
DESISTANCE AND SENTENCING

A review of research

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EXECUTIVE SUMMARY

- Desistance is the cessation of offending by those with previous patterns of criminal behaviour. Desistance is a gradual, non-linear process, not simply a one-off event. This paper reviews research on the desistance process and considers the implications of key findings for the sentencing process.
- Research into offending over the life course has produced one of the most robust findings relevant to desistance: the age-crime curve. This shows a steep increase in offending over the teenage years, which typically peaks between the late teens and early 20s, then rapidly decreases, flattening into a slower decline. Most people eventually desist from crime.
- This finding has led to a focus upon the role of maturation in the desistance process. Studies have documented a relationship between the development of psychosocial maturity (a combination of psychological and sociological factors) and the rate of criminal offending.
- Research also clearly shows that multiple and interacting individual and structural factors combine to facilitate or impede desistance. Studies have demonstrated the potential for criminal justice interventions to function as turning points. At the same time, involvement in the criminal justice system can reduce the likelihood of desistance for some offenders.
- Findings from desistance research have implications for many aspects of sentencing, most notably: approaches to young adult offenders; maturity; criminal records; pre-sentence reports; alternatives to custody; mitigation at sentencing, and strengths-based sentencing.
- Desistance research is becoming more deeply embedded in criminal justice, including in sentencing policy and practice in England and Wales. The reform and rehabilitation of offenders is one of the five statutory purposes of sentencing.
- Further work is needed to demonstrate how desistance research can be applied to court processes, as desistance in this context is comparatively underexplored to that of prisons and probation.

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1. BACKGROUND AND SCOPE OF REVIEW

The cessation of offending behaviour is referred to as desistance from crime. Sentencing decisions are one of many potential influences on the likelihood of desistance being achieved. This report explores the relevance of research findings about desistance for sentencing, and the extent to which these findings have been implemented into sentencing practices. First, a definition of desistance is provided, followed by a discussion of the relevance of desistance for sentencing. Several key sentencing-related issues will then be addressed, drawing upon findings from desistance research. Recent developments will be highlighted, before remaining gaps in knowledge and priority areas for further investigation are set out.

2. DEFINING DESISTANCE

Desistance is the process by which an individual begins to reduce their level of offending, terminate involvement in offending, and ultimately maintain a state of non-offending (McCuish et al. 2020). The key word in this definition is “*process*” – desistance is now understood to be gradual, not a one-off event. The emergence of the study of desistance can be traced back to criminological studies of the age-crime relationship in the early 20th century. The asymmetrical bell shape of the ‘age-crime curve’ shows that the prevalence of offending starts with conformity as a young child, then some offending in early adolescence, followed by an accelerated rate of offending in the mid- to late teens, and finally at least some degree of return to conformity in adulthood (Shapland and Bottoms 2011). Age-crime charts provide clear visual representations of the relationship between age and crime that are important for incapacitation and re-entry policies (Loeber and Farrington 2014). There are different types of age-crime charts. Cross-sectional offender-based charts show a ‘snapshot’ of all recorded offenders in a given year and the unit of measurement is the offender, meaning each offender is counted as one regardless of whether they have committed one or multiple offences. Cross-sectional offence-based charts are the most commonly published, taking a snapshot of the total number of offences committed by offenders at each age point (Bottoms and Shapland 2011). The inclusion of multiple age cohorts in cross-sectional charts means it can be difficult to disentangle cohort, age and period effects (Loeber and Farrington 2014). Particularly relevant for discussions about sentencing are longitudinal offender-based charts. Longitudinal curves measure the frequency of offending over the lifetime (or a portion of it) for a specified subgroup of recidivist offenders, such as ‘chronic offenders’, defined by Piquero, Farrington and Blumstein (2007) as those with five or more convictions by the age of 40 in their analysis of the Cambridge Study in Delinquent Development. The shapes of longitudinal and cross-sectional curves are often not actually very different, demonstrating that even highly recidivist offenders show a sharp decline in offending between the ages of 20-30 (Bottoms and Shapland 2011).

This age-related decline in offending is closely linked to the concept of desistance, particularly among young adult recidivists. Three findings have consistently emerged from theories attempting to explain the age-crime curve: (i) offending peaks in late adolescence and declines with age – consistent with the age-crime curve; (ii) despite this trend, a significant minority of individuals deviate from it – committing crime more frequently, starting to offend at younger ages, and/or continuing to offend into later adulthood; (iii) eventual desistance is the norm, even for chronic offenders (Bersani and Doherty 2018). Something all available age-crime curves show is that reaching 18, the legal age of adulthood in England and Wales, is not characterised by a sharp change (or decrease) in offending at precisely that age, nor does it necessarily determine the downslope of the curve. Desistance is most likely during late adolescence and early adulthood, irrespective of the age of onset of offending. The finding that official desistance largely occurs in early adulthood is inconsistent with many criminal justice policies, with implications for sentencing and incapacitation (Doherty and Bersani 2018). Long sentences administered in the adult court to young offenders, given what we know about normative outgrowing of delinquency in young populations, will not serve to lower the age-crime curve (Loeber and Farrington 2014).

Desistance has attracted considerable theoretical and empirical attention in recent years due to its implications for policies and practices concerned with reducing re-offending. Many factors are associated with desistance, including supportive relationships, employment and sobriety. Broadly speaking, these fall into three categories. Early studies sought to understand desistance at the *individual* level, including ‘maturational reform’ theories which view desistance as a symptom of physiological changes that come with ageing (Glueck and Glueck 1974; Gottfredson and Hirschi 1990), and rational choice theories that consider change a result of individuals choosing to desist (Cornish and Clarke 1986). *Structural* theories prioritise historical, institutional, and cultural drivers of behaviour and focus on the correlation between desistance and family relationships and employment, which create social bonds conducive to conformity (Laub and Sampson 1993). More recently, in *interactionist* theories, desistance is understood in relation to the interaction between changes in an individual’s social context and internal factors such as attitudes towards offending (Bottoms et al. 2004; Massoglia and Uggen 2010). Whilst there is increasing conceptual overlap between theories, the nature of much desistance research as qualitative, individualistic and exploratory has made the accumulation of findings challenging, and its impact on policy and practice muted (Weaver, 2019).

