Punishment Without Trial? Research And Policy In Out-Of-Court Disposals By Police

Dr. Peter NEYROUD, Lecturer in Evidence-based Policing and Co-Chair of the Campbell Collaboration Crime and Justice Coordinating Group
Overview

- A little personal history
- Campbell Systematic Reviews and the evidence on diversion, court disposals and sentencing
- The Evidence on Out of Court Disposals
- Operation Turning Point
- Summarising the best evidence on diversion
A “Pracademic” career

Police Chief (Thames Valley and National Policing Improvement Agency)

Academic – Researcher, author and teacher at Cambridge
From Police Constable to Chief Constable and Academic
Instant Cautions, Implementing Cautioning, Family Group Conferencing and Youth Justice Teams
Restorative Justice and Neighbourhood Justice

Proceed with caution: an evaluation of the Thames Valley Police initiative in restorative cautioning
“An Apology for a Chief Constable” (Richard Littejohn, Sun)
The ACPO Gravity Factors Matrix

GRAVITY FACTOR MATRIX FOR ADULTS – SCORES
UPDATED 8 APRIL 2013

1.0 Introduction

1.1 A simple caution was renamed to distinguish it from a conditional caution. It is a non-statutory disposal for adult offenders and may be used for disposing of offences when specified public interest and eligibility criteria are met. A Gravity Factor Matrix has been developed by the Association of Chief Police Officers (ACPO) to assist in making cautioning / charging decisions for adults. For further information refer to the Ministry of Justice Guidance on Simple Cautions. This document is available on the Ministry of Justice web site or via a link through APP post May 2013.

1.2 This matrix has been updated by the ACPO Out of Court Disposals portfolio to take into account the changes in out of court disposals introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and revised caution guidance from the MOJ.

1.3 The key factors which will be relevant in deciding whether to charge, caution or conditionally caution an offender for an offence are:

(a) Do they admit the offence?
(b) The seriousness of the offence
(c) The previous offending history of the offender and
(d) Does the disposal adequately address, support and reduce the risk of reoffending?
(e) Where the Full Code Test is met, would the public interest be properly served by issuing a simple or Conditional Caution
(f) Views of the victim
The Campbell Collaboration promotes positive social change through the production and use of systematic reviews and other evidence synthesis for evidence-based policy and practice.

Better Evidence for a Better World

Strategy 2016-2018

Better Evidence for a Better World
A growing recognition that prisons are not working.

**THE SUN ON SUNDAY SAYS** Our jails are awash with drugs and legal highs and are stuffed with too many non-dangerous criminals... Liz Truss must re-establish order after cuts.
The effects of sentencing policy on re-offending
A summary of evidence from 12 Campbell systematic reviews
The brief in brief

Prison populations are growing around the world. However, custodial sentences do not reduce recidivism by any more than non-custodial approaches, which are cheaper and have fewer consequences for offenders’ families. Diverting offenders before they enter the system is likely to produce less offending. Harsh prison regimes such as boot camps are not effective. Evidence also shows that programmes focused on specific issues such as drug use and sex offenders reduce recidivism.
Scared Straight Backfires

Trying to scare teenagers off a life of crime by showing them prisons and former gang members 'has the opposite effect', study shows

- Research says taking children to prisons can have a detrimental impact
- Police chiefs use the technique to help tearaway teenagers
- Fears the schemes make children more likely to commit crime
- Police group boss says teens should be taken on survival courses instead

By MATT HUNTER FOR MAILONLINE
PUBLISHED: 11:23, 25 January 2016 | UPDATED: 00:18, 26 January 2016
Curfews backfire

Juvenile curfews are not effective in reducing crime and victimization

The Curfew Myth
How a '90s panic spawned an anti-crime measure that doesn't make you safer.
Yet community sentences and Out of Court Disposals can work.

Effects of custodial versus non-custodial sanctions on re-offending.

Custodial sentences, such as prison, are no better than non-custodial sentences in reducing re-offending.
Based on the evidence presented in this report, juvenile system processing appears to not have a crime control effect, and across all measures appears to increase delinquency....
And the Police can make a difference

Crime and Justice

Police-led diversion of low-risk youth reduces their future contact with the justice system
Formal processing of young offenders and pre-court disposals managed by the police, which divert offenders from the criminal justice system rather than prosecuting them, can lead to reduced reoffending.
And Restorative Justice is one intervention that can work.

