

**SHORT PRISON SENTENCES: Analysing their effectiveness, appropriateness,  
and necessity in England and Wales**

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**Abstract:** This paper revisits the long-standing debate surrounding the use of short prison sentences, with a focus on England and Wales. Drawing from over 170 years of historical and empirical discussions, it critically assesses short sentences in terms of their effectiveness, appropriateness, and necessity within the criminal justice system. The analysis demonstrates that while short sentences are largely ineffective in reducing reoffending when compared to alternatives such as community and suspended sentence orders, methodological limitations and contextual variables complicate this conclusion. Furthermore, it is argued that short sentences are inappropriate due to the harmful consequences of imprisonment and its limited rehabilitative potential. Nevertheless, their continued use persists, grounded in their marginal necessity to address prolific offending and ensuring consistency in sentencing practices.

**Key words:** Short prison sentences – Reoffending - Sentencing alternatives - Criminal justice - Rehabilitation



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**i. Introducción:**

The debate over the effectiveness, appropriateness, and necessity of short prison sentences dates back more than 170 years to Arnould Bonneville de Marsangy in 1847. Along with him, Franz von Liszt and other notable thinkers of the nineteenth century recognised that short prison sentences were not too long to achieve prisoner reform and, on the contrary, were long enough to learn more dangerous crimes (Villettaz, Gillieron and Killias, 2015). To address short sentences' negative consequences, the nineteenth-century authors proposed that they should be replaced by alternative penalties such as fines, suspended sentences, or probation (Villettaz, Gillieron and Killias, 2015). This debate became increasingly complex, and Shoham and Sandberg (1964) found over 50 years ago that first-time offenders who received suspended sentences reoffended less than those who received prison sentences. Since that study, there have been numerous papers arguing the ineffectiveness of short sentences, but in spite of this, they are still in use in England, Wales, Scotland, and many other parts of the world.

For 170 years, it has been argued that the 'use of short-term imprisonment is ineffective, inappropriate, and unnecessary', however, this is an unresolved debate in the United Kingdom, where short sentences are still in force, and that is why this article aims to examine the effectiveness, appropriateness, and necessity of short sentences, to understand the reasons and effects that lead to their current use. For analytical purposes this study looks at the case of England and Wales to discuss the effectiveness of short sentences. Firstly, in these jurisdictions, different types of punishment are used alternatively for the same offences, which allows for a better contrast. Secondly, there are numerous empirical studies of the impact and outcomes of different types of sentences in these jurisdictions.

In order to develop this discussion, the first section discusses the effectiveness of short prison sentences concerning criminal justice goals in England and Wales, with a particular emphasis on reoffending prevention. It is argued that the majority of the

literature recognises the ineffectiveness of short prison sentences in comparison to their alternatives. However, methodological limitations of the studies and variation in the results based on different intervening variables mean that their ineffectiveness is contested.

The second section examines their appropriateness regarding the adverse effects of prison life, their costs, the impact on the prison population, and rehabilitation limitations. It can be argued that short prison sentences are inappropriate due to the criminogenic and unhealthy effects they produce, as well as limiting rehabilitation, but affirmations about the economic cost and prison population impact of alternatives to custody (community orders and suspended sentences), which are frequently used as arguments against short sentences, should be tempered in light of contrasting empirical findings for the case of England and Wales. In the third section, short sentences' necessity is examined, arguing that there is ample evidence to support their disappearance. However, they are still marginally necessary to incapacitate repeat offenders and avoid up-tariffing by judges in the event of their disappearance. Finally, conclusions are drawn about the complexities of the debate and why, after more than 170 years, courts and magistrates in England and Wales still have the option of imposing short prison sentences.

### **Arguably ineffective**

Because the debate over the effectiveness of short sentences involves analysing various aspects, this section first describes the definition of short sentences and their alternatives. It then compares the effectiveness of short sentences in terms of criminal justice objectives in England and Wales, particularly reducing reoffending. It is argued that the effectiveness of short sentences varies depending on the objective and that there is agreement that they are ineffective in reducing reoffending, but that this ineffectiveness must be qualified in light of the studies' methodological limitations and intervening variables.