Research reviews show that strong ties to family and community, fulfilling employment, recognition of their worth from others, feelings of hope and self-efficacy, and a sense of meaning and purpose are the most important factors when it comes to desistance (Maruna and Mann 2019). The most common elements in the desistance process are the development of maturity, emergence of new and meaningful social ties and renegotiation of personal identity (McNeill and Weaver 2010). As such, research has moved beyond binary, either/or explanations of desistance towards more integrative theories. Desistance cannot be explained by environmental factors alone or deliberate individual choices independent of situational context.

3. DESISTANCE AND SENTENCING

Findings from the desistance literature contain important lessons for the sentencing process. Only two decades ago the term desistance was largely unknown, and now the concept has been described as ‘almost ubiquitous’ in some criminal justice systems (Maruna 2017, p. 5). There has been far less research into the implications of desistance for sentencing than for prisons and probation. However, the relevance of desistance for sentencing is clear. In sentencing offenders, courts in England and Wales are required to give due consideration to five objectives: punishing the offender; reducing crime; protecting the public; making the offender ‘give something back’; and reforming and rehabilitating the offender.

Despite sentencing objectives that have links to desistance and related concepts, the prison population remains at historically high levels, re-offending rates are persistently high, and the ‘revolving door’ of crime is still very much in motion. In light of the expansion of the prison population, including increased imprisonment of individuals later in the life course, research and theory on desistance should be at the centre of debates about criminal justice policy and practice, including incapacitation and sentencing decisions (Doherty and Bersani 2018). Given the established importance of early adulthood for the onset of, and experimentation with, desistance processes, research on desistance has the potential to shape responses to early infractions in ways that nurture and facilitate more positive behaviours and identities (Halsey et al. 2017).

Desistance researchers have identified the following core principles for criminal justice practice (McNeill et al. 2012):

- being realistic about the complexity and difficulty of the process;
- individualising support for change;
- building and sustaining hope;
- recognising and developing people's strengths;
- respecting and fostering agency (or self-determination);
- working with and through relationships (both personal and professional);
- developing social as well as human capital;
- recognising and celebrating progress.

This is not a straightforward endeavour. Bottoms and Shapland (2019, p. 262) identified four challenges for implementing the findings of desistance research into criminal justice supervision, which are also relevant to sentencing:

- how the research about desistance has been understood;
- perceived problems in operationalising the concept of desistance;
- the tension between desistance and the ‘risk agenda’;
- political responses to desistance.

Whilst desistance is not necessarily tantamount to the termination of offending, the point at which individuals cease offending is still relevant. This is particularly the case for sentencing policies that

consider someone's risk for recidivism as central to decision-making. Defining a process of multiple changes over time that result in the non-occurrence of certain behaviours is complicated. It involves distinguishing between desistance as the complete termination of offending, desistance as the movement from a relatively higher rate of offending to a relatively lower rate, or as the movement from relatively more serious or harmful offences to relatively less serious forms of offending (Mulvey et al. 2004).

Conceptualising desistance as a significant decrease in offending behaviour rather than complete cessation invites consideration of dynamic factors influencing the shift, acknowledges the intermittency of much offending, and could reveal more subtle influences of sanctions or interventions that would not be identifiable if using a more stringent definition. The flip side of this is that such a definition depends on interindividual variability rather than a standard that can be applied uniformly across all cases, which has clear implications for being implemented into standardised sentencing guidelines. The complex nature of desistance has implications for whether, and how, criminal justice policies can assist in facilitating (or otherwise impede) the process.

Three findings from desistance research have significant implications for sentencing: (i) desistance is complex and complete cessation is difficult to achieve; (ii) most people will ultimately desist; and (iii) maturation – a process that is not physiologically complete until approximately age 24 – plays an important role in desistance. Research suggests almost all offenders have a desire to desist (e.g. Bottoms and Shapland 2011), and that decisions to desist can predict subsequent self-reported desistance. However, such motivation, and the actuality of realising it, can be thwarted by various obstacles. Two such obstacles consistently identified in research are custodial sentences and criminal records (Soyer 2014). The fragility of desistance is not simply the result of individual shortcomings but also due to criminal justice agencies' actions, or failure to act (Halsey et al. 2017). It is very difficult for offenders to build a non-offending life for themselves solely through their own efforts.

Research suggests that involvement in the criminal justice system can interrupt the natural process of desistance that most offenders go through. Sentencing options can influence the future behaviour of even prolific offenders; a recent study published by the Ministry of Justice found the odds of re-offending for those with over 50 previous offences were approximately one third higher where a short-term custodial sentence had been given compared to a community order or suspended sentence order (Hillier and Mews 2018). Prison can reduce the likelihood of desistance by undermining the factors – steady employment, stable accommodation, strong family relationships – which promote desistance. Incarceration has been found to have negative effects on future offending behaviour, particularly for less active offenders (e.g. Mulvey et al. 2010). The issue of maturation has wide-reaching implications for sentencing, one being that, due to their capacity to change, young adults are in a strong position to benefit from rehabilitative sentences and restorative measures (Howard League for Penal Reform 2019). Reflecting these points, the House of Commons Justice Committee stated that:

'Dealing effectively with young adults while the brain is still developing is crucial for them in making successful transitions to a crime-free adulthood. They typically commit a high volume of crimes and have high rates of re-offending and breach, yet they are the most likely age group to stop offending as they 'grow out of crime'. Flawed interventions that do not recognise young adults' maturity can slow desistance and extend the period of involvement in the system.' (House of Commons Justice Committee 2016).

Existing knowledge about desistance has relevance for many aspects of sentencing, including: approaches to young adult offenders; maturity; prior convictions; pre-sentence reports; mitigation; alternatives to custody; and strengths-based sentencing. The implications of key findings from the desistance literature for each of these sentencing issues are now addressed in turn.

