

**CIVITAS BRIEFING**  
**Serious, Violent and Persistent Offenders**  
**David Green (July 2011)**

## **Summary**

The Government has 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.<sup>1</sup>

## **Introduction**

The consistent line of all recent governments has been that ‘custody should be reserved for the most violent, dangerous and prolific offenders’.<sup>2</sup> 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. A table in the annual publication *Criminal Statistics* allows us to compare the risk of detection, conviction and imprisonment from 1951 to 2010. In 1951 the detection rate was 47% (Table 1 below). It fell to a low of 23% in 2003 before recovering slightly to 28% in 2009. This rate is by comparison with police recorded crime. If compared with crime reported to the British Crime Survey (BCS) the proportion is substantially lower.

### **Conviction and Punishment**

However, once 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 Jack Straw remarked in his 2008 RSA speech, 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 2008, for example, 1,336,000 offences were detected but 1,690,000 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, about two 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 the most serious offences that may have to be tried in a Crown Court.<sup>3</sup> In 2010, 23.6% 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.<sup>4</sup> The peak of 25.3% was reached in 2002 and has subsequently fallen to 23.6% in 2010.<sup>5</sup>

In the peak year of 2002 85,000 criminals were sent to jail for indictable crimes, whereas in 2010 only 83,000 were imprisoned. 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 in 2010 the proportion is only 17.1%, having fallen from 17.7% in 2002. Put another way, and as shown in Table 2, only about 17 in every 100 criminals who are cautioned or convicted for an indictable crime are given immediate custody. The variation reflects changes in the use of cautioning from 143,000 occasions in 2002 to a peak of 205,000 in 2007. In 2010 the figure was 134,000. There has also been a significant switch to giving suspended prison sentences from 0.9% of sentences in 1997 to 9.8% in 2010, 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.’<sup>6</sup>

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 24% in 2009. The others were given shorter custodial sentences and in 2009 10% were not given custody at all.<sup>7</sup> Even including those given a 20% discount for pleading guilty, only 44.1% of burglars convicted for at least three burglaries 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 been falling since 1997. In that year 45.3% of convicted burglars were given immediate custody. The proportion peaked at 51.2% in 2000 fell to a low of

only 39.2% in 2007 and was only 44.1% in 2009.<sup>8</sup>

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? It is important to remember that convictions and cautions only take account of occasions on which offenders are brought to justice, perhaps one crime in every five discovered by the British Crime Survey (BCS).<sup>9</sup>

A new 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 2009 shows sentences for offenders classified according to their previous convictions or cautions.<sup>10</sup> Offenders who had 11-14 previous convictions or cautions were given custody in only 32.3% of cases when they were convicted of a serious (indictable) crime. When they had 15 or more previous convictions or cautions only 37.8% were given 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.<sup>11</sup>

### **Violent Offenders**

Only 32.6% of those sentenced for 'violence against the person' in 2009 received custodial sentences. The immediate custody rate for 'violence against the person' has remained roughly static at around 30% since 1997.<sup>12</sup>

Robbery is one of the most serious violent crimes and includes street mugging. Alarmingly the custody rate has fallen since 1997, when it was 71.6%. It reached a peak of 76.1% in 2002 but fell to only 53.8% in 2007. In 2009 it was only 59.5%.<sup>13</sup>

**Table 1**  
**Risk of Detection, Conviction and Imprisonment 1951 - 2009 (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	1,666	775	47%	109	1,688	1,797	56.3	3.3%	3.4%
1981	2,794	1,056	38%	154	2,105	2,259	74.6	3.5%	2.7%
1991	5,075	1,479	29%	279	1,519	1,796	60.1	4.0%	1.2%
2001	5,527	1,291	23%	230	1,350	1,580	106.3	7.9%	1.9%
2002	5,899	1,389	24%	225	1,421	1,647	111.6	7.9%	1.9%
2003	6,014	1,406	23%	242	1,491	1,733	107.6	7.2%	1.8%
2004	5,638	1,441	26%	256	1,549	1,804	106.3	6.9%	1.9%
2005	5,555	1,516	27%	299	1,484	1,783	101.2	6.8%	1.8%
2006	5,428	1,394	26%	350	1,421	1,771	96.0	6.8%	1.8%
2007	4,951	1,373	28%	363	1,416	1,779	95.0	6.7%	1.9%
2008	4,703	1,339	28%	328	1,363	1,691	99.5	7.3%	2.1%
2009	4,339	1,205	28%	291	1,407	1,698	100.2	7.1%	2.3%
2010	4,159			243	1,367	1,610	102.0	7.5%	2.5%

Source: Criminal Justice Statistics, Quarterly Update to December 2010, Table 2.3, Q1.6, Q5.4

Criminal Statistics 2009, Table 1A, Table 1B, Criminal Statistics 2008, Table 1.1, Table 1.2.