To fulfil their objectives and to be effective, criminal courts in England and Wales make use of different types of sentencing, which following Hamilton (2021) can be defined as follows:

- Fines, which require offenders to pay a sum of money, are the most common type of penalty in England and Wales, accounting for 77.4% of criminal court sentences in 2019 (Mann and Bermingham, 2020).
- Determinate prison sentences necessitate immediate detention. Offenders sentenced to fixed-term prison terms typically serve half their sentence in prison and the other half on community supervision. If the individual violates any licence conditions or commits any additional offences during the licence period, he may be returned to prison. Short prison sentences are those of less than 12 months' imprisonment.
- Suspended sentence orders are custodial sentences suspended for a specified period to allow the offender to remain in the community. A prison sentence of 14 days to two years could be suspended, with the suspension period lasting up to two years. Judges may decide to impose the same requirements as community orders. If the person violates any imposed requirement or commits a new offence, the court may order them to serve their original custodial sentence.
- A community order can be in effect for up to 36 months and must include at least one punitive element and one specific requirement. Among the requirements that the court may choose from to achieve the rehabilitation of the offender are unpaid work; an activity requirement; a program requirement; a prohibited activity requirement; curfew; an exclusion requirement; a residence requirement; a foreign travel prohibition; mental health; drug and alcohol treatment; a supervision requirement; an attendance centre requirement; and electronic monitoring.

To analyse the effectiveness of the aforementioned penalties, it can be stated that something is effective when it produces the desired or expected result; thus, there is debate about how to measure the effectiveness of criminal justice penalties (Hamilton, 2021). In this regard, the Criminal Justice Act (2003) mandates that courts and magistrates follow the following sentencing goals: the punishment of offenders; crime reduction; reform and rehabilitation; public protection; and victim reparation. Then it can be deduced that a type of sentence is more or less effective in terms of criminal

justice depending on how well or poorly it meets those objectives. However, since the emergence of penal systems, no measure has proven to be one hundred per cent effective; hence the effectiveness of sentences is analysed in comparative rather than absolute terms. Following this comparative approach, most studies, and therefore this article, compare the effectiveness of short sentences with that of suspended sentence orders and community orders.

In terms of "Punishment of offenders," short sentences are prison sentences, which are highlighted by the government (Ministry of Justice, 2012) and the general public (Mann and Bermingham, 2020) as the best form of punishment. The apparent lack of punishment is why alternatives to custody had to incorporate a mandatory element of punishment in 2012 (Ministry of Justice, 2012b) to not be seen by the public as 'soft' (Mann and Bermingham, 2020). Nevertheless, despite being considered an element of penal populism (Robinson, 2016), incorporating an element of punishment in alternatives to custody has proved necessary as a justification (Robinson, 2016) since the absence of punishment has led to its reduction in practice (Maxwell, 2007). So although short prison sentences may be thought to be more effective in punishing, the gap with alternatives to custody has been narrowing.

The second objective to be analysed is the "Reduction of crime" crime can be reduced according to the traditional view by incapacitation (preventing crime by keeping criminals in prison); general deterrence (preventing the general population from offending because of the possibility or expectation of punishment); and specific deterrence (punishing and rehabilitating criminals to prevent them from reoffending). In terms of incapacitation, it is a central element of criminal justice and there is common agreement that the criminal justice system produces a deterrent effect. However, different sentences also have different effects (Aarten et al., 2014), and there is evidence that incapacitation reduces crime (Spelman, 2008), but its preventive capacity is highly contested (Hough, Farrall and McNail, 2013). Today, the incapacitation of dangerous and prolific offenders is one of the main arguments of advocates of short sentences. However, a certain degree of incapacitation can be achieved with alternatives to custody through curfews and electronic monitoring. Nevertheless, it should be noted that insufficient attention has been paid to reducing crime through incapacitation of short

sentences as comparative studies on reoffending set out the periods of follow-up after sentences have been served.