4. IMPLICATIONS OF FINDINGS ABOUT DESISTANCE FOR SENTENCING

Young adult offenders

For several years now scholars have been advocating a distinct approach to the sentencing of young adults that recognises the transitions from adolescence to adulthood. For example, von Hirsch (2001) made the case that, to be proportionate punishments, sentences for juveniles should be scaled well below those applicable to adults due to juveniles' lesser culpability, greater sensitivity to punishment and the need for increased 'tolerance' of juveniles by the criminal justice system. Such tolerance is important given the key research finding that contact with the criminal justice system can undermine people's ability to desist from crime. This is particularly pertinent for young adults, who may still be maturing, yet have the potential to desist if given the chance. The criminal justice system in England and Wales recognises that young adults aged 18–25 years should be treated as a distinct category of defendant for the purposes of sentencing, and the Sentencing Council's expanded explanation of 'age and/or lack maturity', brought into force in October 2019, has established the particular importance of age and lack of maturity as a mitigating factor for young adults (Emanuel et al. 2021).

As noted, most offenders age out of crime during early adulthood as a result of factors beyond their contact with the criminal justice system. However, prior and ongoing involvement with the criminal justice system can significantly undermine young adults' ability to desist from crime. The Edinburgh Study of Youth Transitions and Crime found that children who become known to services early on tend to be slower to desist than those who are similarly involved in offending behaviour but do not become known to services (McNeill and Weaver 2010). Another study found that the deeper a young person enters the criminal justice system, the *less* likely they are to desist (McAra and McVie 2007). Once known by police and social services, individuals find themselves over-policed compared to their peers, causing a labelling effect that reinforces rather than interrupts criminal identities and pathways.

Custody can have a particularly damaging effect on young adults and may actually increase the likelihood of offending. By interrupting education and employment, incarceration may inhibit financial self-sufficiency and prolong dependency. Incarceration is more likely than non-custodial options to be associated with re-offending (for a review, see Hamilton 2021). When compared to community orders or suspended sentence orders, short-term immediate custodial sentences have been found to be less effective in reducing re-offending among 18- to 20-year-olds than among any other age group, except those aged 50 and over (Hillier and Mews 2018). On the other hand, HM

Inspectorate of Probation (2021) recently reported that children subjected to court orders can be supported in their desistance efforts through multi-agency working and access to a range of services that develop their strengths and encourage positive relationships. Research also shows that the way young people are treated by the criminal justice system has important implications for future compliance with the law. Perceptions of the legitimacy of law and the fairness of the legal system may be shaped by the ongoing encounters that individuals have with police and court personnel. These legal socialisation experiences in adolescence may be critical components of later legal compliance (Mulvey et al. 2004).

These research findings have led to an argument for minimal intervention and maximum diversion, with the use of out of court disposals wherever possible. For example, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced a new system of cautioning to divert more children away from court. More recently, the Youth Justice Board introduced a new, desistance-oriented, assessment model called AssetPlus, designed to emphasise the importance of protective factors for children and young people's ability to desist from crime. However, studies suggest that the implementation of the AssetPlus assessment tool has had limited success in aiding practitioners to balance risk- with desistance-related factors, largely due to a lack of understanding of desistance theory and how to apply it in practice and a tendency to resort to 'business as usual' assessments and deficit-focused intervention plans (Hampson 2018; Deering and Evans 2021). The practicality of taking a diversionary approach depends on the severity and frequency of an individual's offending behaviour. The Howard League for Penal Reform (2019) has argued that when sentencing young adults, a community sentence should always be fully explored, even in instances where the custody threshold has been met, and that efforts should always be made to obtain a pre-sentence report for young adults whose distinct needs and characteristics may not be obvious without in-depth assessments.

The role of maturity

Emotional and cognitive maturation continues throughout adolescence, and this maturity is linked to an individual's criminal responsibility, amenability to rehabilitation and potential for desistance from crime (Mizel and Abrams 2018). Maturity is a multifaceted concept that goes beyond age, thus the relationship between maturation and desistance is complex. Brain maturation, alongside social learning, lead to improved internal controls, identifiable via decreases in risky, reckless and sensation-seeking behaviours and improvements in problem-solving, future orientation and decision-making. Improved controls are thought to reduce the commission of delinquent acts and increase prosocial behaviours (Loeber and Farrington 2014). The relationship between age and offending is understood to reflect underlying changes in biology, social contexts, attitudes and life circumstances that combine to influence motivation to desist from crime, as opposed to a unitary maturation process (Weaver and McNeill 2007). The term 'psychosocial maturation' understands maturation as a combination of psychological/neurodevelopmental and socio-structural change. There is physiological evidence that the process of psychosocial maturation is not complete until around the age of 25, far later than when cognitive capacity reaches adult levels (e.g. Steinberg et al. 2009; Icenogle et al. 2019).

Several pieces of research support the ongoing role of maturation in offending behaviour from adolescence to early adulthood. Two elements of psychosocial maturity that feature strongly in desistance research are 'responsibility' and 'temperance' (i.e. regulation of impulsivity) (Bottoms

and Shapland 2016). With regards to temperance, recent physiological evidence shows that the pre-frontal cortex, responsible for the capacity for full impulse control, does not fully develop until the mid-twenties (Johnson et al. 2009). The potential relevance of this to the decline in offending levels in the early twenties is clear. Responsibility refers to the process in which people begin to take responsibility for the direction of their lives and start making independent decisions. Evidence suggests that offenders who seriously decide to attempt to desist have lower subsequent re-offending, despite the multiple obstacles often encountered (Shapland and Bottoms 2017). The Pittsburgh 'Pathways to Desistance Study' (Monahan et al. 2014; Mulvey and Schubert 2016) is the leading empirical source for the importance of maturation for desistance. This comprehensive large-scale study followed 1,300 serious adolescent offenders into young adulthood over a period of 10 years to explore how developmental processes, social context and interventions and sanctioning experiences affect the process of desisting from antisocial activities and crime.

The findings showed a relationship between the development of psychosocial maturity and the rate of criminal offending. When patterns of psychosocial maturity were analysed in relation to offending trajectories, offenders who desisted from antisocial activity during adolescence showed significantly greater increases in psychosocial maturity than those who persisted into adulthood. A more recent study of the relationship between maturation and desistance, which drew upon data from the Pathways to Desistance study, found that measures of consideration of others and moral disengagement were related to lower levels of offending (McCuish et al. 2020). Particularly during adolescence and early adulthood, maturation is a key marker of growth and change that means individuals are more receptive to adult roles and transformations in identity. Given that such roles and identity changes are prominent in desistance theories, maturation may also have a role to play in explaining desistance (McCuish et al. 2020).

