

CENTRE FOR CRIME PREVENTION

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Research Note 1

17 January 2013

The sentencing gap: Punishments for serious, repeat offenders

Peter Cuthbertson

Since the financial crisis began, the courts have failed to lock up an increasing number of serious, repeat offenders. 64.9% of those convicted of serious offences who already had more than 10 previous convictions or cautions avoided prison in 2011/12 – 91,032 offenders. This is higher than the total prison population. Tens of thousands of repeat offenders are instead receiving fines, community service or a fully suspended sentence for crimes such as violence against the person, theft and sexual offences.

Key Findings

- In 2011/12, **68,100 received a penalty other than prison for a serious offence despite 15 or more previous convictions or cautions.**
 - This compares to 49,729 in 2006/07 – a 38% increase.
 - A total of 108,119 serious offenders had 15 or more previous convictions/cautions, meaning **62.9% of them avoided prison.**
- The number of serious offenders who avoided prison despite **more than 10 previous convictions/cautions** rose from 71,301 in 2006/07 to **91,032** in 2011/12.
 - **This is higher than the total prison population** of 83,825 and represents a 27% increase.
 - A total of 140,168 serious offenders had more than 10 previous convictions/cautions, meaning **64.9% of them avoided prison.**
- The number of **fully suspended sentences increased 31-fold** for those with **15 or more previous convictions/cautions** in the decade since 2001/02, from 270 to **8,284.**
- **11,810 serious offenders were discharged** in 2011/12 although they had **15 or more previous convictions/cautions - a 30% rise** from 9,086 in 2006/07. This is in spite of statute laying down that courts may discharge offenders only in those cases where “it is inexpedient to inflict punishment”.

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- **20,879 received a community sentence** for a serious offence **after 15 or more previous convictions/cautions** - a 47% rise from 14,236 in 2006/07.
- **16,111 received a fine** for a serious offence **after 15 or more previous convictions/cautions** - a 44% rise from 11,226 in 2006/07.
- Of the minority who did go to prison for a serious offence in 2011/12, **the average sentence was only 1 year 5 months.**

To discuss the research or arrange broadcast interviews, please contact:
Peter Cuthbertson
Chief Executive, Centre for Crime Prevention
peter@centreforcrimeprevention.com
07590 033189

Are too many people in prison?

Many politicians and lobby groups argue that prison should be reserved for serious and serial offenders. They imply that while prison is appropriate for the most serious repeat offenders, there are more people in prison than there are serious and serial offenders.

Centre for Crime Prevention research into sentencing data from the Ministry of Justice reveals that in fact there are far more serious and serial offenders than there are prison places. More than 91,000 (64.9%) of the 140,168 most serious, serial offenders thereby avoided prison in 2011/12 alone.

Serious offences

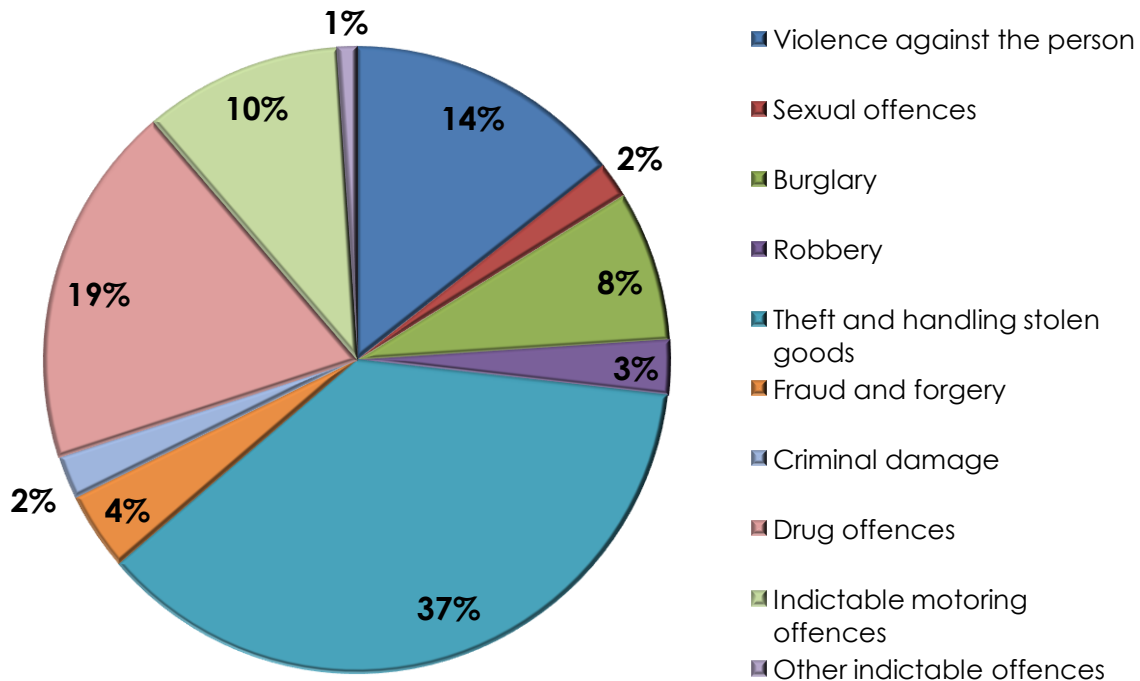
Crimes are either summary or indictable offences. The most serious crimes are classified as indictable offences. They consist of violence against the person, sexual offences, burglary, robbery, theft and handling stolen goods, fraud and forgery, criminal damage, some drug offences, some more serious motoring offences and other indictable offences. The chart below shows the breakdown.¹

