



Serious, Violent and Persistent Offenders

Second Edition

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Summary

Successive governments have frequently said that prison is for serious, violent and persistent offenders, but a study of the latest official statistics shows that many serious, violent and persistent offenders are not being imprisoned. In particular, there has been a surge in the use of suspended prison sentences since 2005/06. In 2012/13 nearly 32,000 criminals who were convicted of crimes serious enough to deserve immediate prison were let off with a suspended sentence.¹

Introduction

The consistent line of all recent governments has been that custody should be reserved for the most violent, dangerous and prolific offenders. This policy was introduced after the 2003 Criminal Justice Act with the intention of reducing the use of prison and in the expectation of finding alternatives for less serious offenders. However, appraisal of the evidence shows that some violent, dangerous and prolific offenders are not being sent to jail.

The risk of detection, conviction and punishment

Detection

It is generally accepted that, with the possible exception of crimes involving an emotional outburst or momentary loss of control, the higher the risk of detection the less likely it is that offenders will commit crimes. Table 1 shows the risk of detection, conviction and imprisonment from 1951 until 2012/13. In 1951 the detection rate was 47% and fell to a low of 23% in 2003/04 before recovering slightly to 29% in 2012/13.²

Conviction and Punishment

However, once an offender has been detected the severity of punishment also makes a difference to offending behaviour. If every captured criminal were given an absolute discharge the deterrent effect of arrest by the police would be small. More important still, sentences are acknowledged to have far more than a deterrent effect. A punishment also signals the degree of social disapproval, which in its turn influences individual behaviour. Moreover, prison sentences protect the public. As former Labour Secretary of State for Justice, Jack Straw, remarked in 2008, at the very least custody gives potential victims a 'respite' from offenders.

The Home Office regularly reports the detection rate as a percentage of total recorded crime. However, many crimes are carried out by more than one person and so the number of offenders in a given 12-month period will be higher than the number of recorded or detected crimes. In 2012/13, for example, 1,012,000 offences were detected but 1,395,000 offenders were found guilty or cautioned. Nevertheless, it is useful to compare the number of offenders convicted with the number of recorded crimes and to express the number imprisoned as a percentage of the total number of recorded crimes. As Table 1 shows, fewer than three in every 100 recorded crimes lead to immediate custody. But how does the system deal with serious, persistent and violent offenders?

Serious offenders

Indictable crimes are offences serious enough to be eligible for a jury trial in a Crown Court.³ As Table 2 shows, in 2012/13, 26% of those sentenced for an indictable crime received an immediate custodial sentence. How does this rate compare with earlier times? The proportion given custody fell from about 21% in the early 1950s to about 13% in the early 1970s. Between 1990 and 1993 it was about 14-15%, after which it was increased sharply by the new Home Secretary, Michael Howard, to 25% by 1995.⁴ After a dip to 23% in 2006/07 it has increased to 26% in 2012/13.⁵

In the peak year of 2002/03, 81,000 criminals were sent to jail for indictable crimes, which was not surpassed until 84,000 were imprisoned in 2011/12. This figure was inflated by the London riots of 2011 and the number has fallen back to under 76,000 in 2012/13. However, these figures do not take account of cautioning, which has also fluctuated over time. If the number given immediate custody is compared with all those convicted or cautioned for indictable crimes (other than fraud since 2002/03) in 2012/13 the proportion was 19%, having fallen to 14% in 2006/07. Put another way, and as shown in Table 2, just over one in every five criminals who are cautioned or convicted for an indictable crime are given immediate custody. The variation reflects changes in the use of cautioning from 145,000 occasions in 2002/03 to a peak of 206,000 in 2006/07. In 2012/13 the figure was 101,000. There has also been a significant switch to giving suspended prison sentences from 0.9% of sentences in 1997 to over 10% in 2012/13, as shown in Table 3.