These findings have led some to suggest that it is reasonable to consider maturity for legal purposes, for example when considering culpability. Many courts now recognise that the brain is continuing to mature throughout adolescence and into early adulthood, which affects both culpability and the potential for change over the life-course, and the Sentencing Council for England and Wales added 'Lack of maturity' to its list of mitigating factors (Coyle 2019). A psychosocial maturation screening tool for young adult men (18+), created from factor analysis of items from HM Prison and Probation Service's Offender Assessment System, was integrated into the criminal justice system as a means of understanding desistance at these earlier age stages (Wakeling and Barnett 2017). However, the tool demonstrates only adequate to good psychometric properties, therefore further research is needed to test and improve the tool before it is widely implemented. The Howard League (2019) argued that consideration should be given to how mitigating factors uniquely affect young adults, for example they may be exacerbated on account of their ongoing physical and mental development. Thus, an assessment should be made of the extent to which the offence was influenced by lack of maturity. Whilst such recommendations have made their way into sentencing guidelines, it is unclear how this plays out in practice in courts.

A recent report by the Magistrates Association found that maturity was most likely to be mentioned by the Probation Service in a pre-sentence report (Moody 2021). However, pre-sentence reports did not always contain adequate detail of the type of assessment carried out, how lack of maturity might relate to the offence, and whether it had affected sentencing recommendations. Magistrates agreed that to take maturity into consideration, any lack of maturity should be linked to offending behaviour, and information should be provided as to whether specific sentencing options might be

more appropriate or effective due to maturity assessments. Without in-depth understanding of the psychology and sociology of maturation, there is a danger that the concept is reduced to simply ‘something that impacts on doing stupid things’, rather than something that is mitigating.

Prior convictions, sentencing and desistance

Most offenders being sentenced have been previously convicted. Recent data show that the number of first-time offenders convicted for an indictable offence decreased for three years in a row whilst the proportion with 15 or more previous convictions has increased, to 39% (Ministry of Justice 2020a). The Sentencing Council’s Crown Court Sentencing Survey found that the more previous relevant convictions an offender has, the more likely they are to be imprisoned (Sentencing Council 2015).

The gradual nature of desistance is relevant to debates about the extent to which a defendant’s prior criminal record should lead to a more severe sentence. Prior convictions essentially increase the severity of the current conviction. If a long period of time has been spent crime-free the courts do take this into account at sentencing. Where previous convictions occurred a long time ago, they are unlikely to have a significant effect on the sentence (Sentencing Council 2015). Section 65(2) of the Sentencing Act 2020 specifies that sentencers *must* treat as an aggravating factor any relevant previous conviction, having regard to its relevance to the current offence and the time that has elapsed since the previous conviction. Although courts disregard a high proportion of prior convictions at sentencing (see Roberts and Pina-Sanchez 2014), in many cases previous convictions aggravate the sentence. Therefore, there have been calls for legislation to annul prior criminal convictions after a period of crime-free activity (Bottoms and Shapland 2019).

The gradual and complex nature of the desistance process can clash with the recidivist sentencing premium. Most offenders on a journey to complete desistance will suffer periodic lapses into criminality despite having made generally positive progress overall. Imposing harsher punishment on somebody who has made significant effort to desist could be self-defeating. Even the most prolific of offenders has the potential to desist from crime. Sentencing policies that rely heavily on criminal history are based upon an assumption of stability in human behaviour, and underestimate the very real possibility of change demonstrated across two decades of desistance research.

Related to this is the fact that the factors that explain an individual’s desistance from crime are not necessarily simply the reverse of the factors that explained why he or she started offending (i.e. risk factors). New roles, responsibilities, and interests often prompt people to re-evaluate how they would like to live their lives, which can then lead to less offending. Desistance is associated with both enhanced human capital (individual skills or aptitudes accrued through, for example, training or education) and social capital (social or economic benefits accrued through social networks). The implication of this is that focusing on risk factors identified from previous offending behaviour at sentencing may not be the most effective way of supporting desistance. Writing off would-be desisters based on risk assessment scores, even if they are genuinely trying to change, will likely hinder movements towards a non-offending self-identity and maintenance of pro-social ties or employment, which are all conducive to the desistance process. Instead, interventions to positively influence an offender’s current circumstances and support them in overcoming practical obstacles to desistance should be considered at sentencing.

Pre-sentence reports

A pre-sentence report (PSR) is an expert assessment of the nature and causes of an offender's behaviour, the risks they pose and to whom, and includes an independent recommendation of the sentencing option(s) available to the court. PSRs are prepared by the Probation Service to assist the court when they may be considering a community or custodial sentence, by providing a greater understanding of the background and context of the offending behaviour, rather than just the details of the offence (see Robinson 2022). PSRs are thus a perfect opportunity for efforts at desistance to be objectively recorded and taken into consideration when making sentencing decisions.

However, the number of PSRs produced has reduced over the past decade. This is largely due to pressure to reduce costs in the public sector; it is costly to do a full PSR due to the need to adjourn the court and return for a further hearing (Clinks 2019). Instead, there has been a preference for Fast Delivery Reports (short, written reports) or Stand Down (Oral) reports and, in many cases, there is no PSR at all. This is a concern as information included in a PSR could have real implications for the offender's future and their opportunities for desistance.

A recent report by HM Inspectorate of Probation (2021) found that the quality of pre-sentence information varied by type of report. Whilst nearly all of the full reports examined in their sample were judged to be sufficiently analytical and personalised to the service user, only about two in three of the oral reports were considered to be so (HM Inspectorate of Probation 2021). Importantly, reports were less likely to be judged as sufficient for those with a high likelihood of re-offending, who tended to have multiple and complex needs which required careful consideration be given to the most appropriate interventions and how they could be integrated into a coherent and holistic programme of work. The pre-sentence information was also more likely to be considered sufficient when it had drawn upon all available sources of information and considered factors related to both risk of harm and likelihood of re-offending, which was least likely in oral reports.