¹ Percentage breakdown taken from Table Q7I - Offenders sentenced by offence group and previous criminal history, 12 months ending June 2002 to 12 months ending June 2012, England and Wales, Ministry of Justice, at <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/offending-histories-tables-06.xls>

² Population and Capacity Briefing for Friday 11/01/2013, Ministry of Justice, at

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Breakdown of all indictable offences in 2011/12



The number of criminals who receive a non-custodial sentence for indictable offences, despite a large number of prior convictions, provides a measure of how frequently or infrequently prison is used to protect the public from serious, serial offenders.

In 2011/12, this figure reached 91,032 for those with more than 10 previous convictions or cautions. This compares to 71,301 in 2006/07 (+27%). It is also considerably greater than the total prison population of 83,825.²

For those with 15 or more previous convictions, the number increased in five years from 49,729 to 68,100 – a 38% increase. Instead, tens of thousands of these offenders are receiving fines, a conditional discharge or community service. The full data, taken from the Ministry of Justice, are available in Tables 1 and 2.

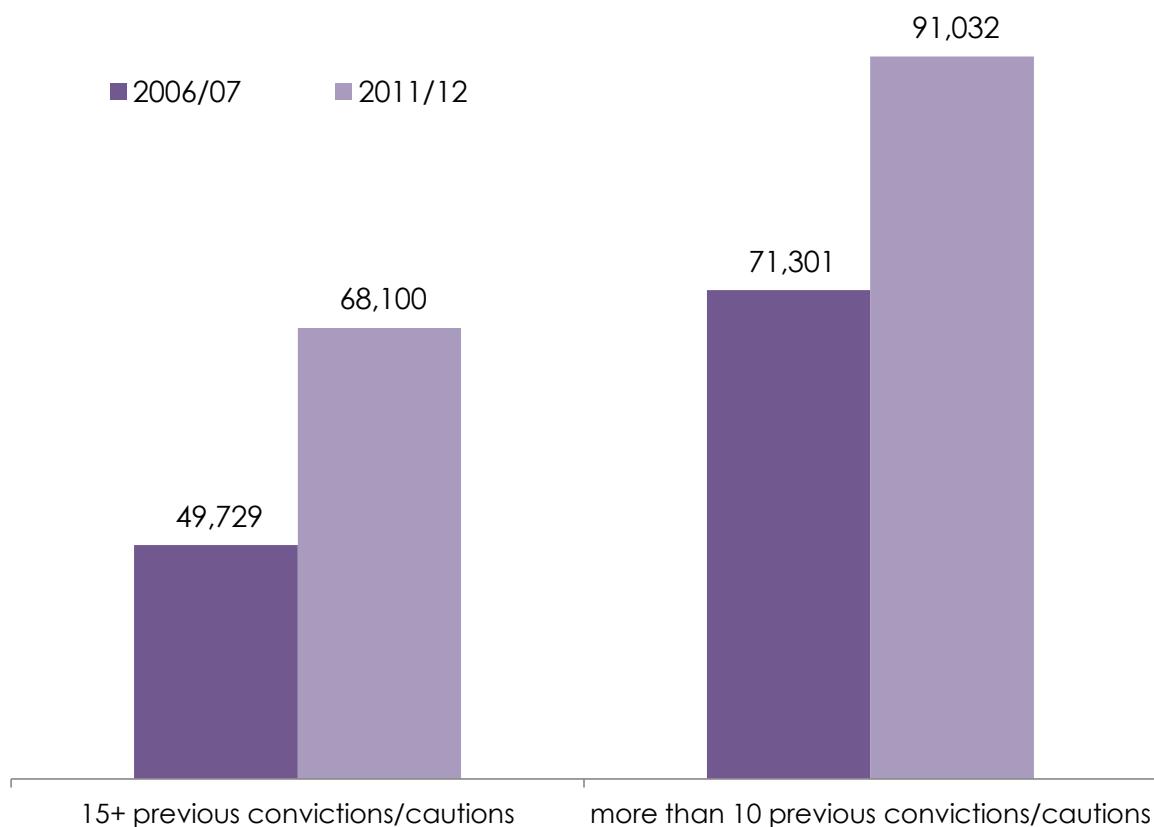
Of the minority who did receive a prison sentence for a serious offence in 2011/12, the average sentence was just 1 year 5 months - up from 1 year 3 months in 2006/07.³