Burglary

Burglary is among the most serious crimes. As Lord Igor Judge remarked in the Court of Appeal in January 2009: ‘Something precious is violated by burglary of a home and those who perpetrate this crime should be sentenced and punished accordingly... The principle which must be grasped is that when we speak of dwelling house burglary we are considering not only an offence against property, which it is, but also, and often more alarmingly and distressingly, an offence against the person.’⁶

Parliament stipulated in 2000 that on a third or later conviction for household burglary an offender should receive a minimum of three years. However, under 20% were given that sentence in 2008 and only 22% in 2011. The others were given shorter custodial sentences and in 2011 11% were not given custody at all.⁷

Even including those given a 20% discount for pleading guilty, only 47% of burglars convicted for at least three burglaries in 2011 were sentenced to three years. Judges are rightly allowed to use discretion in 'exceptional circumstances' but this reasonable stipulation has been abused by some judges who are failing in their duty to protect the public. Moreover, the overall custody rate for burglary has only recently returned to 1997 levels. In that year 45% of convicted burglars were given immediate custody. The proportion peaked at 51% in 2000 fell to a low of only 39% in 2007 but was back to 52% in the twelve months to June 2013.⁸

But perhaps many of those convicted of serious crimes are first-time offenders and persistent criminals are dealt with more appropriately. What is the evidence?

Serious and persistent offenders

First, how many previous convictions or cautions should be considered evidence of persistent offending?

An analysis of figures from the Ministry of Justice shows that many serious and frequent offenders are not being imprisoned. From time to time the criminal history of offenders has been made available and the latest report from the Ministry of Justice for 2012 shows sentences for offenders classified according to their previous convictions or cautions.⁹ Offenders who had 11-14 previous convictions or cautions were given immediate custody in only 32% of cases when they were convicted of a serious (indictable) crime. When they had 15 or more previous convictions or cautions only 39% were given immediate custody. Or, put another way, hardened offenders with 15 or more convictions or cautions had a better than 60% chance of avoiding jail, even when convicted of a serious crime.¹⁰

Violent Offenders

Only 37% of those sentenced for 'violence against the person' in the 12 months to June 2013 received custodial sentences. The immediate custody rate for 'violence against the person' has remained roughly static at around one-third or less since 1997.¹¹

Robbery is one of the most serious violent crimes and includes street mugging. Alarming the custody rate has fallen since 1997, when it was 72%. It reached a peak of 76% in 2002 but fell to only 54% in 2007. In the 12 months to June 2013 it was only 63%.¹²

Rising Use of Suspended Prison Sentences

In 2004/05 fewer than one per cent of offenders convicted of a serious (indictable) crime were given a suspended prison sentence. The proportion surged to 4.3% the following year and has continued to rise under the Coalition to 10.5% in 2012/13. In that year, nearly 32,000 individuals were convicted of a crime serious enough to deserve prison, but were left free to continue offending. Immediate custody protects the public from offenders; suspended sentences do not.

As Figure 3 shows, the increase in suspended sentences has been mainly at the expense of fines and community sentences. On the surface this looks like an increase in the severity of sentencing, but suspended sentences still leave the offender at large and the public unprotected. For the criminal, being let off with a suspended sentence is often perceived as no different from being let off with a community sentence.

The reoffending rate for criminals serving suspended sentences has consistently been above 30%. The latest figure for 2011 is 30.2%.¹³ It is irresponsible for the Government to go on encouraging the use of suspended sentences when such a high proportion of offenders have consistently been reconvicted within twelve months of being sentenced.

Conclusion: Reform the Sentencing Council

Much of the inadequate sentencing is the result of the failures of individual judges, but the Sentencing Council and its predecessors must also bear some responsibility. It lays down sentencing guidelines and monitors their use by judges. The guidelines are used by the appeal courts when reviewing the decisions of lower courts, which means that a judge who wishes to gain promotion is wise to pay heed to the Sentencing Council.

The Sentencing Council is officially described as ‘an independent non-departmental body of the Ministry of Justice’. It took over the roles of the Sentencing Guidelines Council and the Sentencing Advisory Panel in 2010. In January 2014 it had 14 members. The eight judicial members are appointed by the Lord Chief Justice with the agreement of the Lord Chancellor, and the six non-judicial members are appointed by the Lord Chancellor with the agreement of the Lord Chief Justice, following open competition.

It is vital to our system that judges are independent of the government of the day (the executive), but it is no less important that judges reflect the views of Parliament as a whole, which in turn reflects the opinions of the public. In recent years sentencing guidelines have often reflected neither the views of the majority of the public, nor the views of Parliament.

It would not be legitimate for the Government to interfere directly with sentencing practices in individual cases, but it is legitimate for Parliament to lay down guidelines. The legislature already stipulates the type of sentence appropriate for particular crimes and often stipulates maximum sentences. It would be a natural extension of Parliament’s role for it to control the Sentencing Council.