A recent study of desistance-informed youth justice practice in Wales found that PSRs often missed opportunities to explain to the courts the maturation process and the challenging social and economic conditions within which young people were negotiating transitions into adulthood, and an emphasis on desistance usually being characterised by both successes and setbacks was also often missing (Deering and Evans 2021).

Together these findings demonstrate the importance of the quality of PSRs for sentencing outcomes and desistance. In recognition of the vital role that PSRs play in the criminal justice system, in 2021 the government launched a PSR pilot to evaluate an Alternative Delivery Model. This model includes the delivery of short format written reports for three priority cohorts identified as having more complex needs (female offenders, young adult offenders and offenders who are deemed at risk of custody) and thus requiring a more comprehensive written PSR as opposed to an oral report (Ministry of Justice 2021). To make a convincing case for desistance at sentencing, courts need to understand what the individual is doing and whether there is already evidence of desistance. High-quality PSRs could provide just this, yet it appears that such detail is often not included.

PSRs can also provide an opportunity for the defendant to have a voice and for rapport and trust to be built between them and their probation officer. This is important because perceptions of those who have offended are central to understanding potential crime-reducing strategies (Kroner et al. 2019) and there is robust evidence for the importance of positive and supportive relationships in

the desistance process (e.g. Weaver 2012). A study of PSRs in Ireland found that the time taken between the court requesting a PSR and a sentencing decision being made, and the report-writing process itself, enabled probation officers to track and 'test' motivation and capacity to change, which informed their assessment of suitability for various sanctions (Carr and Maguire 2017). In addition to the formal purpose of a PSR, a secondary purpose recognised by judges and probation officers who participated in this study was that the report-writing process provides a momentary pause during which the client had the opportunity to think about whether they wish to engage by demonstrating willingness and capacity to change. In England and Wales, sentencing can be deferred for up to six months and the greater use of deferred sentencing may provide more opportunities to engage with a desistance process between conviction and sentencing (see Roberts et al. 2022).

However, the extent to which the defendant has a chance to tell their story is often limited. Recent research with persistent adult offenders in Scotland found that they perceived a lack of chance to challenge things in court, particularly due to focus on their criminal history and current community conditions (Schinkel et al. 2019). Other issues that have been identified are report writers' editing and reinterpretation of their narrative, and judges' tendency to 'gloss over' the personal and social circumstances contained in the report. This is problematic because evidence for the importance of informal social control in desistance research elevates the impact of nonprofessional contexts and shows that, outside of professional intervention, 'extra-legal' circumstances, such as family relations, matter the most (Sandøy 2019). Contemporary systems preoccupied with getting cases through the courts quickly risk defendants becoming de-centred in the PSR process. Findings from the desistance field suggest that this will be counterproductive as being treated like a person rather than a number can be facilitative of desistance, whilst impersonal categorisation can be dehumanising and demotivating (Bullock and Bunce 2018; Bullock et al. 2019).

Research in England and Wales has also found that the current emphasis on speed has led to the assessment of risk and needs and sentence planning often being conducted post- rather than pre-sentence (Robinson 2017). Inevitably, this means that the court probation officer who writes the PSR will not be the supervising officer in the community. Thus, the desistance-compatible idea of laying the foundations of a lasting offender-supervisor relationship, along with the possibility of beginning some rehabilitative work at the PSR stage, is 'a thing of the past' (Robinson 2017, p. 347). Further research is needed into the neglected research area of defendant's views of these recent changes to sentencing, but these changes undoubtedly pose a number of risks to the quality of that experience, as defendants may be more likely to feel rushed and confused, and less likely to feel fully engaged in the process (Robinson 2017). This risk is significant, because research confirms that involvement, agency and autonomy throughout the criminal justice process is vital for successful desistance (Shapland et al. 2012).

If afforded sufficient time and attention, an informal function of the PSR can be to demonstrate to defendants that they are being considered as unique individuals, and to reassure them that someone cares about them and what happens to them, and sees them as a whole person rather than just a case number (see Tata 2010). For example, in Belgium, social reports are written by judicial assistants, whose professional values explicitly include the building of relationships of mutual trust and confidence with the defendant in order to be able to facilitate desistance (Beyens and Scheirs 2010). Almost no research has been conducted on how offenders themselves experience the PSR process (Robinson 2022). A report by HM Inspectorate of Probation found that the process

of preparing the PSR was perceived by most as fair, and one individual said they understood everything discussed in the report interview (2017, p. 25). Research with probation officers revealed that the report writing process enabled them to build a relationship of trust with the offender, in turn allowing them to explore their attitudes and motivation, which was necessary to assess suitability for probation and referring the defendant to relevant support services (Maguire and Carr 2017). Probation officers in this study also felt the final interview was a chance to ensure the offender understood the content of the report and the recommendations. Research with legal professionals has found that they perceive that PSRs enable them to treat defendants individually and assist with the efficient processing of guilty pleas (Tata 2010).

There perhaps needs to be clearer and more consistent guidelines in terms of the defendant's involvement in the PSR process, and how the report is used to inform sentencing decisions. Insights from those who are being sentenced themselves could be integrated into discussions about risk reduction and management, rather than solely relying on a risk assessment instrument for assessment and intervention planning. Such an approach would enable the individual to have a meaningful role in their transition to a lifestyle of reduced criminal activity (Kroner et al. 2019). Research on the impact of the PSR process on sentencing outcomes and re-offending is scant, although a study in the Netherlands found that defendants who had a PSR were related to less 'controlling' and more 'diverting' sentencing outcomes than those without such a report (van Wingerden et al. 2014). Further research on the impact of the PSR process on offenders' understanding of the sentencing process and post-sentencing outcomes in England and Wales is needed.

Mitigation

Linked to the desistance-supportive potential of PSRs is the issue of mitigation. Mitigating factors reduce seriousness or reflect personal mitigation and suggest that a less severe sentence is appropriate. Information in PSRs is often used to support claims for personal mitigation. Personal mitigation includes elements relating to the offender and his or her circumstances, history and likely future path, and can play a central part in encouraging desistance (Shapland 2011). Personal mitigation is key to sentencing decisions and can be the decisive factor when choosing a community penalty in preference to imprisonment, and in imposing shorter custodial sentences.

