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# THE EFFECTIVENESS OF SENTENCING OPTIONS

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A review of key research findings

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# EXECUTIVE SUMMARY

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- Reducing re-offending is one of five key sentencing objectives in England and Wales. Courts employ a range of sentences, from discharges to imprisonment. This paper summarises findings from the latest research exploring the relative effectiveness of the principal sanctions for more serious offending: immediate imprisonment, suspended sentence orders and community orders.
- In recent years, researchers have evaluated the relative effectiveness of these different sanctions by comparing the re-offending rates of those who have served a sentence of immediate imprisonment to those who served instead a community order or suspended sentence order.
- Comparing re-offending rates associated with different sanctions is challenging because high risk offenders are more likely to be sentenced to custody. This may explain why short sentences of imprisonment are associated with higher re-offending rates than community orders and suspended sentence orders.
- Recent research by the Ministry of Justice and other agencies compared re-offending rates for immediate imprisonment, suspended sentence orders and community orders, having first controlled for other explanatory factors. Re-offending rates for offenders sentenced to short terms of immediate imprisonment were higher than rates for offenders sentenced to either a community order or a suspended sentence order. Re-offending rates for offenders sentenced to community orders are typically higher than those given suspended sentence orders.
- It is too early to know whether the introduction of supervision upon release for short-term custodial sentences has been effective in reducing re-offending because of additional changes implemented around the same time.
- More research is needed to determine whether the type of sentence is related to re-offending rates by gender and ethnicity and to determine how different sentences meet the criminogenic needs of offenders and how they improve their lives more generally.
- Research should use longer follow-up periods to better evaluate the impact of sentences on long-term desistance.

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# 1. SCOPE OF REVIEW

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The purposes of sentencing were first specified in statute in the Criminal Justice Act 2003 and include punishment and the prevention of crime. This paper focuses on the possible preventive effectiveness of key criminal sanctions. Re-offending rates are the most common measure of effectiveness – although others have been proposed (and are discussed below). At sentencing, courts attempt to prevent further offending through the imposition of sanctions which deter, incapacitate, or rehabilitate offenders. To this end, sentencers employ a range of different disposals including: immediate custody; suspended sentence orders; community orders; and fines.<sup>1</sup> This paper reviews the latest evidence relating to the effectiveness of the first three of these sentences and summarises the latest cost estimates of different disposals.

The first part of this paper provides background information about effectiveness and re-offending. The paper then summarises research which compares the re-offending rates associated with different sanctions uncorrected for variables which may explain these differences. Then it describes findings from Ministry of Justice research (and other agencies) which compares re-offending rates after controlling for other relevant variables such as offenders' prior records and their risk of re-offending. As will be seen, the two bodies of research reach the same general conclusions. The paper concludes by noting some important research priorities.

## 2. BACKGROUND

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In England and Wales, sentencing is based on five key objectives: punishment, the reduction of crime; reparation; rehabilitation; and public protection.<sup>2</sup> Three of these purposes – crime reduction, rehabilitation and protecting the public – share a broader aim of reducing re-offending. The recent White Paper, *A Smarter Approach to Sentencing*, expressed concerns about repetitive crime by low-level and repeat offenders (Buckland 2020). The revolving door of justice carries great financial costs: The total estimated economic and social cost in England and Wales of re-offending by adults is £16.7 billion (Newton et al. 2019). This estimate includes expenses in relation to future crime, the consequences of crime and responses to crime.

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1 For very low level offending a court may instead impose either a conditional or absolute discharge.

2 Section 57 of the Sentencing Code.

### ***The Principal Sentences Available in England and Wales***

When determining which sanction to impose, courts in England and Wales apply a “custody threshold” at sentencing. This means that a court must not impose a custodial sentence unless it is of the opinion that the offence was sufficiently serious that neither a fine nor a community sentence would be justified.<sup>3</sup> This provision attempts to ensure that imprisonment is reserved for the most serious offences (Sentencing Council 2017). Courts have a range of different sentences to deploy at sentencing. The principal disposals for more serious offending include the following:<sup>4</sup>

Determinate prison sentences require immediate custody.<sup>5</sup> Offenders serve a fixed period of time in prison before automatic release. Offenders sentenced to determinate prison terms generally serve half of the period in prison and the remainder on licence in the community (although the picture is now a little more complicated as recent reforms to release arrangements mean that offenders serving longer sentences for certain sexual or violent offences have to serve two-thirds of their determinate term in custody before being released). If the person breaches any of the licence conditions, or commits any further offences during the licence period, he or she may be returned to prison.