There is a precedent. The Comptroller and Auditor General is, unlike other civil servants, an officer of the House of Commons. He is supported by the National Audit Office, which is also not part of the Government. It too is responsible to the House of Commons, which appoints the Public Accounts Committee to supervise its work. The Sentencing Council could become a similar agency responsible to Parliament and supervised by a select committee. It could advise Parliament on law making as well as give advice to judges about sentencing.

This idea is unlikely to be implemented in the short run, but it has already been put forward by one backbench MP, Mark Reckless. Moreover, it fits in with the developing trend for Parliament to assert its independence from the Government.

Parliamentary committees are no longer controlled by government whips and many more MPs now see legislating and scrutinising the executive as a worthwhile career in its own right; not a mere stepping stone on the way to a place in government.

Table 1
Risk of Detection, Conviction and Imprisonment 1951 – 2012/13
(All Recorded Offences)

Thousands and percentages

| | All recorded crimes | No of recorded crimes detected | % of recorded crimes detected | No. of offenders cautioned | No. of offenders found guilty | No. of offenders cautioned or found guilty | No. of offenders sentenced to immediate custody | % of offenders found guilty given immediate custody | % of all offences resulting in immediate custody |
|---------|---------------------|--------------------------------|-------------------------------|----------------------------|-------------------------------|--|---|---|--|
| 1951 | 525 | 247 | 47% | – | 723 | 723 | 33.7 | 4.7% | 6.4% |
| 1961 | 807 | 361 | 45% | 70 | 1,152 | 1,222 | 45.5 | 3.9% | 5.6% |
| 1971 | 1,646 | 775 | 47% | 109 | 1,688 | 1,797 | 56.3 | 3.3% | 3.4% |
| 1981 | 2,964 | 1,056 | 38% | 154 | 2,105 | 2,259 | 74.6 | 3.5% | 2.7% |
| 1991 | 5,276 | 1,479 | 29% | 279 | 1,519 | 1,796 | 60.1 | 4.0% | 1.2% |
| 2001/2 | 5,525 | 1,291 | 23% | 230 | 1,350 | 1,580 | 106.3 | 7.9% | 1.9% |
| 2002/3 | 5,662 | 1,389 | 24% | 228 | 1,425 | 1,652 | 109.8 | 7.7% | 1.9% |
| 2003/4 | 5,711 | 1,406 | 23% | 250 | 1,541 | 1,791 | 109.1 | 7.1% | 1.9% |
| 2004/5 | 5,374 | 1,441 | 26% | 258 | 1,510 | 1,768 | 103.0 | 6.8% | 1.9% |
| 2005/6 | 5,338 | 1,516 | 27% | 314 | 1,493 | 1,807 | 101.7 | 6.8% | 1.9% |
| 2006/7 | 5,240 | 1,394 | 26% | 359 | 1,404 | 1,763 | 93.9 | 6.7% | 1.8% |
| 2007/8 | 4,807 | 1,373 | 28% | 356 | 1,410 | 1,766 | 96.9 | 6.9% | 2.0% |
| 2008/9 | 4,550 | 1,300 | 29% | 322 | 1,366 | 1,688 | 100.2 | 7.3% | 2.2% |
| 2009/10 | 4,195 | 1,182 | 28% | 273 | 1,400 | 1,674 | 99.7 | 7.1% | 2.4% |
| 2010/11 | 4,012 | 1,132 | 28% | 241 | 1,362 | 1,604 | 102.8 | 7.5% | 2.6% |
| 2011/12 | 3,842 | 1,100 | 29% | 224 | 1,296 | 1,520 | 105.5 | 8.1% | 2.7% |
| 2012/13 | 3,502 | 1,012 | 29% | 194 | 1,202 | 1,395 | 94.4 | 7.9% | 2.7% |

Sources: Home Office Crime Statistics, Historical Crime Data, A summary of recorded crime data from 1898 to 2001/02

Home Office Crime Statistics, Historical Crime Data, A summary of recorded crime data from 2002/03 to 2012/13
 Crimes Detected in England and Wales, 2012 to 2013, Data tables, Table 3

Criminal Justice Statistics Quarterly to March 2013, Executive Summary Tables, Table Q1.5

Criminal Statistics 2007, Tables Chapter 1, Table 1.1.