Concerning general deterrence, there is a lack of research on whether short sentences or alternatives to custody are better at deterring crime in the general public. Although the relationship between severity of punishment and deterrence of crime is controversial and widely studied in criminology, again, there are no studies that analyse the effectiveness of short sentences in this respect. Finally, in terms of specific deterrence, this can be understood as desistance, i.e. that after the penalty or intervention the offender definitely ceases his criminal behaviour. However, desistance is not easy to measure, and it is generally opted to analyse the levels of reoffending in the short and medium term. Reoffending is currently the most widely used way to measure and compare the effectiveness of short sentences in practical terms (Hamilton, 2021). The importance of reoffending as a measure of rehabilitation lies in the fact that it is present in this objective, the "Protection of the public" objective and as an objective in itself, i.e. that of "Reform and rehabilitation".

The third objective is that of "Protection of the public" this protection can be given by keeping prolific or dangerous offenders incapacitated in prison and by the alternative (short prison sentence, suspended sentence order or custody order) that most diminishes reoffending. As already mentioned, there are not comparative studies on incapacitation, and reoffending will be analysed with under the reform and rehabilitation objective discussion. The fourth objective is "Reparation of the victims", and in that sense, short sentences, like all prison sentences, do not do much by themselves to achieve this objective and are not effective for that purpose. Both these and alternatives to custody may require convicted individuals to pay victim surcharges or victim compensation (Mann and Bermingham, 2020), so reparation of the victims is ancillary. However, alternatives to custody may be more effective to the extent that offenders must participate in a restorative justice session or pay back to the community with unpaid work (Sentencing Council, 2017).

The fifth objective, "Reform and rehabilitation", is the most widely used to evaluate the effectiveness of sentences, which makes it particularly significant for analysing the use

of penalties. Despite some public distrust in the reform and rehabilitation of criminals (Garland, 2001), the literature has consistently compared the effectiveness of short sentences with the community orders and suspended sentences in terms of rehabilitation and reoffending. Most empirical studies argue that short sentences are ineffective, compared to their alternatives, in reducing reoffending (Cid, 2009; Bartels, 2009; Wermink et al., 2010). This ineffectiveness has been demonstrated in different countries such as England and Wales (Abramovaite et al., 2018), Spain (Cid, 2009), Australia (Bartels, 2009, Lulham, Weatherburn and Bartels, 2009; Wang and Poynton, 2017), Netherlands (Wermink et al., 2010; Aarten et al., 2015) Switzerland (Killias, Aebi and Ribeaud, 2000) among others. One of the reasons given for short sentences' poorer performance was a lack of supervision after release, but this was introduced in 2015 with the Offender Rehabilitation Act; four years later, Eaton and Mews (2019) found that alternatives to custody were better at reducing reoffending than short sentences, even with supervision after release.

Furthermore, the superior effectiveness of alternatives to custody in terms of reoffending occurs regardless of the length of the short prison sentences (3, 6 or 12 months) (Eaton and Mews, 2019) and regardless of the offenders' gender or ethnicity (Hillier and Mews, 2018). However, these results need to be qualified because there are also studies that have found that short sentences do not increase the possibility of reoffending (Aarten et al., 2014), that differences tend to fade over time (Mews et al., 2015) and methodological limitations in the studies (Hamilton, 2021). In terms of methodological limitations, two approaches are used to compare different types of sentencing and levels of reoffending: cross-sectional studies comparing recidivism rates with sentences received and experimental studies analysing recidivism rates after randomly assigning different types of sentences.