Suspended sentence orders (SSOs) involve the imposition of a custodial sentence which is then suspended for a period to allow the offender to remain in the community. A custodial sentence of between 14 days to two years may be suspended and the suspension period may last up to two years. A sentencing judge may, but need not, impose one or more requirements upon the offender during the operational period of the SSO (the available requirements are the same as may be attached to a community order, specified below). If the person breaches any requirement imposed or commits a new offence, the court may order the person to serve their original custodial sentence. An SSO is considered a custodial sentence; before imposing an SSO the court must decide that the custody threshold has been crossed.

A community order can last up to 36 months and must include at least one specified requirement. When imposing a community order, courts select from a menu of requirements to address the offender’s needs and to promote his or her rehabilitation. In addition, the court must impose at least one condition that is punitive in nature. A court can impose any one or more of the following:<sup>6</sup>

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- 3 Section 230 of the Sentencing Code, replicating the earlier provision from the Criminal Justice Act 2003, states: ‘The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence’.
  - 4 Other sentences not discussed further in this paper include financial penalties and conditional and absolute discharges (whereby the person does not face an immediate punishment but is recorded as having a criminal record). This paper also does not consider out-of-court disposals.
  - 5 Some offenders receive indeterminate prison sentences – custodial sentences without a fixed release date. These offenders serve a minimum amount of time in prison (the minimum term) before being considered for release by the Parole Board. Release will only be directed by the Parole Board if it is satisfied that it is no longer necessary for the protection of the public for the person to remain in custody.
  - 6 Section 201 of the Sentencing Code.

- \* Unpaid work requirement
- \* Rehabilitation activity requirement
- \* Programme requirement
- \* Prohibited activity requirement
- \* Curfew requirement
- \* Exclusion requirement
- \* Residence requirement
- \* Foreign travel prohibition requirement
- \* Mental health requirement
- \* Drug Rehabilitation requirement
- \* Alcohol treatment requirement
- \* Alcohol abstinence and monitoring requirement
- \* Attendance centre requirement
- \* Electronic compliance monitoring requirement
- \* Electronic whereabouts monitoring requirement

In the year ending March 2020, the following distribution of sentences was recorded across England and Wales: Fines (78%), immediate custody (7%), community orders (7%), suspended sentence orders (3%) and conditional discharges (3%) (Ministry of Justice 2020a). Although fines are the most common sentence, this report examines immediate sentences of imprisonment, suspended sentences orders and community orders. There are several reasons for this focus. First, these three sanctions are the most expensive to administer and therefore need to be scrutinised most closely. Second, they attract the most media attention and public interest. Third, these three disposals often overlap in terms of the offenders on whom they are imposed. Under the sentencing regime in England and Wales, even if the case has passed the custody threshold, there may be reason to suspend the prison sentence or even impose a high-end community order. In cases which only just cross the custody threshold a court may consider immediate imprisonment, an SSO or a community order.

### ***Costs of Principal Sentences***

The costs of different sentences vary greatly. The Ministry of Justice does not routinely publish the costs of community orders and SSOs. However, the 2014/15 National Offender Management Service Business Plan noted that in 2012/13 the average cost per community order/SSO was £4,305 compared to an average cost of £36,808 for a prison place (National Offender Management Service 2014, p. 35). The costs of community-based supervision will of course vary, depending on the number and type of requirements imposed on the individual. The difference in costs between imprisonment and community-based sanctions has recently become more significant: 'The search for effective alternatives to custody has become even more urgent following the recent recession and the demand for governments to make cuts in public services, including the criminal justice system' (Abramovaite, et al. 2018, pp. 800-801). The renewed focus on alternative sanctions reflects

the fact that prisons in England and Wales are operating near capacity and the coronavirus pandemic has exacerbated the risks of imprisonment (Pope et al. 2020).