Criminal Statistics 2007, Table 1.1, Table 1.2

Criminal Statistics 2001, Table 1.1, Criminal Statistics 1993, Table 7A

Criminal Statistics 1981, Table 7.15, Criminal Statistics 1951, 1961, 1971, 1991

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 - 2009 (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	1,666	775	47%	77	342	419	45.5	13.3%	10.9%
1981	2,794	1,056	38%	104	465	568	69.3	14.9%	12.2%
1991	5,075	1,479	29%	180	347	527	48.9	14.1%	9.3%
2001	5,527	1,291	23%	144	323	468	80.3	24.8%	17.2%
2002	5,899	1,389	24%	143	337	481	85.2	25.3%	17.7%
2003	6,014	1,406	23%	151	335	486	80.8	24.1%	16.6%
2004	5,638	1,441	26%	156	318	474	79.9	25.1%	16.9%
2005	5,555	1,516	27%	183	308	491	76.3	24.8%	15.5%
2006	5,428	1,394	26%	204	303	507	73.5	24.3%	14.5%
2007	4,951	1,373	28%	205	313	518	74.0	23.7%	14.3%
2008	4,703	1,339	28%	181	317	498	79.1	24.9%	15.9%
2009	4,339	1,205	28%	160	329	488	80.2	24.4%	16.4%
2010	4,159			134	351	484	82.9	23.6%	17.1%

Source: Criminal Justice Statistics, Quarterly Update to December 2010, Table 2.3, Q1.6, Q5.4

Source: Criminal Statistics 2009, Table 1A, Table 1B

Criminal Statistics 2008, Table 1.1, Table 1.2, Criminal Statistics 2007, Table 1.1, Table 1.2

Criminal Statistics 2001, Table 1.1, Criminal Statistics 1993, Table 7A, Criminal Statistics 1981, Table 7.15