Personal mitigation factors that best reflect desistance-supportive practice include age and/or lack of maturity and determination and/or demonstration of steps having been taken to address addiction or offending behaviour. However, the Sentencing Council's Crown Court Sentencing Survey found that whilst each mitigating factor was associated with a reduced chance of a custodial sentence, the presence of aggravating factors appeared to have a much stronger influence on decisions about sentence length than additional mitigating factors (Sentencing Council 2015). The PSR is an essential provider of information on personal mitigation, where one is requested, yet the current key role of PSRs is to inform the sentencer on risk of re-offending and/or harm.

The plea in mitigation provided on behalf of the defendant may include reference to wider circumstances at the time of the offence than those covered by the (brief and vague) guidance on 'offender mitigation' (Shapland 2011). This suggests that in practice sentencers do go beyond the guidance to consider social and personal circumstances such as youth, immaturity/vulnerability, factors about the individual's past (including good character, gaps in previous offending and deprived background), and factors relating to the individual's present and future (including currently

employed/training, addressing drug/alcohol problems, making amends for offending behaviour and having a supportive family). Many of these have obvious relevance to encouraging desistance.

Whilst support from professionals is often key to successful desistance, input and agency from the offender is vital, making personal mitigation an essential opportunity for sentencing that aims to encourage desistance (Shapland 2011). However, personal mitigation is often not fully recognised in sentencing policies, inadequate attention is paid to personal mitigation at sentencing and, where factors of personal mitigation are considered, they are often inconsistently applied to sentencing decisions. Shapland (2011) has argued that personal mitigation as currently stipulated in England and Wales is backwards-looking due to disproportionate focus upon the remorse shown by the offender, and urges that motivation to change and evidence that action is beginning to be taken to change be considered separately from remorse when discussing mitigation. Shapland made several suggestions for a new personal mitigation of desistance, including (2011, pp. 77–78):

- Recognise as mitigating elements in guidance, for example:
 - Offers of employment;
 - Agreement to participate in substance abuse programmes and other skills training (particularly learning to drive);
 - Seeking out help;
 - Participating in debt advice;
 - Family support.
- Replace the list of mitigating factors with guidance that a package needs to be developed which combines individual elements and decisions with social support from families, criminal justice or social agencies.
- Provide sentencers with information about what has been found to be more effective for overcoming different obstacles to desistance.
- Make personal mitigation key.

Considering personal circumstances through a desistance framework would likely encourage individualisation of the sentencing process and maximise the chances that the sanction imposed gives the individual the best chance of desistance.

Alternatives to custody

In order to promote desistance, community sentences and other alternatives to imprisonment should be employed whenever possible. The community order (CO) provides a range of 15 requirements that can be combined when sentencing a person. It was designed as a flexible and individualised approach to sentencing. Research conducted by the Ministry of Justice that compared re-offending rates of those sentenced to immediate imprisonment (sentences of less than 12 months), suspended sentence orders (SSOs) or community orders found that those who served a prison sentence or an SSO without requirements re-offended much more frequently than those receiving other community-based sentences (Mews et al. 2015). However, the number of COs imposed each year has decreased by 46% over the past decade (Guilfoyle 2021). Furthermore, the way in which community rehabilitation has evolved in England and Wales is in potential tension with some of the aforementioned implications of desistance research. Bottoms (2021) has identified

these as: the 'risk' focus of managerial rehabilitation, whereby 'offender managers' are tasked with arranging various interventions in the offender's life with the aim of reducing crime; and the emphasis on criminogenic needs (i.e. risk factors for offending). The former is in tension with the suggestion that criminal justice systems should move away from programmes to 'fix' offender's deficits and towards services that will support movements towards desistance (e.g. Porporino 2010), and the latter can downplay the importance of encouraging positive future possibilities that could displace offending.

Desistance research has already had a notable impact on probation policy and practice, particularly in terms of the importance placed upon relationships (both personal and working relationships) and the social context (and obstacles within it) when attempting to encourage change. The Offender Rehabilitation Act 2014 replaced the 'supervision requirement' with a 'rehabilitative activity requirement' (RAR), intended to be 'an enabler of flexible – and potentially innovative – rehabilitative work amenable to delivery in a fragmented and marketised world' (Robinson and Dominey 2019, p. 452).

Research tells us that desistance-focused support needs to be explicitly not 'fragmented' and based on positive relationships between aspiring desisters and their supervisors. The wider reforms to the delivery of probation services introduced by the Offender Rehabilitation Act 2014 may have actually deflected attention from delivering desistance-focused practice (Bottoms 2021). For example, a further aim of the Offender Rehabilitation Act 2014 was to extend compulsory post-custody supervision to prisoners who fell outside the remit of existing resettlement provision. These arrangements have proven unsuccessful due to delivering high and often unmanageable caseloads, little support for service users and a significantly increased chance of recall to prison (Raynor 2020). Furthermore, debates about sentences that are intended to act as alternatives to prison have revolved around qualities such as 'toughness' and 'adequately punitive sanctions'. Research has shown that restrictive 'mass supervision' can be experienced as punitive and pervasive (e.g. McNeill 2018), therefore COs approached like this in practice may not be any more conducive to desistance than custodial sentences. Attention must be paid to the requirements of COs at sentencing.

Research has found that overly intensive and restrictive supervision requirements can lead to negative outcomes such as offenders being more likely to fail to comply with supervision or being charged with more technical violations (Hyatt and Barnes 2017). Thus, responding to infractions with increasingly restrictive sanctions may not only curtail an individual's desistance efforts, it might even increase their risk of re-offending (Porporino 2018). A recent study drawing upon interview data from Australia, the United States and England found that the multiplicity and complexity of conditions imposed post-release can lead even offenders with a strong desire to desist to feel overwhelmed and develop a mood of fatalism (Halsey et al. 2017). The implication being that this undermines the motivation to desist and ultimately leads to a higher likelihood of the individual returning to offending. The same study found evidence that when infractions were responded to by mandating rehabilitation as opposed to recall to custody, this could reinstate hope, the desire to desist and investment in the efforts required to pursue this.