² Population and Capacity Briefing for Friday 11/01/2013, Ministry of Justice, at <http://www.justice.gov.uk/downloads/statistics/hmps/prison-population-stats/prison-population-2013/prison-population-110113.xls>

³ Table Q5.5 - Persons sentenced to immediate custody and average custodial sentence length at all courts by offence group, 12 months ending June 2002 to 12 months ending June 2012, Ministry of Justice at <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/sentencing-tables-0612.xls>

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Serious offenders avoiding prison despite



How are the majority of serious, repeat offenders punished?⁴

Discharge

Statute lays down that judges may discharge offenders only in those cases where “it is inexpedient to inflict punishment”.⁵ Astonishingly, it was deemed to be inexpedient to punish more than 15,000 serious offenders with more than 10 previous convictions or cautions in 2011/12 alone – a rise of 21% on five years earlier.

For those with 15 or more previous convictions or cautions, the rise was 30%.

	2006/07	2011/12
More than 10 previous convictions/cautions	12,492	15,103
15+ previous convictions/cautions	9,086	11,810

⁴ All figures for discharges, fines, community sentences and fully suspended sentences are taken from 'Table Q7.5 - Offenders sentenced for indictable offences by previous criminal history and sentence received, 12 months ending June 2002 to 12 months ending June 2012, England and Wales', Ministry of Justice at <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/offending-histories-tables-0612.xls> (See Table 3 for the percentages that were converted into absolute numbers in these tables.)

⁵ Powers of Criminal Courts (Sentencing) Act 2000, Section 12: Absolute and conditional discharge, at <http://www.legislation.gov.uk/ukpga/2000/6/section/12>

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Fine

One of the most striking increases was in the use of fines to punish the most serious repeat offenders. Those fined with 15+ prior convictions or cautions rose 44%. For those with more than 10 the increase was 37%.

	2006/07	2011/12
More than 10 previous convictions/cautions	15,875	21,737
15+ previous convictions/cautions	11,226	16,111

Community sentence

The use of community service saw the most dramatic increase – 47% for those with at least 15 prior convictions or cautions and 34% for those with more than 10.

	2006/07	2011/12
More than 10 previous convictions/cautions	20,808	27,931
15+ previous convictions/cautions	14,236	20,879

Fully suspended sentence

Just shy of 11,000 serious, repeat offenders had their sentences fully suspended in 2011/12. This is a particularly startling figure given only 419 such offenders received a suspended sentence a decade earlier. This 26-fold increase may be explained by the Criminal Justice Act (2003). This Act repealed the requirement that courts suspend a prison sentence only when this could be “justified by the exceptional circumstances of the case”.⁶

	2001/02	2006/07	2011/12
More than 10 previous convictions/cautions	419	9,509	10,993
15+ previous convictions/cautions	270	6,874	8,284

Caution, reprimand or warning

A caution, reprimand or warning was judged sufficient punishment for thousands of serious, repeat offenders. In 2011/12, 4,493 criminals received a caution, reprimand or warning for an indictable offence despite more than 15 previous convictions, reprimands or warnings.⁷

7,243 received a caution, reprimand or warning for an indictable offence despite more than 10 previous convictions, reprimands or warnings.⁸

Caution, reprimand or warning	2006/07	2011/12
More than 10 previous convictions, reprimands or warnings	7,750	7,243
15+ previous convictions, reprimands or warnings	4,715	4,493

⁶ Powers of Criminal Courts (Sentencing) Act 2000, Section 118: Suspended sentences of imprisonment, at <http://www.legislation.gov.uk/ukpga/2000/6/part/V/chapter/V>

⁷ Table Q7k - Offenders receiving a reprimand, warning or caution for an indictable offence recorded on the Police National Computer by age group, gender and previous criminal history, 12 months ending June 2002 to 12 months ending June 2012, England and Wales, Ministry of Justice, at <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/offending-histories-tables-06.xls> (See Table 4 for the percentages that were converted into absolute numbers above.)

