ensuring the defendant's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the

purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

17. Public participation

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between defendants undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18. Public understanding and cooperation

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote noncustodial measures.

18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of defendants.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

19. Volunteers

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage defendants and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the defendants' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

20. Research and planning

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of defendants.

20.2 Research on the problems that confront clients, practitioners, the community and policy-makers should be carried out on a regular basis. 20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for defendants.

21. Policy formulation and programme development

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Intermittent reviews should be concluded to assess the objectives, functioning and effectiveness of non-custodial measures.

22. Linkages with relevant agencies and activities

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for noncustodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

23. International cooperation

23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of defendants, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Defendants Conditionally Sentenced or Conditionally Released.

BIOGRAPHY

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