Regarding cross-sectional studies, most that suggest alternatives to custody are more effective in reducing reoffending share a common limitation: they cannot establish a causal relationship between the type of sentence and reoffending outcomes (Aarten et al., 2014), and this may be due to uncontrolled variables, such as the criminal record of the offenders, which would lead magistrates to opt for short prison sentences in the most complex cases (Villettaz, Gillieron, and Killias, 2015), faced with this difficulty, a

number of studies have tried to match and control variables to strengthen the results (Cid, 2009; Bartels, 2009; Wermink et al., 2010; Hillier and Mews, 2018), even going so far as to link 150 variables (Eaton and Mews, 2019) finding the same results. Another difficulty with these studies is that the follow-up periods are generally not that long (Hamilton, 2021), usually between 1 and 3 years. However, studies that have extended the follow-up period have found the same results (Cid, 2009). Finally, cross-sectional studies are criticised for using re-arrest or re-conviction rates as an indicator of reoffending when there are probably more accurate measures of reoffending, such as self-reports (Villettaz, Gillieron and Killias, 2015). However, these are the same indicators used in experimental studies, and it should be recognised the existing bias, especially of some minorities, in self-reports (Siegel, 2015).

Beyond the criticisms, the same cross-sectional studies recognise that short sentences' effectiveness and alternatives vary according to different variables, so their ineffectiveness must again be qualified. Concerning the type of crime, short sentences seem to be less effective in reducing property crime, but the results are less conclusive when it comes to violent crimes (Abramovaite et al., 2018). In terms of the criminal record, there is evidence that short sentences are more effective in the case of first-time offenders (Bartels, 2009; Aarten et al., 2014; Mears and Cochran, 2018), so beyond its much-cited and disputed general ineffectiveness, there appear to be cases where it is more effective, although other studies claim that there are no significant differences between the different sanctions in the case of first offenders (Hillier and Mews, 2018). In terms of age, courts orders are more beneficial for those under 20 and over 50 and less beneficial for those between 21 and 29 years old (Hillier and Mews, 2018), that is, the age at which criminals are more prolific (Sapouna et al., 2015) and therefore where their incapacitation would seem to have the best results (Ministry of Justice, 2012). Finally, there is agreement that short sentences are less effective for those with significant psychiatric problems and who are undergoing psychiatric treatment (Hillier and Mews, 2018).

About experimental studies, it should be noted that there is a lack of them and that more are needed to clarify further the relationship studied (Villettaz, Gillieron and Killias, 2015). However, systematic reviews have led to the conclusion that there are ambiguous



results regarding the ineffectiveness of short sentences (Villettaz, Gillieron and Killias, 2015) or that the differences with alternatives to custody are not significant (Killias and Villettaz, 2008; Killias et al., 2010).

The discussion about the effectiveness of the short sentences implies the discussion about different sentencing purposes, according to which they could be more or less effective. However, concerning the primary conception of effectiveness that this discussion has taken in empirical terms, that is, concerning re-offense, it is possible to affirm a broad consensus around the idea that these are less effective than their alternatives. Nevertheless, this conclusion must be taken with caution to the extent that the studies that defend it have methodological limitations, the more robust experimental studies have shown mixed or non-conclusive results and that the same results vary and even change according to a significant number of intervening variables.

### **Clearly inappropriate**

Regarding the appropriateness of short sentences, there is a greater consensus that they are inappropriate, and their justification, like any custodial measure, is that they are a necessary evil (Ministry of Justice, 2010). The main reasons that have been argued for the inappropriateness of short sentences have been their high economic cost compared with alternatives (Abramovaite et al., 2018), their encouragement of prison overcrowding (Howard League, 2019), the hostile environment of prison for reform and rehabilitation (Bullock and Bunce, 2020), and the harmful effects of prison life (Becker, 1963; Massoglia, 2008). This section argues that the empirical evidence should temper the economic and overcrowding arguments. At the same time, those relating to the negative characteristics and outcomes of prison life are more difficult to reject and thus support the idea of short sentences as an inappropriate criminal justice response.