### ***Rate of Imprisonment and Relationship Between Prison Populations and Crime Rates***

The imprisonment rate in England and Wales is currently higher than most other European countries (Walmsley 2018). As the Lord Chief Justice noted in a recent speech, the length of custodial sentences has been increasing in recent years.<sup>7</sup> The imprisonment rate and the average sentence length imposed have both been increasing steadily. The custody rate for indictable offences<sup>8</sup> rose from 24.1% in 2010 to 35.1% in 2020,<sup>9</sup> an increase of 46%. Much of this increase is more recent: the first half of the decade saw an 11% increase in the custody rate for indictable offences, while the increase from 2015-2020 was 28%. Over the decade 2010-2020, the average custodial sentence length for all offences rose from 13.8 months to 19.5 months, an increase of 34%.<sup>10</sup>

The use of imprisonment may prevent crime through incapacitating effects, specific deterrence (i.e. encouraging the individual not to re-offend) and general deterrence (i.e. encouraging others not to offend). However, imprisonment itself can create criminogenic effects in facilitating criminal behaviour.

### ***The Use of Imprisonment as a Potential Contributor to Re-offending***

Offenders are sent to prison, in part, to prevent further offending, but imprisonment may also contribute to future offending.<sup>11</sup> There are a number of explanations for this apparent paradox. Ex-prisoners may lose many of the protective benefits that living in the community offers, including employment opportunities, pro-social relationships and safe housing (Sapouna et al. 2015). While in custody, prisoners have opportunities to interact with other individuals who may reinforce and encourage offending behaviours. Further, imprisonment labels ex-prisoners as 'deviant' and this may impede their efforts to lead crime-free lives after release (Abramovaite et al., 2018). Recent research has found that longer terms of imprisonment have adverse, criminogenic effects by reducing the opportunities for employment, housing, benefits and marriage (e.g. Ramakers et al. 2017). Short terms of imprisonment may be particularly counter-productive in different ways. The early weeks of imprisonment are often chaotic and transitioning back to the community is often challenging. Finally, the limited time in detention may be insufficient for rehabilitation programming to be successful (Cracknell 2018).

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7 Lord Chief Justice of England and Wales, UCL Judicial Institute Annual Lecture, 9 December 2020.

8 An indictable offence is either an either way offence (an offence that can be tried in either the magistrates' courts or the Crown Court) or an indictable only offence (which can be tried only in the Crown Court). These are the most serious offences.

9 Ministry of Justice (2020) *Criminal justice system statistics quarterly: June 2020*, Table Q5.2b. The custody rate increased more sharply for some high-volume offence categories. The custody rate for theft rose by 58% while for fraud it rose by 56%.

10 Ministry of Justice (2020) *Criminal justice system statistics quarterly: June 2020*, Table Q5.2c. Certain offence categories showed much higher increases: the average custodial sentence length for robbery over this period rose from 33.8 months to 53.7 months, an increase of 59%, while average sentence lengths for fraud rose by 85%.

11 The authors of a comprehensive research review concluded: 'A good deal of evidence indicates that incarceration, on average, increases the offending of those incarcerated' (Kleck and Sever, 2018, p. 305). More recently a review conducted by the Queensland Sentencing Advisory Council concluded that: 'At best, imprisonment has a marginal effect on recidivism. At worst, imprisonment increases the likelihood of reoffending' (Gelb et al. 2019, xii).

### 3. DEFINING EFFECTIVENESS

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In weighing the benefits and consequences of different types of penalties, officials often question which is most 'effective' (Ministry of Justice 2020b). A common research strategy involves comparing the re-offending rates of different disposals. Drawing causal inferences from this research is challenging. Studies that compare re-offending rates by type of sentence can only show a correlation between the type of sentence and the outcome (desistance or re-offending). Many factors other than sentence type may explain offending. For example, people may have particular characteristics that make them more likely to re-offend regardless of the type of sentence imposed and certain crime categories have long been associated with high re-offending rates – again independent of the sentence imposed.

Effectiveness can also have alternate meanings. Policy-makers may wish sentences to be effective in the more complete sense of desistance. Desistance refers to a long-term cessation in criminality for those who had a pattern of offending (Sapouna et al. 2015). Yet studies on re-offending tend to follow ex-offenders for relatively short periods of time (one to three years is common). The absence of offending during those follow-up periods does not necessarily mean that these individuals have achieved desistance. Indeed, the studies tend only to count offences that are known to police and their perpetrators identified as ex-offenders. This means that ex-offenders who commit offences yet who evaded prosecution and punishment may be mistakenly counted as successes. As well, the limited follow-up periods do not necessarily detect desistance where the ex-offenders may have committed new offences outside the short time frame studied.