Series exclude fraud offences from 2002/3.

Note: The Government adjusts historic crime figures from time to time, usually to make them more comparable with the latest statistics. In such cases we have used the most recent official figure.

Table 2
Risk of Detection, Conviction and Imprisonment 1951 – 2012/13
(Indictable Crimes)

Thousands and percentages

| | All recorded crimes | No of recorded crimes detected | % of recorded crimes detected | No. of offenders cautioned for indictable offences | No. of offenders found guilty of indictable crimes | No. of offenders cautioned or found guilty – indictable | No. of offenders given immediate custody – indictable | % offenders found guilty given immediate custody – indictable | Immediate custody as % of cautions and convictions – indictable |
|---------|---------------------|--------------------------------|-------------------------------|--|--|---|---|---|---|
| 1951 | 525 | 247 | 47% | – | 125 | 125 | 26.5 | 21.2% | – |
| 1961 | 807 | 361 | 45% | 25 | 182 | 207 | 35.2 | 19.3% | 17.0% |
| 1971 | 1,646 | 775 | 47% | 77 | 342 | 419 | 45.5 | 13.3% | 10.9% |
| 1981 | 2,964 | 1,056 | 38% | 104 | 465 | 568 | 69.3 | 14.9% | 12.2% |
| 1991 | 5,276 | 1,479 | 29% | 180 | 347 | 527 | 48.9 | 14.1% | 9.3% |
| 2001/2 | 5,525 | 1,291 | 23% | 144 | 323 | 468 | 80.3 | 24.8% | 17.2% |
| 2002/3 | 5,662 | 1,389 | 24% | 145 | 339 | 484 | 81.1 | 23.9% | 16.7% |
| 2003/4 | 5,711 | 1,406 | 23% | 154 | 334 | 487 | 79.0 | 23.7% | 16.2% |
| 2004/5 | 5,374 | 1,441 | 26% | 158 | 308 | 466 | 74.9 | 24.3% | 16.1% |
| 2005/6 | 5,338 | 1,516 | 27% | 191 | 313 | 504 | 74.3 | 23.7% | 14.7% |
| 2006/7 | 5,240 | 1,394 | 26% | 206 | 302 | 508 | 70.2 | 23.2% | 13.8% |
| 2007/8 | 4,807 | 1,373 | 28% | 200 | 314 | 513 | 73.4 | 23.4% | 14.3% |
| 2008/9 | 4,550 | 1,300 | 29% | 178 | 321 | 499 | 77.6 | 24.2% | 15.6% |
| 2009/10 | 4,195 | 1,182 | 28% | 150 | 331 | 481 | 77.6 | 23.4% | 16.1% |
| 2010/11 | 4,012 | 1,132 | 28% | 132 | 353 | 485 | 81.4 | 23.0% | 16.8% |
| 2011/12 | 3,842 | 1,100 | 29% | 120 | 340 | 459 | 84.3 | 24.8% | 18.4% |
| 2012/13 | 3,502 | 1,012 | 29% | 101 | 296 | 397 | 75.6 | 25.6% | 19.1% |

Sources: Crimes Detected in England and Wales 2012/13, Table 3
 Criminal Justice Statistics, Quarterly Update to March 2013, Tables Q1.5, Q1.6(ii)
 Criminal Statistics 2008, Table 1.1, Table 1.2, Criminal Statistics 2007, Table 1.1, Table 1.2
 Series exclude fraud from 2002/3