⁸ Ibid

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Table 1: Offenders who committed an indictable offence with more than 10 previous convictions/cautions⁹

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Absolute discharge	521	586	451	442	527	567
Conditional discharge	11,971	12,794	12,656	12,721	13,768	14,536
Fine	15,875	17,381	20,296	20,439	22,285	21,737
Community sentence	20,808	23,448	27,129	26,097	27,036	27,931
Fully suspended	9,509	10,557	10,710	10,581	10,142	10,993
Caution, reprimand or warning ¹⁰	7,750	8,447	8,308	7,251	7,369	7,243
Other	4,867	5,456	5,730	7,224	8,141	8,025
Total non-prison	71,301	78,669	85,280	84,755	89,268	91,032
Immediate custody	41,655	45,561	47,394	45,020	48,085	49,136
Total	112,956	124,230	132,674	129,775	137,353	140,168

Table 2: Offenders who committed an indictable offence with 15 or more previous convictions/cautions¹¹

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Absolute discharge	387	444	344	339	415	462
Conditional discharge	8,699	9,411	9,490	9,579	10,489	11,348
Fine	11,226	12,346	14,650	14,770	16,263	16,111
Community sentence	14,236	16,318	19,592	19,041	19,957	20,879
Fully suspended	6,874	7,740	7,968	7,783	7,609	8,284
Caution, reprimand or warning ¹²	4,715	5,233	5,173	4,405	4,597	4,493
Other	3,592	4,136	4,351	5,608	6,496	6,523
Total non-prison	49,729	55,628	61,568	61,525	65,826	68,100
Immediate custody	31,475	34,865	36,773	35,309	38,467	40,019
Total	81,204	90,493	98,341	96,834	104,293	108,119

⁹ Data taken from Table Q7.5 - Offenders sentenced for indictable offences by previous criminal history and sentence received, 12 months ending June 2002 to 12 months ending June 2012, England and Wales, Ministry of Justice at <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/offending-histories-tables-0612.xls> (See Table 3 for the percentages that were converted into absolute numbers in this table)

¹⁰ Caution, reprimand or warning data are taken from Table Q7k - Offenders receiving a reprimand, warning or caution for an indictable offence recorded on the Police National Computer by age group, gender and previous criminal history, 12 months ending June 2002 to 12 months ending June 2012, England and Wales, Ministry of Justice at <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/offending-histories-tables-0612.xls> (See Table 4 for the percentages that were converted into absolute numbers in this table)

¹¹ Data taken from Table Q7.5 (See Table 3 for percentages)

¹² Table Q7k (See Table 4 for percentages)

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Table 3: Percentage breakdown - Offenders sentenced for indictable offences by previous criminal history and sentence received, 12 months¹³

Number and percentage of offenders	2007	2008	2009	2010	2011	2012
12 months ending June						
By number of previous convictions, reprimands or warnings						
0	61.0	58.0	56.3	55.1	52.2	50.3
1-2	23.9	25.0	25.5	25.9	26.5	26.3
3-6	8.3	9.3	9.9	10.3	11.6	12.6
7-10	2.9	3.3	3.5	3.7	4.1	4.4
11-14	1.5	1.7	1.8	2.0	2.1	2.4
15+	2.4	2.8	3.0	3.0	3.5	3.9
Number of offenders	199,451	188,955	172,967	145,833	132,984	113,897

Table 4: Percentage breakdown - Offenders sentenced for indictable offences by previous criminal history and sentence received, 12 months ending June 2007 to 12 months ending June 2012, England and Wales¹⁴

Disposal and number of previous convictions or cautions	Number and percentage of offenders 12 months ending June					
	2007	2008	2009	2010	2011	2012
Absolute discharge						
First time offenders	8.9	9.7	8.7	9.6	9.5	9.5
1-2 previous convictions/cautions	30.2	27.7	29.2	30.1	25.8	23.2
3-6 previous convictions/cautions	26.1	24.9	27.8	25.8	25.6	25.9
7-10 previous convictions/cautions	9.2	9.9	7.6	8.5	8.8	7.6
11-14 previous convictions/cautions	6.6	6.7	6.3	6.1	6.4	6.3
15 or more previous convictions/cautions	19.0	21.1	20.3	20.0	23.8	27.6
All offenders (100%)	2,037	2,109	1,695	1,699	1,744	1,676
Conditional discharge						
First time offenders	11.0	9.8	9.1	9.7	9.3	8.1
1-2 previous convictions/cautions	19.9	19.5	19.5	20.1	19.6	18.1
3-6 previous convictions/cautions	23.5	23.2	22.5	22.8	22.2	21.4
7-10 previous convictions/cautions	12.6	12.8	12.6	12.1	12.3	12.1
11-14 previous convictions/cautions	9.0	9.2	9.1	8.7	8.7	8.8
15 or more previous convictions/cautions	23.9	25.5	27.2	26.6	27.9	31.4
All offenders (100%)	36,392	36,924	34,918	36,038	37,654	36,128
Fine						
First time offenders	8.3	7.3	6.6	6.2	6.1	5.8
1-2 previous convictions/cautions	18.2	17.1	16.9	16.9	16.4	15.3
3-6 previous convictions/cautions	26.3	26.0	25.5	25.6	25.0	24.3