Decreased use of imprisonment, and even supervision, will inevitably lead to a significant increase in other forms of sentence such as fines, absolute or conditional discharge and suspended sentences (Schiraldi 2016). Many countries have recently documented a shift towards alternative penal sanctions, which vary in form and structure and are more or less severe. In Norway, for example, rates of imprisonment and fines for young offenders has decreased, and the majority are enrolled

in offender management programmes (Sandøy 2019). Electronic monitoring and curfews are commonly used in such programmes, which have been linked to lower recidivism rates (Andersen and Telle 2022).

Risk-based versus strengths-based sentencing

The use of actuarial risk assessment tools in sentencing decisions has become common practice in various jurisdictions, including England and Wales. Widely used risk assessment tools include the Offender Assessment System (OASys) (England and Wales) and the Recidive InschattingsSchalen (RISc) (the Netherlands). These tools typically include socioeconomic factors such as education, employment, financial situation and accommodation. Such risk assessment tools have attracted widespread criticism from desistance scholars. For example, socioeconomic marginality contributes to a higher risk score, which can subsequently lead to more severe sentences (van Eijk 2017). This, in turn, results in restricted opportunities to attempt desistance because individuals find themselves caught in a vicious cycle of repeated conviction and assessment resulting in a higher risk score. Critical evaluation of risk assessment should therefore take into account not only public safety but also unintended societal consequences that can undermine the desistance process. Additionally, because such tools do not systematically acknowledge reduced severity in offending behaviour, as they do prior convictions, somebody who committed a violent offence and has desisted from violent offending yet was rearrested for stealing from a supermarket can end up similarly stuck in the system despite having made significant positive behavioural changes.

Current risk assessments evaluate only the probability of *any* reconviction, which does not account for the now well-established findings regarding the gradual character of desistance, including reductions in the frequency of re-offending (Bottoms 2021). In assessing the increased reliance on actuarial risk tools in sentencing, Hannah-Moffatt (2013) concluded that whilst they offer managerial and organisational benefits, uncritical acceptance of risk as an efficient, objective and empirical concept that can exactly determine deserved or required punishments are misguided. Furthermore, 'risk' as it is currently implemented is understood predominantly on an individual basis, whilst issues of social capital and potential protective factors are downplayed (Bottoms and Shapland 2019).

Strengths-based approaches, on the other hand, focus on individuals' core values and capabilities and the promotion of pro-social behaviour by appealing to and advancing their interests. They ask not what a person's deficits are, but what positive contribution the person can make (Burnett and Maruna 2006; Maruna and LeBel 2009). A narrative of strengths-based sentencing guided by desistance principles has gained momentum and permeated the risk culture over recent years. One example of this is recognition by the courts of the relational nature and importance of social support for desistance (Weaver 2012; Nugent and Schinkel 2016). Various studies have shown that the quality of the relationship between probation supervisors and the clients they supervise impacts their attitudes and future behaviour. The role of supervisors as agents of desistance is dependent on the level of support that they provide to their clients (Chouhy et al. 2020). This has been supported by empirical research in community hubs in England and Wales which found that hub-based probation links people with their communities and creates a support network which lasts beyond the end of an order. This is important for supporting desistance (Phillips et al. 2020). The current environment of spending cuts, staff shortages and a lack of experienced staff in probation

services is a barrier to the building of positive supervisor/supervisee relationships characterised by trust and legitimacy (Dominey 2019).

McNeill et al.'s (2009) study in Scotland found that although risk assessments were routinely included in reports prepared to assist sentencers, this was not an *explicit* central concern in most. Instead, the principal focus seemed to be on assessing the offender's responsibility, character, attitudes, motivation to change and likely compliance with community sanctions. The relational nature of desistance does not just concern direct, personal relationships, but also the relationship between individuals, their communities and wider society. Legal concerns are of a relational nature, as they are directed at the offender's relationship with wider society (Sandøy 2019). The importance of recognition from others for desistance is a well-established finding (e.g. Barry 2016; Gålnander 2020), and includes 'official' recognition from the criminal justice system. These ideas are captured within McNeill's (2012) concept of 'social rehabilitation'. Whilst the sentencing context is not primarily rehabilitative, given few other public forums for such recognition, it could feasibly be built into sentencing practices; for example, sentencers acknowledging good behaviour in the sentencing process when articulating aggravating and mitigating factors. Sentencers should also consider all of the offender's main relationships and how they might be facilitating or impeding the desistance process, rather than focusing their attention solely on the offender. A further example of strengths-based sentencing which places emphasis upon positive relationships is the mainstreaming of restorative justice into pre-sentence court processes (Rossner and Bruce 2018).

Desistance research has consistently demonstrated that acquisition of new skills can affect offender's choices and opportunities. Completing an employment training programme, educational course or undertaking work supporting the community in some way can provide people with marketable skills that they did not have before. Experiences such as these may only be accessible to would-be desisters through institutional placements or court-ordered services and can be a prerequisite for continued positive changes such as stable employment or a changed view of oneself (Mulvey et al. 2004). This provides courts with the opportunity to encourage desistance when making decisions about sanctions and requirements. In its current form, however, sentencing policies and practices may be working in contrast to the notions of identity transformation and holding back offenders in their endeavours to change. For example, achieving change, particularly from entrenched offending behaviour, takes time – yet time is a resource not often allocated by big, managerial systems. Crucially for those attempting to move away from crime, time also needs to be marked with indications of success for motivation to be maintained (Buck 2018). An understanding that slip-ups are an integral part of the path towards desistance is crucial. A more meaningful sentencing process should thus take a longer term, more holistic view of a person's offending and desistance pathway, as opposed to solely relying on binary understandings of re-offending, for example, by the identification of 'partial desisters' (Marchetti and Daly 2017). Such relational and humanitarian features, however, are in tension with the prevailing 'outcomes' focused policy model. There is a need for policies that are more flexible and tolerant and allow for the complexity of offenders' lives and the process of desistance. Lapses need to be 'normalized, rather than pathologized' (Buck 2018, p. 203).