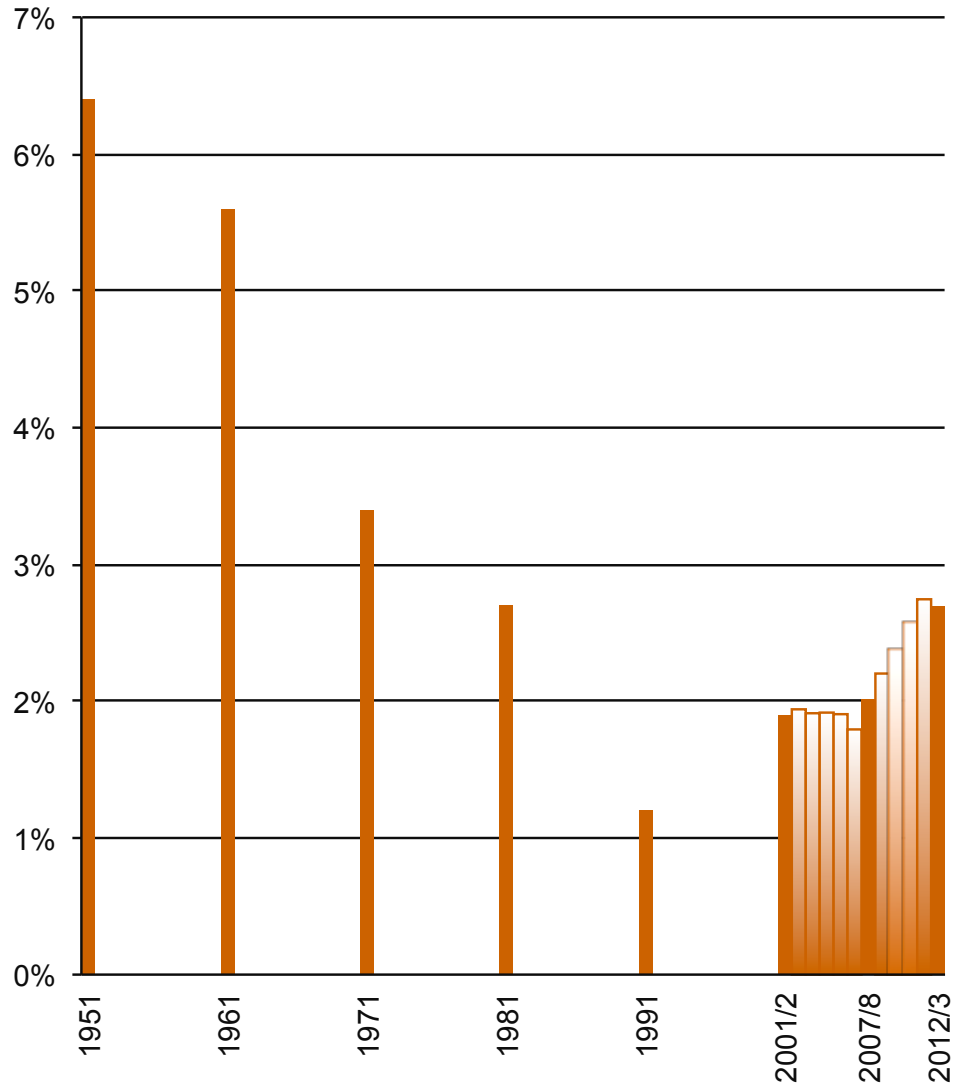
Note: The Government adjusts historic crime figures from time to time, usually to make them more comparable with the latest statistics. In such cases we have used the most recent official figure.

Table 3
Suspended prison sentences as % of convictions for indictable crimes
1997 – 2012/13