¹³ Data taken from Table Q7k

¹⁴ Data taken from Table Q7.5

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7-10 previous convictions/cautions	14.5	15.0	15.1	14.9	14.7	14.7
11-14 previous convictions/cautions	9.6	10.0	10.0	10.1	10.2	10.3
15 or more previous convictions/cautions	23.1	24.6	26.0	26.3	27.6	29.5
All offenders (100%)	48,679	50,167	56,319	56,254	59,014	54,571
Community sentence						
First time offenders	12.5	11.5	11.5	12.2	12.5	12.4
1-2 previous convictions/cautions	27.4	26.3	24.4	23.9	22.6	21.2
3-6 previous convictions/cautions	27.1	26.7	25.5	25.3	24.6	23.5
7-10 previous convictions/cautions	11.8	12.0	11.8	11.5	11.8	11.9
11-14 previous convictions/cautions	6.7	7.2	7.4	7.4	7.5	7.8
15 or more previous convictions/cautions	14.5	16.4	19.3	19.8	21.1	23.2
All offenders (100%)	98,213	99,492	101,437	95,990	94,754	90,029
Fully suspended						
First time offenders	14.3	14.6	15.0	15.8	16.3	16.1
1-2 previous convictions/cautions	15.7	16.7	17.3	17.7	18.0	17.1
3-6 previous convictions/cautions	21.2	20.9	20.2	21.0	21.0	19.7
7-10 previous convictions/cautions	13.7	13.3	12.9	12.2	12.1	12.0
11-14 previous convictions/cautions	9.7	9.2	8.9	8.8	8.2	8.6
15 or more previous convictions/cautions	25.4	25.4	25.8	24.5	24.5	26.4
All offenders (100%)	27,055	30,509	30,905	31,705	31,065	31,370
Immediate custody						
First time offenders	10.2	10.8	10.0	10.3	9.3	9.1
1-2 previous convictions/cautions	9.2	9.2	9.6	10.0	9.5	9.6
3-6 previous convictions/cautions	16.1	15.5	15.2	15.6	14.9	14.6
7-10 previous convictions/cautions	14.3	13.9	13.3	12.9	12.5	11.9
11-14 previous convictions/cautions	12.3	11.9	11.6	11.0	10.8	10.2
15 or more previous convictions/cautions	37.9	38.7	40.3	40.1	43.0	44.6
All offenders (100%)	83,012	90,008	91,229	87,955	89,365	89,646
Other						
First time offenders	8.6	9.3	10.5	10.1	8.7	7.9
1-2 previous convictions/cautions	14.0	13.0	14.1	15.5	13.7	12.4
3-6 previous convictions/cautions	22.5	21.0	20.1	19.5	18.9	18.3
7-10 previous convictions/cautions	14.7	14.1	13.0	12.9	12.7	12.7
11-14 previous convictions/cautions	10.6	10.3	10.2	9.4	9.3	9.1
15 or more previous convictions/cautions	29.8	32.3	32.2	32.6	36.6	39.5
All offenders (100%)	12,068	12,803	13,525	17,187	17,727	16,514
All disposals						
First time offenders	11.0	10.6	10.3	10.6	10.3	10.0
1-2 previous convictions/cautions	18.6	17.9	17.4	17.5	16.7	15.7
3-6 previous convictions/cautions	22.9	22.3	21.6	21.7	21.1	20.3
7-10 previous convictions/cautions	13.3	13.3	13.0	12.6	12.6	12.4
11-14 previous convictions/cautions	9.3	9.5	9.5	9.2	9.1	9.2
15 or more previous convictions/cautions	24.9	26.5	28.2	28.3	30.1	32.4
Total offenders of All ages (100%)	307,456	322,012	330,028	326,828	331,323	319,934