Effectiveness could also be measured by the extent to which the sentence addressed the individual's criminogenic needs. The term 'needs' here refers to those characteristics and problems that are amenable to treatment and, if addressed, will reduce the individual's likelihood of re-offending. For men, common criminogenic needs include drug/alcohol problems, underemployment and a lack of stable housing. For female offenders, needs may include a history of trauma, fractured family ties and sexual victimisation. Thus, a broader approach to effectiveness would consider how sentences foster improvements for offenders in such life areas as health, employment and family and social networks (Villettaz et al. 2015). Another definition of effectiveness would consider how well different sentences compensate victims or society in general (Mann and Bermingham 2020). Unfortunately, studies provide little information on this version of effectiveness. The emphasis in the effectiveness literature has long been upon re-offending rates over relatively short periods of time, rather than these other, broader conceptions.

#### ***Thinking about Risk***

The discussion about the effectiveness of sentencing alternatives (at least in terms of its meaning for reductions in re-offending) confuses different concepts. References to repeat offenders as endangering public safety, for instance, suggest the concern is more specifically about repeat



offenders who commit serious or violent crimes. Yet many such offenders commit only less serious crimes. Theft convictions, for example, are a common predictor of re-offending. Even when sophisticated risk assessment tools, such as the Offender Group Reconviction Scale (OSGR)<sup>12</sup> used in England and Wales, predict an individual to be at high risk, this result does not necessarily mean a likelihood of committing a serious or violent crime. Instead, a strong likelihood is predicting any re-offending, including quite minor offences.

Consequently, reform proposals should reflect these issues. Repeat offenders may be taxing on criminal justice resources as they cycle in and out of the justice system. But they may distract attention from the small group of individuals who do pose a serious and violent threat to society. The recent White Paper recognises the difference:

*There are some offenders that we consider to be ‘prolific’. These offenders commit a large number of generally low-level crimes, and often fail to respond to existing interventions by the court. For these prolific offenders we will continue to consider whether there are innovative ways in which we could tackle their persistent offending.* (Ministry of Justice 2020b, p. 34)

The White Paper provides little detail on these innovations but the implication remains that the current sentencing system which cycles these ‘prolific’, yet non-serious, offenders in and out of prison is not ideal. Increasing the number or duration of custodial sentences will contribute to the already burgeoning prisons. ‘Smarter’ sentencing will entail amending current alternatives or creating new penalties that help transform the lives of repeat offenders.

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<sup>12</sup> The Offender Group Reconviction Scale (OSGR) is a risk assessment tool used by probation and prison services across England and Wales. Initially deployed in 1996, the OSGR was designed to predict the probability of re-offending by adults discharged from custody or given non-custodial sentences (Howard 2018). OSGR scores are based on age, gender, offence type and criminal history. Higher scores indicate a greater likelihood of re-offending. The OSGR is designed to predict the risk of committing any crime, regardless of severity. Hence, a high score is not equivalent to predicting the offender will commit a serious or violent crime.

## 4. RE-OFFENDING RATES AND THE PRINCIPAL SENTENCES

The Ministry of Justice regularly publishes re-offending rates and recent statistics for England and Wales regarding annual average proven re-offending statistics for adults by sentence type are summarised in Table 1 (Ministry of Justice 2020c). This table notes the percentage of recidivists in each category, the average number of offences committed per re-offender and the average risk score for the offenders who previously received the disposal.

**Table 1: Adult Known Re-offending Rates by Sentence Type (April 2017 – March 2018)**

Sentence Type	Percentage of Offenders	Average number of new offences per recidivist	Average risk score
All custodial sentences	48%	5.3	51.1
Less than or equal to 6 months	66%	6.1	59.0
More than 6 months to less than 12 months	52%	5.4	52.6
12 months to less than 2 years	37%	3.9	46.5
2 years to less than 4 years	29%	3.2	45.6
4 to 10 years	19%	2.8	37.0
More than 10 years	8%	2.0	21.6
Suspended sentence order with requirements	30%	3.7	35.4
Suspended sentence order without requirements	48%	5.3	46.7
Community order	33%	4.0	35.3

Source: Ministry of Justice (2020c, Tables C1a and C2a); percentages rounded.