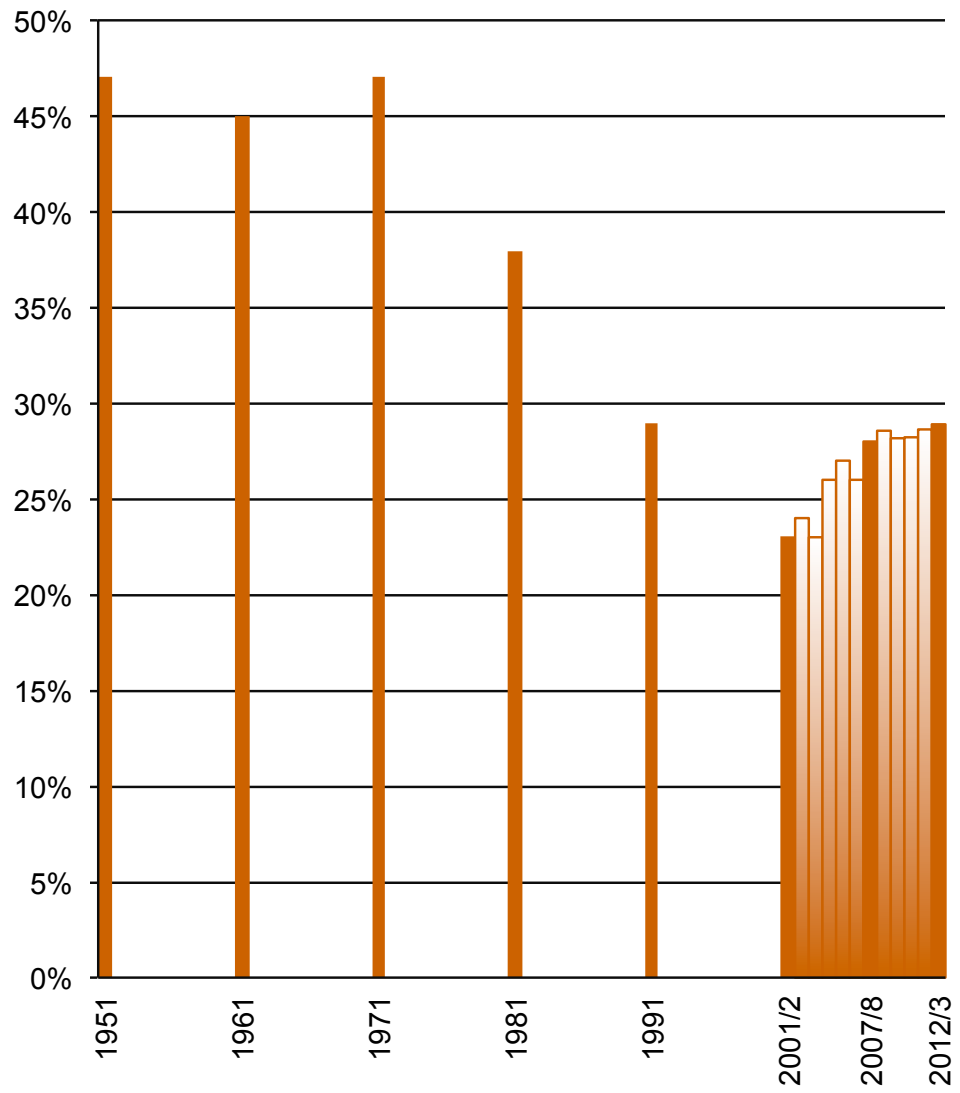
| | Immediate custody (%) | Suspended custody (No.) | Convictions for indictable crimes | Suspended prison sentences as % convictions for indictable crimes |
|---------|-----------------------|-------------------------|-----------------------------------|---|
| 1997 | 22.5 | 2,823 | 318,849 | 0.9 |
| 1998 | 22.7 | 2,834 | 341,102 | 0.8 |
| 1999 | 23.4 | 2,547 | 341,664 | 0.7 |
| 2000 | 24.8 | 2,453 | 326,210 | 0.8 |
| 2001 | 24.8 | 2,139 | 323,203 | 0.7 |
| 2002/3 | 24.5 | 1,963 | 336,744 | 0.6 |
| 2003/4 | 24.8 | 2,055 | 333,930 | 0.6 |
| 2004/5 | 25.2 | 2,143 | 316,937 | 0.8 |
| 2005/6 | 24.5 | 5,610 | 306,598 | 4.3 |
| 2006/7 | 23.7 | 20,799 | 302,537 | 8.2 |
| 2007/8 | 24.7 | 27,254 | 312,258 | 9.1 |
| 2008/9 | 24.8 | 28,455 | 315,900 | 9.1 |
| 2009/10 | 24.1 | 31,131 | 327,361 | 9.7 |
| 2010/11 | 24.4 | 34,176 | 348,220 | 10.0 |
| 2011/12 | 26.1 | 34,422 | 342,706 | 10.3 |
| 2012/13 | 26.6 | 31,885 | 306,928 | 10.5 |

Sources: Criminal Justice Statistics, Quarterly update – June 1013, Sentencing Tables Q5.1;
 Sentencing Statistics 2007, Table 1.2
 Series include fraud.
 Figures after 2001 are for twelve months to end of June.