Prisons are expensive (Abramovaite et al., 2018; Make Justice Work, 2009), and not only that, but it is the most expensive response in the penal system (Gelb et al., 2019). In the case of England and Wales, it has been estimated that between 2012 and 2013, the average cost for a community order or suspended sentence order was £4,305 compared to an average cost of £36,808 for a prison place (National Offender Management Service 2014). This has led to the argument that replacing short sentences with

community orders would reduce prison overcrowding and lead to significant financial savings (Howard League, 2019). Conversely, it has been also argued that despite its costs, prison produces social savings, a study by Levitt (1996) estimated that "for each one prisoner reduction induced by prison overcrowding litigation, the total number of crimes committed increases by approximately 15 per year. The social benefits of eliminating those 15 crimes are approximately \$45,000; the annual cost per prisoner of incarceration is roughly \$30,000" (Levitt, 1996, p.1). However, if, as has previously been argued, community orders produce better results in reducing reoffending, the savings could be even more significant by replacing short sentences with alternatives to custody. For instance, this does not appear to be the case for repeat offenders, for whom prison does appear to provide value for money (Sapouna et al., 2015), but an empirical study of the use of alternatives to custody has found that they have displaced fines more than short sentences (Mills, 2011), leading to the paradox that by replacing fines with community orders, people end up receiving a more expensive intervention and thus would not be a form of savings as proposed (Mills, 2011). Finally, the idea that community orders reduce the prison population and produce savings (Lind, 2002) clashes with the current consensus that the expected decrease would not occur due to other factors such as the length of sentences (Mann and Bermingham, 2020) and that an overwhelming number of short sentences would have to be replaced to have a moderately significant impact on England and Wales prisons (Mills, 2011).

What is less debated, as already mentioned, is that short sentences are less effective in reducing recidivism because prison is not an appropriate place for the rehabilitation and reformation of prisoners. First, according to labelling theory, prison generates a stigma that endows the individual with a negative identity and limits his or her possibilities to reintegrate into society (Becker, 1963). Prison also breaks the bonds with family, friends, and employment related to law-abiding behaviour (Hirschi, 1969). Moreover, sending offenders for minor offences, such as those receiving short sentences, to prison is an opportunity to introduce them to new and more complex forms of offending (Abramovaite et al., 2018), where peer groups and even prison officers reinforce deviant identities (Hamilton, 2021). Furthermore, the prison is a place that negatively affects prisoners' physical and mental health (Abramovaite et al., 2018), causing them to have a

much higher rate of self-harm incidents and suicides than the general population (Massoglia, 2008).

Prison itself has proven to be bad for rehabilitation compared to the opportunities offered by community orders. Firstly, prison work opportunities, which are central to prisoners' future insertion into society, are generally irrelevant, limited and composed of repetitive tasks that do not favour future employment opportunities (Bullock and Bunce, 2020). Secondly, in educational programmes that favour recidivism reduction (Sapouna et al., 2015), less than one-year sentences do not allow for participation in any relevant programme. In terms of psychological assistance and substance abuse treatment, which are very effective for rehabilitation (Sapouna et al., 2015), again, less than one year is too short to complete these programmes (Hamilton, 2021). To address the time limitation on interventions, supervision on release has been extended to short sentences, which has been shown to produce good results but has only been recently and sporadically used in England and Wales (Bullock and Bunce, 2020). However, it is only a way of extending the punishment for other authors and, therefore, ineffective for rehabilitation (Cracknell, 2018). Finally, not only is the time available for rehabilitation during short sentences limited, but there are also challenges in implementing these programmes across the board, such as a lack of staff interest and an adversarial climate, prison overcrowding, staffing constraints, and prisoners' focus on survival rather than self-reform (Bullock and Bunce, 2020).

It is possible then to argue that short sentences are not appropriate for petty criminals, not because of the generally argued cost and impact on the prison population, but because of prison's more commonly accepted negative impacts on people's lives. However, after more than 170 years of being declared infective and most clearly inappropriate, they continue to exist due to their marginal necessity, as discussed in the next section.