Table 1 shows the percentage of offenders within each sentence group who re-offended (i.e. were convicted or received a caution for a new offence) during a one-year period.<sup>13</sup> The overall re-offending rate for offenders sentenced to immediate custody was 48%. Re-offending rates varied significantly across different sentence lengths with the highest re-offending rate (66%) emerging for

<sup>13</sup> The year began for those receiving a custodial sentence when they were released from prison and for the others on the date of their court conviction.

those who had served the shortest sentences. The proportion of offenders re-offending then declined steadily for longer sentences, down to 8% for custodial sentences of over 10 years.

### ***Re-offending Rates Higher for Custody than Community-based Sentences***

Offenders who had served a period in custody offended at a higher rate (approximately 48%) than those sentenced to community orders (about 33%) or SSOs with requirements (30%). These latter community-based orders are more likely to be considered appropriate alternatives to short prison sentences. Re-offending occurred less often for ex-offenders who had received community orders or SSOs than for custodial sentences of less than six months (about 66%) and of six to 12 months (about 52%).

Table 1 also shows the average number of offences per re-offender in each group. For custodial sentences, the average number of new offences was highest for the shortest terms of imprisonment and then declined as the sentence length increased. Comparing averages across sentence type, a similar pattern to the re-offending rates emerged: custodial sentences were associated with a higher number of new offences than community orders and SSOs.

Table 1 summarises the average risk score for each sentence group as a whole from the OGRS. The average risk scores are consistent with the patterns in the first two columns. Those released from longer custodial sentences were evaluated at lower risk by the OGRS. This may be explained by the fact the risk assessment tool places great weight on offender age as a risk factor. Offenders who served custodial sentences were scored, on average, higher risk than offenders sentenced to community-based penalties; offenders with SSOs or community orders were assessed on average as lower risk than the custody group.

However, there is a clear contrast between SSOs with and without requirements. Re-offending rates of offenders who receive an SSO with no requirements were higher than those whose SSO had requirements attached. The former perform much more similarly to the custodial sentence group than they do to the other community-based sentence cohorts. This group has a higher risk score and, in terms of the proportion who re-offend and the average number of offences per re-offender, it performs almost identically to the overall custody cohort. The higher risk score of offenders who receive an SSO without requirements suggests that there is something fundamentally different about this group of offenders to those who receive the other community-based sentences.<sup>14</sup>

Some insight into the relationship between re-offending and sentence type emerges from studies with prisoners. Research conducted by Lievesley et al. (2018) involving repeat offenders in an English prison provides some context on those cycling in and out of short custodial sentences. These individuals tended to describe their prison terms as exemplifying their way of life in which re-offending was assumed to be inevitable. These prisoners did not see their time in custody as rehabilitative. Instead, they considered each short sentence as worsening their problems on the

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<sup>14</sup> In 2019, 18% of offenders who received an SSO did not have any requirements attached to the order (Ministry of Justice (2020d, Probation 2019, Table A4.1)).

outside. Criminal behaviour became their default way of meeting their needs for housing, food and drugs.

### ***Variations in Re-offending Rates***

The statistics in Table 1 do not establish whether the nature of sentence (e.g. custodial versus community-based) or the length of custody are *causes* of re-offending. Rather, the form and length of sentence may just be *correlated* (i.e. associated) with re-offending. The offenders in the multiple sentencing groups vary in risk-relevant ways, such as the types of offences committed and in their personal characteristics. Individuals sentenced to imprisonment may differ in many ways from those given community orders or SSOs – and these differences may explain the variable re-offending rates.<sup>15</sup> The lower average risk scores listed in Table 1 for community orders or SSOs compared to custodial sentences are evidence of such risk-relevant differences.

Limited evidence is available on how re-offending varies according to the type of offence, or gender and ethnicity of the offender (Ministry of Justice 2020c). For the year ending March 2018, female offenders had significantly lower re-offending rates than males. Females re-offended at a rate of 23% compared to males at 30%. Comparisons based on ethnicity categorisations revealed the following re-offending rates: White offenders (30%), Black offenders (31%), Asian offenders (24%) and other ethnicities (20%). Re-offending rates by offence type are presented in Table 2.