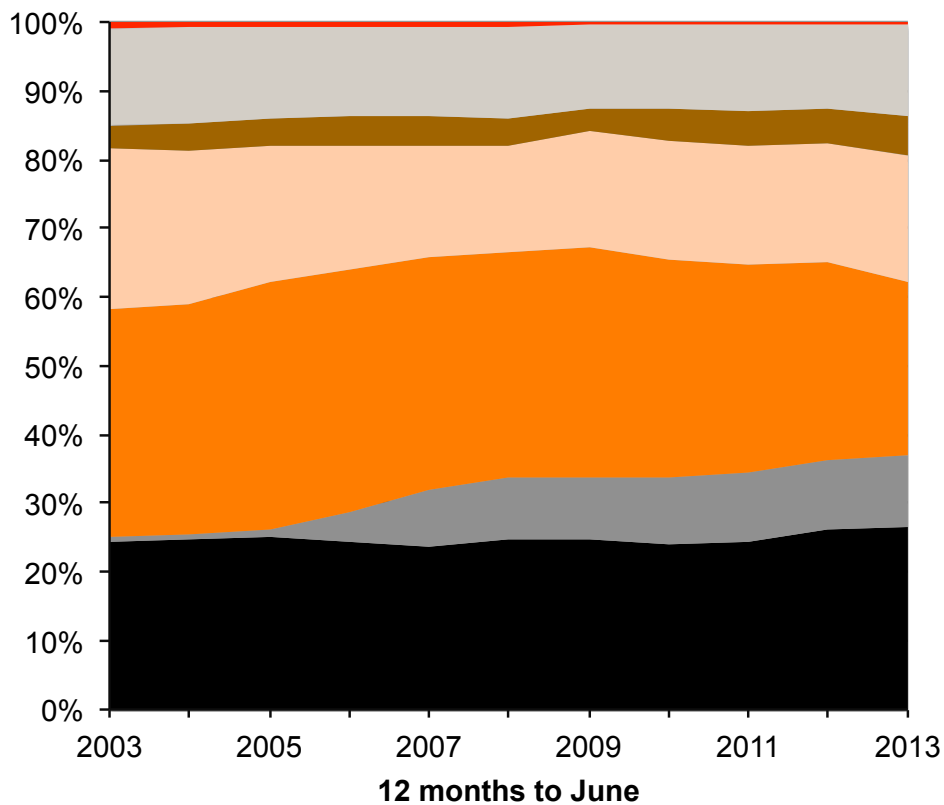
Figure 1
Proportion of All Recorded Crimes Resulting in Custody
1951 – 2012/13



**Figure 2:
Proportion of All Recorded Crimes Detected
1951 – 2012/13**



**Figure 3:
Proportions of Disposal Types for All Indictable Offences
2003 – 2013**



- Immediate custody
- Community sentences
- Otherwise dealt with
- Absolute discharge
- Suspended sentence
- Fines
- Conditional discharge

References

¹ I am very grateful to Civitas statistician, Nigel Williams, for his sterling assistance with the statistics.

² The recent increase may be the result of 'gaming' the statistics, given recent revelations.

³ Some offences are 'triable either way', which means they can be heard either before magistrates or in a Crown Court.

⁴ Davies, M., 'Sentencing trends and public confidence' in Murray, C., *Does Prison Work?*, London: Civitas, 1997.

⁵ Sentencing Statistics 2009, Table 1.2. Criminal Justice Statistics, Quarterly Update to March 2013, Table Q1.5.

⁶ Guardian, 17 January 2009.

⁷ Sentencing Statistics 2008, Tables 6.11 and 6.12; Sentencing Statistics 2009, Tables 6i and 6h; Offending Histories Tables to 2012, Tables A7.9 and A7.10.

⁸ Sentencing Statistics 2008, Table 1.2; Sentencing Statistics 2009 Table 2.4; Criminal justice statistics quarterly – June 2013, Sentencing Tables Q5e.

⁹ A caution involves admitting a crime, which is then recorded as a detection. Offenders suffer no punishment, although conditions may be attached.

¹⁰ Sentencing Statistics 2008, Table 6.6, Sentencing Statistics 2009, Table 6.2, Offending Histories Tables to 2012, Table A7.5.

¹¹ Sentencing Statistics 2008, Table 1.2; Sentencing Statistics 2009, Table 2.4; Criminal justice statistics quarterly – June 2013, Conviction tables Q4a and Sentencing tables Q5.5.

¹² Sentencing Statistics 2008, Table 1.2; Sentencing Statistics 2009, Table 2.4; Sentencing Tables 2001-2011, Table A5.1; Criminal justice statistics quarterly – June 2013, Conviction tables Q4a and Sentencing tables Q5.5.

¹³ <https://www.gov.uk/government/publications/proven-re-offending-quarterly-january-to-december-2011>