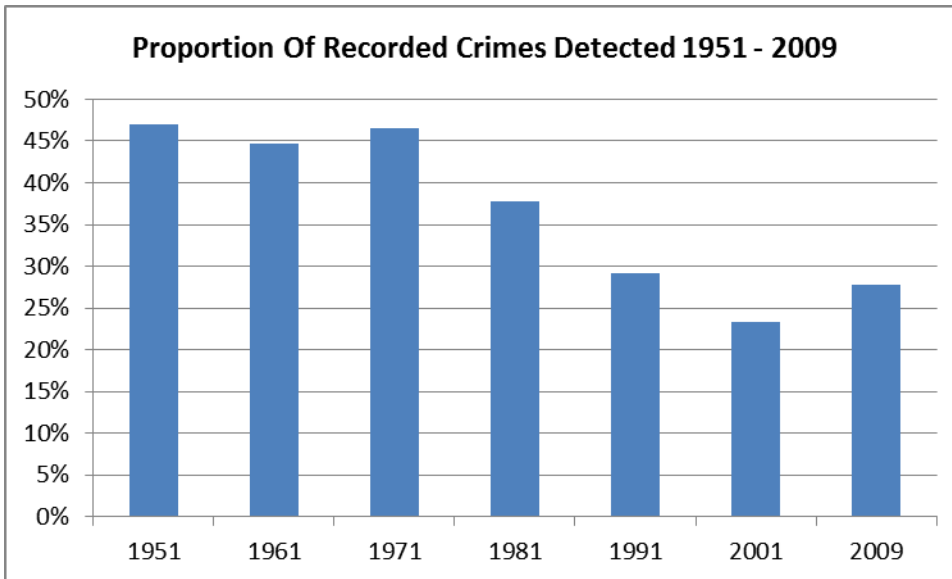
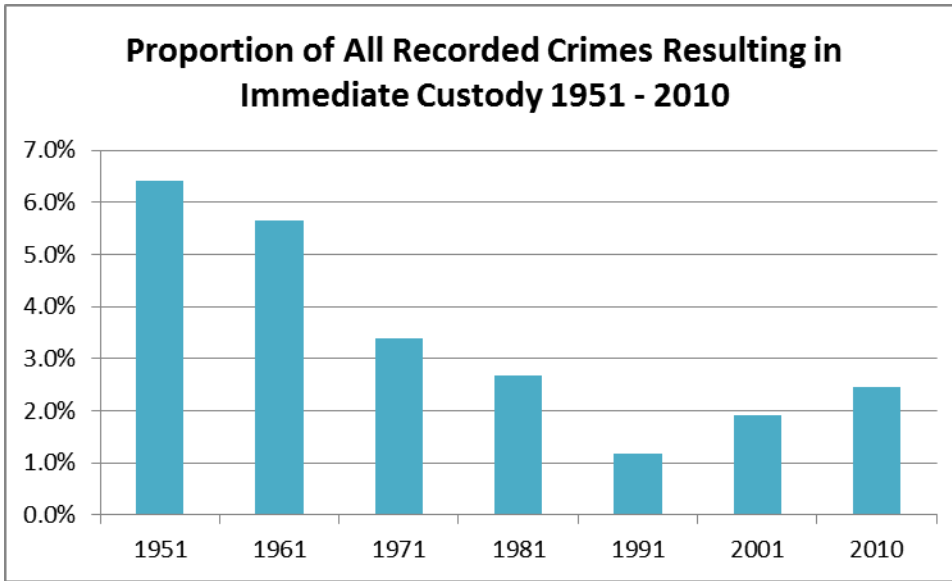
Criminal Statistics 1951, 1961, 1971, 1991, Sentencing Statistics 2008, Table 1.2, Table 2.5

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 1997-2010**

	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	25.3	1,963	336,744	0.6%
2003	24.2	2,055	333,930	0.6%
2004	25.2	2,143	316,937	0.7%
2005	24.9	5,610	306,598	1.8%
2006	24.3	20,799	302,537	6.9%
2007	23.7	27,254	312,258	8.7%
2008	25.0	28,455	315,900	9.0%
2009	24.5	31,119	327,146	9.5%
2010	23.8	34,176	347,422	9.8%

Source: Criminal Justice Statistics, Quarterly update to December 2010, Table Q5b  
 Sentencing Statistics 2009, Table 1.2  
 Sentencing Statistics 2008, Table 1.2  
 Criminal Statistics 1993, Table 7.3  
 Criminal Statistics 1999, Table 7.3



## Notes

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<sup>1</sup> Thanks to Pete Quentin and Lara Natale for research assistance in 2009 and 2010.

<sup>2</sup> For example, Jack Straw, Secretary of State For Justice, speech to the RSA, October 2008.

<sup>3</sup> Some offences are ‘triable either way’, which means they can be heard either before magistrates or in a Crown Court.

<sup>4</sup> Davies, M., ‘Sentencing trends and public confidence’ in Murray, C., *Does Prison Work?*, London: Civitas, 1997.

<sup>5</sup> Sentencing Statistics 2009, Table 1.2.

<sup>6</sup> Guardian, 17 January 2009.

<sup>7</sup> Sentencing Statistics 2008, Tables 6.11 and 6.12; Sentencing Statistics 2009, Tables 6i and 6h.

<sup>8</sup> Sentencing Statistics 2008, Table 1.2, Sentencing Statistics 2009, Table 2.4.

<sup>9</sup> In 2008 there were 1.690m convictions or cautions compared with 10.687m BCS crimes – about 16%.

<sup>10</sup> A caution involves admitting a crime, which is then recorded as a detection. Offenders suffer no punishment, although conditions may be attached.

<sup>11</sup> Sentencing Statistics 2008, Table 6.6, Sentencing Statistics 2009, Table 6.2.

<sup>12</sup> Sentencing Statistics 2008, Table 1.2, Sentencing Statistics 2009, Table 2.4.

<sup>13</sup> Sentencing Statistics 2008, Table 1.2, Sentencing Statistics 2009, Table 2.4.