### **Marginally necessary**

After 170 years of debate, short sentences have been abolished in several European countries. However, they continue to exist in England, Wales and Scotland, where even their advocates have sought to limit and reduce their use. Their survival is due, as will

be seen in this section, to the fact that they are the only option for repeat offenders with a history of non-compliance with community and suspended sentence orders, the difficulties that probation services in England and Wales have recently faced in offering credible alternatives to magistrates, and the potential up-tariffing of removing one type of sentence from the penal scale.

Efforts to reduce the use of short sentences are evident, in Scotland, a presumption against their use was introduced in 2010 and extended in 2019 (Criminal Justice and Licensing Act 2010), while in England and Wales, the Sentencing Council (2017) has strongly emphasised that no one should receive a short prison sentence if they have not passed the custody threshold and that even if they have passed it, magistrates should consider whether this is the most appropriate sentence. This effort to limit short sentences does not go so far as to abolish them because they are the only way to get dangerous and prolific criminals off the streets (Ministry of Justice, 2012). The label of dangerous criminals is debatable because short sentences only punish minor offences. However, the prolific nature of some criminals and their poor record of complying with fines, community orders and suspended sentences is undeniable (Ministry of Justice, 2010). Firstly, there is an overwhelming proportion of crimes committed by prolific offenders, with some 16,000 offenders in England and Wales having a record of over 75 convictions of all types (Ministry of Justice, 2010). This prolific background is something that magistrates take into account when deciding whether to apply short prison sentences or community orders, with empirical studies showing that those given short prison sentences had an average of 65 previous offences, compared to 33 for those given community orders and 37 for those given suspended sentences (Eaton and Mews, 2019).

Magistrates have also been constrained in their willingness to use alternatives to custody by the difficulties probation services have experienced in recent years (Dominey, 2019; Robinson, 2019), difficulties that have resulted in many magistrates having to pass sentence without the probation services' pre-sentence reports (Ministry of Justice, 2020). These limitations on probation services make magistrates question how good alternatives to custody will be implemented, and until a few years ago, not all requirements were available in every area (Mair, Cross and Taylor, 2008). In addition,

the magistrates' concern is heightened by statistics that show that one in four offenders do not complete their community or suspended sentence order (Ministry of Justice, 2010; Gelb et al., 2019). Finally, the magistrates are who ultimately decide what sentence to apply from the menu of options available, and it has been argued and found that the removal of short prison sentences can lead magistrates to increase the sentence (up-tariffing) (Eley et al., 2005; Mills, 2019) when they believe that alternatives to custody are not a sufficient, leading to the paradox that the removal of short-sentences could in many cases result in sentences longer than one year, multiplying the problems argued for by those who claim for short sentences abolition. Despite their ineffectiveness and inappropriateness, short sentences continue to exist because their suppression would be even more harmful and required for a group of particularly prolific and difficult-to-reform criminals.

### **Conclusions**

For 170 years, there has been debate about the use of short sentences, a debate that now seems to have stalled but is still prolific, and this article has discussed their effectiveness, appropriateness, and necessity. Concerning their effectiveness, this varies according to the different purposes of sentences in England and Wales. However, most studies consider short sentences ineffective in terms of reoffending, although such conclusions have been mitigated in methodological and empirical terms. The inappropriateness of short sentences is clearer, not for the reasons traditionally argued (economic costs and prison overcrowding) but because of the evident adverse effects of prison life. Finally, the existence of short sentences rests on the fact that they are marginally necessary as the only way to respond to prolific criminals, generating confidence in magistrates and avoiding up-tariffing of sentences. The fact that this debate is still open after 170 years demonstrates a greater complexity than campaigners on either side often acknowledge, and this complexity leads to the recognition of the need for more research on the subject before significant changes can be made.

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