**Table 2: Adult Re-offending by Offence Type (April 2017 – March 2018)**

Offence Category	Re-offending rate
Sexual	14%
Fraud	17%
Drugs	25%
Violence against the person	26%
Criminal damage and arson	26%
Robbery	32%
Possession of a weapon	33%
Public order	39%
Theft	52%

Source: Ministry of Justice (2020c, Table A4a); percentages rounded

As noted earlier, offenders who received short custodial sentences were often convicted of low-level offences such as public order offences and theft. Table 2 thus provides some explanation for this finding: less serious offences (such as theft) are associated with higher re-offending rates. In

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<sup>15</sup> See findings and discussion in Villettaz et al. (2015).

contrast, the more serious types of offence that would justify lengthier custodial terms (such as sexual offences and violence against the person) are among the lower re-offending rates.

## 5. COMPARING RE-OFFENDING RATES WITH MATCHED SAMPLES

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While comparing re-offending rates for different sentence types (see Table 1) yields general information on the patterns of repeat offending, such comparisons are unable to estimate the relative *effectiveness* of different forms of the penalty (e.g. custody or community order). As noted, the groups in each sentence type may vary in many respects. Thus, different re-offending rates across types of sentencing outcome may simply reflect differences in offences and offenders. For example, offenders sentenced to immediate custody are likely to have more serious criminal histories.<sup>16</sup> This would make them a higher risk to re-offend even before they begin their sentence. For this reason, it is necessary to control for factors such as the previous convictions.

To address this problem, researchers created comparable samples in order to control for any pre-existing differences between offenders. Samples of individuals are matched on multiple offender and offence characteristics. This method increases the confidence that different types of sentences are related to re-offending. The trade-off with using matched samples is that not all offenders can be appropriately matched and some individuals are lost in the comparisons. Hence, the matched sample design is unable to give full re-offending rates because the comparisons between sentence types only include those offenders who could be matched. Nonetheless, the results provide further insight into how sentence types may differ with respect to re-offending outcomes for similar offenders.

### ***Comparing Short and Intermediate Custodial Sentences with Community Sanctions***

The Ministry of Justice has published several comprehensive analyses using this superior methodology. In a study of matched samples in England and Wales for 2010 (Ministry of Justice 2013),<sup>17</sup> researchers matched individuals on age, gender, offence type, offence seriousness and the number of prior offences. This study compared various sentencing types in pairs (i.e. each pair was matched on those characteristics). The differences between re-offending rates in each pair are shown in Table 3 (the group in the left-hand column of the table has a higher re-offending rate than the comparator on the right).

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<sup>16</sup> A provision in the Sentencing Code (replicating an earlier provision in the Criminal Justice Act 2003) requires courts to take prior convictions into account at sentencing unless it would be unreasonable to do so.

<sup>17</sup> This study defined re-offending as any court conviction, caution, reprimand, or warning.

Table 3: Re-offending Comparisons by Type of Sentence (2010)

Matched group pairs		Difference	
Custody < 12 months	vs	Custody from 1-4 years	+ 12%
Custody < 12 months	vs	Community orders	+ 6%
Custody < 12 months	vs	Suspended sentence orders	+ 9%
Custody 1 – 6 months	vs	Custody from 6-12 months	+ 5%
Community orders	vs	Suspended sentence orders	+ 3%

Source: Ministry of Justice (2013); percentages rounded.

Table 3 reveals that short custodial sentences (< 12 months) were associated with higher re-offending rates, whether compared to intermediate custodial sentences of one to four years or to either a community order or SSO. Shorter custodial sentences (one to six months) had a higher re-offending rate than a custodial sentence of six to 12 months. These results suggest that a short term of imprisonment is the least effective sentence in reducing re-offending.

One possible explanation for these trends is that short prison sentences disrupt offenders' lives without allowing sufficient time for the prisoner to gain any rehabilitative benefits that custody might offer (such as rehabilitative programmes). Table 3 shows that both community orders and SSOs are associated with lower re-offending rates than short custodial sentences and that SSOs were more effective in terms of a lower likelihood of re-offending than community orders.

These findings confirm earlier research outcomes.<sup>18</sup> Mews et al. (2015) compared re-offending rates for the principal sanctions and found that short custodial sentences (< 12 months) were consistently associated with higher rates of re-offending than SSOs or community orders. These researchers had controlled for differences between offenders sentenced to the various sanctions.<sup>19</sup>

### ***Offender Characteristics and Variations by Offence Type***

Researchers have also used matched samples analysis to determine whether the differences in re-offending rates based on sentence type varied by age, ethnicity, gender, criminal history and mental health status (Hillier and Mews 2018). Their focus was upon short custodial sentences (12 months or less) compared to community orders and SSOs. In this study, short prison sentences were associated with higher rates of re-offending than community orders or SSOs (Hillier and Mews 2018). However, the relationship varied depending on the offender's criminal history. The difference in re-offending for first offenders was not statistically significant. But for those with many prior

<sup>18</sup> The advantage of a period of community supervision with requirements over imprisonment is a robust finding which has been noted since the 1960s (see Hammond 1964; Brody 1976, pp. 27-29.)

