Sentencing Trends in England and Wales: Assessing Changes in Punitiveness

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The Problem

- **Widespread perception:** Sentence severity in England and Wales has been on the rise for decades
  - Increase in the average length of custodial sentences (from 17 months in 2012 to 24.8 in 2022)
  - Increase in the use of custodial sentences for indictable sentences (from 26% in 2012 to 33% in 2022)
The Problem

- Widespread perception: Sentence severity in England and Wales has been on the rise for decades
  - Increase in the average length of custodial sentences (from 17 months in 2012 to 24.8 in 2022)
  - Increase in the use of custodial sentences for indictable sentences (from 26% in 2012 to 33% in 2022)

- Implications: Worsening of the prison crisis
  - Overcrowded prisons, undermining human rights
  - Increase in prison population of 19.3% since 2002
  - Even though the number of cases sentence decreased by 26% since 2022
Explanations

- Legislative changes
  - Increases in statutory minima (e.g. 2003 Criminal Justice Act)
  - New crimes (dangerous dogs)
  - The sentencing guidelines (from 2011 on)
  - The sentencing powers given to magistrates (from 2022 to 2023)
Explanations

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- Budget cuts across the criminal justice system (from 2008 on)
  - Cuts in legal aid, parole, reduction of appeals
  - Loss of faith in community orders
  - Cuts in police and prosecutions changed the mix of offences
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- Indirect effects of penal populism
  - Perpetual dissonance between public opinion and sentencing practice
Research Aims

- To document the extent of the process of sentence inflation
  - Harder than it seems
  - There is no agreed unidimensional scale of severity

- Explore potential causes
  - Using available data and descriptive stats
Making Sense of Sentencing Trends

Background

Documenting Severity Trends

Measuring Sentence Severity

Sentence Severity Trends

Teasing Out Potential Causes

Discussion

Offence type

- Indictable only
- Summary or triable either way
- All

![Graph showing sentencing trends over years](image-url)
Making Sense of Sentencing Trends

**Relative use of disposal types (indictable offences)**

- Immediate custody
- Suspended sentence
- Community order
- Fine
- Other

**Year**

Making Sense of Sentencing Trends

Relative use of disposal types (all offences)

Disposal type
- Immediate custody
- Suspended sentence
- Community order
- Fine
- Other

Year
## Measuring Sentence Severity

<table>
<thead>
<tr>
<th>Sentence Outcome</th>
<th>Pina-Sánchez &amp; Gosling (2022)</th>
<th>Roberts (2023)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absolute Discharge</td>
<td>0</td>
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<tr>
<td>Conditional Discharge</td>
<td>1.47</td>
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<tr>
<td>Fine A</td>
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<tr>
<td>Fine B</td>
<td>2.03</td>
<td>0</td>
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<tr>
<td>Fine C</td>
<td>3.55</td>
<td>0</td>
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<tr>
<td>Fine D</td>
<td>4.15</td>
<td>0</td>
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<tr>
<td>Fine E</td>
<td>9.01</td>
<td>0</td>
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<tr>
<td>Fine F</td>
<td>9.42</td>
<td>0</td>
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<tr>
<td>Low Community Order</td>
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</tr>
<tr>
<td>Medium Community Order</td>
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<tr>
<td>High Community Order</td>
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</tr>
<tr>
<td>1 Month Custody 6 Months Suspended</td>
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<tr>
<td>1 Month Custody 12 Months Suspended</td>
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<td>6 Months Custody 6 Months Suspended</td>
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<tr>
<td>12 Months Custody 24 Months Suspended</td>
<td>12.20</td>
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<td>1 Month Custody</td>
<td>11.22</td>
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</tr>
<tr>
<td>2 Months Custody</td>
<td>11.60</td>
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<tr>
<td>3 Months Custody</td>
<td>11.96</td>
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<tr>
<td>12 Months Custody</td>
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<td>5 Years Custody</td>
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<td>10 Years Custody</td>
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<tr>
<td>20 Years Custody</td>
<td>100</td>
<td>240</td>
</tr>
</tbody>
</table>
Sentence Severity Trends

Relative change in severity (Roberts 2023)

- Offence type:
  - Indictable only
  - Summary or triable either way
  - All

Year
Sentence Severity Trends

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Measuring Sentence Severity
Sentence Severity Trends
Teasing Out Potential Causes
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Relative change in severity (Pina 2022)

Offence type
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Year
Events Thought to Affect Severity

Relative change in severity (2022 as baseline)

Offence type
- Indictable only
- Summary or triable either way
- All

Year
- 2000
- 2005
- 2010
- 2015
- 2020

Events Thought to Affect Severity:
- 2003 Coroners Justice Act
- First austerity budget
- First Council guidelines
- First covid lockdown
- Extended magistrates powers
Documenting Severity Trends

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Severity Trends by Offence Group

Relative change in severity (2002 as baseline)

Offence Group
- Robbery
- Sexual offences
- Summary motoring
- Summary non motoring
- Violence against the person

Year

2005 2010 2015 2020
Severity Trends by Offence Group

Relative change in severity (2012 as baseline)

Offence Group
- Possession of weapons
- Public order offences
Severity Trends by Offence Group

Relative change in severity (2002 as baseline)

Offence Group
- Purple: Criminal damage and arson
- Blue: Drug offences
- Green: Fraud
- Light Green: Miscellaneous
- Yellow: Theft

Year
- 2005
- 2010
- 2015
- 2020

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What Have We Learnt

• We corroborate an increase in sentence severity
  – From approx. 10% to 50% depending on the measure of severity
  – Entirely driven by changes in the sentencing of indictable offences
  – Specifically, fraud, drugs, and criminal damage
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- Most events identified seem to have played a role
  - The 2003 Criminal Justice Act, budget cuts, sentencing guidelines, the pandemic
  - Except for the increase of magistrates powers
What We Would Like to Know

- Estimate the change of magistrates powers
  - Using statistical inference
  - And possibly causal inference (difference in differences or regression discontinuity)
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  - The observed changes in sentence severity of sex offences point in the expected direction
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- Test how much of the sentence inflation is due to a changing mix of offences
  - Somehow adjust for changes in arrest and charge rates
  - Focus on specific offence types