It is not simply a case of considering risk versus desistance, but appropriately balancing the two. Reliance on risk-related technologies can jeopardise due process, produce discrimination, undercut proportionality and individuality and escalate the severity of sentences, yet considerations of risk could also facilitate diversion and lead to the application of different and potentially more

constructive interventions (Hannah-Moffat 2013). Recent research in a London Community Rehabilitation Company presented a ‘blended approach’ to risk management and desistance, which combines traditional actuarial approaches to risk assessment, sentence planning and case management with a desistance-informed focus on supporting positive identity shifts (Kemshall et al. 2021). Based on this research, HM Inspectorate of Probation now routinely inspect whether there is sufficient focus on the key goals of supporting desistance and supporting public safety (Kemshall 2021). Despite identifiable movements towards more strengths-based sentencing, wider and entrenched political reluctance to embrace a truly ‘strengths-based’ criminal justice system will be an ongoing obstacle to desistance.

5. RESEARCH GAPS AND PRIORITIES

In response to ongoing sentencing trends and policy changes, campaigners and voluntary sector organisations have highlighted three key needs for sentencing reform: reversing sentence inflation, reducing the use of short-term custody and increasing the use of community sentences (Clinks 2019). A recent report on sentencing in ten countries recommended reforms with regards to short sentences and previous convictions to minimise the use of custody, prevent disproportionate sentencing of repeat offenders and more effectively tackle the underlying causes of entrenched offending (Heard and Jacobson 2021).

Whilst maturity is now undoubtedly recognised as a relevant factor when it comes to the processes of sentencing and desistance, the extent to which this knowledge has impacted upon practice is less clear. Studies suggest that maturity is not frequently considered at sentencing, and when it is, the depth of understanding is variable and the impact upon decision-making inconsistent (Howard League for Penal Reform 2017). A recent report similarly found that, despite the majority of criminal offences being dealt with in the magistrates’ courts, the issue of maturity is not often raised in the magistrates’ courts. On the rare occasions that concerns around maturity were raised it was not done early enough in the process and they were not based on robust, independent assessments, meaning magistrates did not have enough information to effectively factor it into their decision-making (Moody 2021). The report recommended that to increase magistrates’ confidence and ability to make decisions based on information about maturity, independent assessments by experts should be conducted before the first hearing and magistrates should receive training about how maturity affects behaviour both in court and in relation to offending or compliance with court orders. In terms of the PSR, probation should carry out maturity assessments with all young adults to determine whether lack of maturity has impacted on their offending behaviour and could potentially affect how the individual responds to various sentencing options, and this information should be included in all PSRs for young adults.

The empirical evidence for desistance being a gradual process rather than a one-off event is clear, however this means it is a challenging concept to operationalise in the context of sentencing. A study that assessed the point at which former offenders are statistically indistinguishable from the general population in their risk of offending found that following arrest, a seven-year crime-free period

resulted in statistical similarity between ex-offenders and non-offenders (Kurlychek et al. 2007). More recently, analysis of data from The Cambridge Study in Delinquent Development, a prospective longitudinal study of 411 London males, concluded that offenders who had been conviction free for 30 or more years (49%) had truly desisted; those who were conviction free for less than 10 years (22%) probably had not desisted up to the age of 61, and desistance for the remainder of the sample was uncertain (Farrington 2019). Clearly, further research into how long one must be crime-free to be considered a desister must be done before this can be written into law (should there be a strong case for this being an appropriate goal).

One of the key challenges of implementing findings from desistance research into criminal justice practice has been reconciling the principles of risk and public protection with the nature of the desistance process. Sentencing decisions based on assessment of risk struggle to accommodate the 'false starts' and relapses common throughout offenders' desistance journeys. Research into desistance demonstrates that a) it is a non-linear and endless process; b) that any change in a person's life, however insignificant or unrelated it may seem, contributes to their change from offender to non-offender; c) that people attempting to desist may be attaining success in one element of their life whilst struggling in others; and d) that regardless of any robust general trends, individuals grow at different rates and in different ways (Phillips 2017). At any and multiple points in this process, there are opportunities for courts to acknowledge these findings, and impose sanctions in a way that maximises the likelihood of desistance.

There is much more to learn about the impact of system involvement or particular types of interventions on progression towards desistance. It is still unclear under which conditions official criminal justice interventions can create turning points for serious offenders. Little is known about the relative effectiveness of different requirements of community-based sentences upon offending behaviour, or the possible interactions between different requirements (Hamilton 2021). Further research into sentencing decisions is needed to better understand the extent to which judges take efforts made towards desistance into their sentencing remarks. For example, research is required on how sentencers respond to PSRs, how magistrates and judges interpret and use them, and ultimately if their decisions are influenced by their contents. Gaining perceptions from the individuals who are experiencing/have experienced the process and outcomes of sentencing is vital when it comes to implementing evidence about desistance into practice (Mulvey and Schubert 2016; Raynor 2018). Further research with longer follow-up periods is also needed, to better evaluate the impact of sentences on long-term desistance (Hamilton 2021).

6. CONCLUSION

The most consistent finding to emerge from the desistance literature is that, even for those who have persistently offended, desistance is eventually the norm. Some consideration is now given to the influence of sentencing decisions upon people's prospects for rehabilitation and, ultimately, desistance. The White Paper, *A Smarter Approach to Sentencing* (Ministry of Justice 2020b), whilst setting out plans for longer prison sentences for serious offenders and increased use of whole life orders which will ultimately increase the prison population, also included some changes aimed at encouraging rehabilitation. For example, increased use of deferred sentences to give offenders a chance to turn themselves around, flexible community orders, reducing the time before a conviction is classed as 'spent', changes to criminal records disclosure law and greater use of out of court disposals.

Further movements towards a desistance-focused approach to sentencing would incorporate knowledge of the age-crime curve, factors related to desistance, and the rarity of offending in later stages of the life-course. Sentencers should be provided with the tools and guidance needed to apply this knowledge in order to maximise the chances of their decisions supporting desistance from crime. This report has suggested that steps could be made towards this by (re)considering legal processes and policy with regards to: sentencing young adults; considerations of maturity; prior convictions; recall to custody post-release; PSRs; mitigation; non-custodial sanctions and strengths-based approaches, and assessing the impact of such measures upon the course of people's lives. Research on desistance continues to accumulate and the evidence base is growing. Those with a stake in sentencing should be attuned to developments in desistance theory and findings when implementing changes to practice.

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