<sup>19</sup> This was accomplished by applying 'propensity score matching', described by the researchers as 'a well-tested approach to looking at impact' of different sanctions (Mews et al. 2015, p. 1).

offences, there was a significant decrease in re-offending rates for those given community orders or SSOs compared to short custodial sentences.

Compared to short custodial sentences, community orders or SSOs were more significantly related to lower re-offending rates for those who were younger (age 18-20) or older (over age 50). Community orders and SSOs were also related to reduced re-offending for those with severe mental health issues, after controlling for offending history. No differences were observed based on gender or ethnicity, after controlling for offending history, in re-offending rates between short custodial sentences versus the other orders. This means that reductions in re-offending for community orders and SSOs compared to short prison sentences were seen for those with similar criminal histories, regardless of gender or ethnicity.

### ***Comparing Short Custodial Sentences Plus Supervision with Community Sanctions***

The matched sample comparisons relate to a time when short custodial sentences did not include any supervision in the community upon release. The Offender Rehabilitation Act 2014 introduced a requirement for community supervision upon release with custodial sentences of less than twelve months. Thus, it is possible that the supervisory requirement may affect re-offending rates for short custodial sentences. More recently, researchers have investigated re-offending patterns with a new cohort of adult offenders whose short custodial sentences included post-release supervision (Eaton and Mews 2019). These researchers created comparable groups by matching on 150 factors. Results are shown in Table 4 with the disposal in the left-hand column representing the alternative with a higher re-offending rate.

**Table 4: Re-offending Comparisons by Sample Type (2016)**

Matched group pairs		Difference	
Custody < 12 months	vs	Community orders	+3.7%
Custody < 12 months	vs	Suspended sentence orders	+4.1%
Community orders	vs	Suspended sentence orders	+ 4.2%

Source: Eaton and Mews (2019, p. 16)

The results are consistent with the earlier studies. Short custodial sentences, even with supervision upon release, were associated with higher re-offending rates (about 4% higher) than community orders or SSOs. Although not shown in the table, these results occurred whether the custodial sentences were less than three, six, or 12 months (Eaton and Mews 2019). In this new study, community orders were associated with a higher re-offending rate than SSOs.

It is not possible to determine whether the introduction of the supervision requirement for short custodial sentences had any impact on re-offending rates by comparing results between Table 3 (pre-supervision requirement) and Table 4 (post-supervision requirement). Between the study dates, the Ministry of Justice changed the data used to compile re-offending statistics and various

other reforms in managing offenders were implemented. This may have affected the results. Amidst these various adjustments, it was not possible to isolate the effect of the introduction of a supervision component.

### ***Similar Findings from Other Countries***

For comparison purposes, it is of interest to look at the relative re-offending rates in a related jurisdiction. In Scotland, the re-offending rate for those released after a custodial sentence was about 41% (Justice Directorate 2020). In contrast, the re-offending rate for what are referred to in Scotland as community payback orders (a form of community order with requirements attached) was lower -- at about 29%. As with England and Wales, the longer the prison sentence, the less likely the individuals were to re-offend. Scottish officials offer an explanation: 'Short custodial sentences have higher reconvictions than longer sentences. This is largely because offenders who are given shorter sentences commit relatively less serious crimes such as shoplifting and tend to commit more of these crimes than those committing more serious crimes and so they are reconvicted more often' (Justice Directorate 2020, p. 6).

Overall, these various studies in England and Wales and in Scotland that reveal higher re-offending rates for short term custody over community sanctions are consistent with research in other parts of the world (Villettaz et al. 2015; Zara and Farrington 2016). For instance, Dutch researchers also recorded higher re-offending rates for custodial sentences than suspended sentences (Aarten et al. 2015; see also Mears and Cochran 2018; Lulham et al. 2009).