Face-to-face Restorative Justice Conferences are cost-effective in reducing reoffending and increasing victim satisfaction.
UK Developments on diversion and out of court disposals
Falling levels of Out of Court Disposals

Figure 1: Individuals dealt with formally by the CJS, 12 months ending March 2008 to March 2018 (Source: Table Q1.1 and historical data)
Offences Brought to Justice fall by 50%, OOCD by more than 75% in 10 years

Figure 2: Out of court disposals issued, by disposal, 12 months ending March 2008 to March 2018 (Source: Tables Q.1.1, Q2.1 & Q2.2 and historic data)

Figure 1. Percentage change in numbers of crimes and CHI for total crime, by year. Data (2016) obtained from Eleanor Neyroud by personal email, July 3, 2018.
And an upward march of violent crime..

England and Wales, year ending March 2003 to year ending September 2018

Number of offences

November 2014: Publication of HMICFRS reports highlighting the issues in recording practices for violent offences.
Seven disposals
Caution
Informal warning
Community resolution
Cannabis warning
Khat warning
Fixed Penalty
Conditional Caution

Community Remedy
A locally determined menu of potential conditions

A ‘simplified’ system
Community Resolution Plus
Conditional Caution Plus

Home Office and The Ministry of Justice “reforms”
Home Office and The Ministry of Justice “reforms”

Seven disposals
- Caution
- Informal warning
- Community resolution
- Cannabis warning
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- Fixed Penalty
- Conditional Caution

Community Remedy
- A locally determined menu of potential conditions

A ‘simplified’ system
- Community Resolution Plus
- Conditional Caution Plus

Where is the Evidence?
From the present...

Current model: - report of crime/arrest + evidence + seriousness of offence = disposal decision

Arrest or street processing

Gravity Factors Matrix + Instant Offence + Previous convictions

Prosecution

Out of Court Disposals
Rethinking the Gateway: Using evidence to reform the criminal justice system for victims and people who offend

A pamphlet for the Howard League for Penal Reform by Peter Neyroud CBE QPM, Institute of Criminology, University of Cambridge
Offender desistance policing (Sherman and Neyroud, 2012)

Harm prediction rather than offence being dealt with

- HIGH HARM (2%)
- MEDIUM HARM
- LOW HARM (60+%)
Does “it” work? For whom? How? Why?

Out of Court Disposals managed by the Police: a review of the evidence

Dr Peter Neyroud

Commissioned by the National Police Chief’s Council of England and Wales

https://www.npcc.police.uk/Publication/NPCC%20Out%20of%20Court%20Disposals%20Evidence%20assessment%20FINAL%20June%202018.pdf
Using the best evidence of effectiveness

- **Establish causality (bias --)**
- **Generate hypotheses (bias ++)**
- **Randomised controlled studies**
  - “It is shown that ...”
- **Controlled longitudinal studies**
  - “It is likely that ...”
- **Uncontrolled longitudinal studies**
  - “There are signs that ...”
- **Cross-sectional studies and case studies**
- **Expert opinions**
  - “Experts are of the opinion that ...”
Police RCTs 1970-2016: Pre-court diversion RCTs
Combined with the Lessons from the non-experimental evidence

- Speed matters: Instant cautions work better than deferred (Giller, 1981)

- Cautions may “net-widen” (Farrington and Bennett, 1981) and act as a Gateway to prosecution (Kemp and Gelsthorpe, 2012)

- Cautioning may be discriminatory (Landau and Nathan, 1983 and Lammy, 2018)


- Cautions using restorative justice may reduce reoffending (Young and Goold, 1999 and Strang et al., 2013)

- Diversion for drug offenders look promising (Harvey et al., 2007 and Collins et al., 2015)
The Turning Point Project: testing prosecution against pre-court diversion

Lawrence Sherman
Peter Neyroud
Molly Slothower
Jamie Hobday
Barak Ariel
Eleanor Neyroud
Geoffrey Barnes
Deterrence and Desistance: Operation Turning Point