## 6. RESEARCH PRIORITIES

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Reducing re-offending is only one of five primary sentencing objectives in England and Wales. Nevertheless, it is vital that sentencing options contribute to reducing offending in the most cost-effective way. The research consensus suggests that short term prison sentences are not a cost-effective means of reducing re-offending. Beyond this conclusion, several areas of interest remain to be addressed.

First, when imposing community orders or SSOs, sentencers may select from a range of requirements. Yet little is known about the relative effectiveness of different requirements or the ways that different requirements interact. If researchers could establish which specific requirements, or combinations of requirements, contributed most to reducing re-offending, this information would be of great use to sentencers. It would also be helpful if researchers could establish why offenders sentenced to an SSO without requirements re-offend at a rate that is very similar to those who receive an immediate custodial sentence (and much more frequently than those receiving other community-based sentences). This may be caused by the types of offender



who receive this particular disposal or by an inherent flaw in this type of sentence, or some other reason.

Second, more research is needed upon the effectiveness of the SSO. The volume of these orders has increased dramatically over the past 15 years.<sup>20</sup> Again, research to date has demonstrated the cost-effective nature of this form of custodial sentence, relative to immediate terms of custody. What is needed now is a better understanding of the factors explaining the relative success of SSOs and the optimal periods during which a sentence is suspended. Finally, moving beyond the question of relative effectiveness in reducing offending, it would be worth exploring public reaction to the use of SSOs.<sup>21</sup>

Third, many other jurisdictions employ intensive community-based orders which are designed to be as punitive as a short term of imprisonment. The recent White Paper proposes to introduce such a high-end supplement to improve the scope of community orders.<sup>22</sup> The proposal is similar to sanctions in other jurisdictions, such as the Intensive Correction Order and the Community Corrections Order in Australia or the Conditional Sentence of Imprisonment in Canada (see Maxwell (2017) and Roberts and Cole (2020)). These sanctions permit the offender to reside in the community, but only subject to very restrictive conditions, including a curfew and possibly electronic monitoring. Breach of these conditions should result in committal to custody. Both sentences were created to offer courts a plausible alternative to imposing a relatively short term of institutional imprisonment.

The research on these sanctions is limited, but generally finds that such intensive orders perform better than prison in reducing re-offending. For example, Wang and Poynton (2017) report a significantly greater reduction in re-offending for offenders sentenced to an Intensive Correction Order compared with offenders who received a prison sentence of up to 24 months.

Finally, Sentencing Commissions and Councils in other countries have published comprehensive reviews of the effectiveness of the sanctions in their jurisdiction (e.g. Gelb et al. 2019). A similar exercise is long overdue in England and Wales. While the Ministry of Justice has published a number of reports examining select disposals, a more comprehensive, comparative exercise, in conjunction with the Sentencing Council would provide courts with useful information on the crime preventive effectiveness of the sanctions they deploy.

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20 The increase in the use of SSOs since 2005 represents the most dramatic shift in sentencing practices in England and Wales in decades (for discussion, see Irwin-Rogers and Roberts, 2019).

21 Research could explore the extent to which the public is aware of the nature of SSOs and whether there is public support for, or opposition to, the expanded use of this form of custodial sentence.

22 The Centre for Social Justice recently proposed a new custodial sentence called the Intensive Control and Rehabilitation Order (ICRO). This sanction would be served wholly in the community with the offender being subject to electronic monitoring, curfew monitoring and regular periodic reviews by a court; See <https://www.centreforsocialjustice.org.uk/library/sentencing-in-the-dock-the-case-for-a-new-sentence-in-the-criminal-courts-of-england-and-wales>.

## 7. SUMMARY AND CONCLUSION

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Different types of sentences (e.g. custodial or community-based) are associated with different rates of re-offending. Longer custodial terms are associated with progressively lower re-offending rates. This is likely to be explained in part by the ageing of the longer serving prisoners. Short term custody (with or without supervision on release) is linked to higher re-offending rates than either community orders or SSOs. The studies were not able to show whether the introduction of supervision to offenders released after custodial sentences of less than twelve months was effective or not because differences in how data were collected preclude such comparisons. In turn, community orders with requirements were associated with higher re-offending rates than those receiving SSOs. Overall, these findings with respect to re-offending with different sentence types were consistent across gender and ethnicity. Ultimately, this research suggests that the selection of a sentence does make a difference with respect to the likelihood of re-offending.

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