• **Hypothesis** is that police can prevent crime by a combined treatment
  • **Holding a prosecution over the offender** (Deterrence)
  • **Agreeing a contract to support the offender to stop offending** (Desistance)
  • **But insisting on compliance in return for non-prosecution** (Deterrence)

• **Treatment** is a deferred prosecution with conditions, targeted at the 60+% of offenders who can be assessed as a “low risk of serious harm”

• **Method** is an Randomised Controlled Trial
Operation ‘Turning Point’

- **Sample**: offenders whom the police have decided to prosecute, who are:
  - Low risk offenders
    - Who have no previous conviction (they may have previous cautions or other diversions)
    - or one prior conviction (more than 5 years ago if an adult and 2 years ago if juvenile).
  - And offence is not likely to result in instant prison sentence
- Randomly assigning them to prosecution or police offender management
- Developing and testing a standard protocol of tactics for police offender management
Sample of 414 first and second offenders whom the police have decided to prosecute.

Random assignment = 414

Prosecution = 208

Turning Point = 206

Which has less crime? Cost? Victim satisfaction?
What’s Involved?

- Voluntary participation
- Agreed ‘Turning-Point Plan’
- Compliance = no prosecution

- Non-compliance
  - Failure to keep to plan
  - Reoffending

  Breach

  Prosecution
3 Key Findings

Compared to standard prosecution, Offender Management by Turning Point (Deferred Prosecution With a Plan) caused these effects:

1. Reduced crime harm by 36%
2. Increased justice imposed by 34%
3. Reduced cost of justice by 45%
1. Reduced Crime Harm by 36%
Average, per offender, over 2 years after initial arrest

- Prosecution: 134 Days
- Turning Point: 87 Days
The Cambridge Crime Harm Index: Measuring Total Harm from Crime Based on Sentencing Guidelines

Lawrence Sherman*, Peter William Neyroud** and Eleanor Neyroud***
### Difference in Total Days of Potential Imprisonment Over 2 Years

<table>
<thead>
<tr>
<th></th>
<th>Prosecution</th>
<th>Turning Point</th>
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<tbody>
<tr>
<td>Days</td>
<td>27,872 days</td>
<td>17,922 days</td>
</tr>
<tr>
<td>Over 365</td>
<td>76 years in prison</td>
<td>49 years in prison</td>
</tr>
<tr>
<td>homicides</td>
<td>5</td>
<td>2 fewer</td>
</tr>
<tr>
<td>robberies</td>
<td>76</td>
<td>27 fewer</td>
</tr>
<tr>
<td>rapes</td>
<td>15</td>
<td>5 fewer</td>
</tr>
<tr>
<td>burglary dwellings</td>
<td>1,394</td>
<td>498 fewer</td>
</tr>
</tbody>
</table>
2. Increased “Justice” Imposed by 34%

• Offer to have NO record
• BUT ONLY
• as a carrot for compliance with *immediate* treatment
• Versus bail to court
• If fail to keep promise to
• Undertake a plan
• Then breach, prosecute
Diversion vs. Prosecution

% “Punishment” Defined as “Consequences”

PROSECUTION

70% Consequences

TPP DEFERRAL

94% Consequences

34% higher in TPP

d=.64, p=.000
What About Victims?

- How does diversion square with the goal of retribution for victim?
- The idea that prosecution = retribution is not evidence-based
- The claim that victims prefer prevention IS evidence-based
- What really happened with prosecution?
Prosecution Outcomes

- Community Order/Referral: 27%
- Not Guilty/Withdrawn/Dismissed: 33%
- Fine: 23%
- Conditional Discharge: 10%
- Imprisonment: 2%
- Suspended Imprisonment: 5%
Birmingham Turning Point Hypotheses:

- Victims widely share the underlying goal of stopping it from happening again.
- Victims will be happy with out-of-court disposals as long as they feel the police respect them, care about them, and are doing something in their interest.
- How police explain the outcome will matter: reducing reoffending as a legitimate police goal.

Molly Slothower
Sample

- 142 Victims of cases randomly assigned to prosecution or Turning Point over a 6-month period
- 70% response rate
The victim conversation

1. **RJ Questions:** How has this impacted you/others? How did you feel then/now? Hardest part for you?

2. **Explicitly state** each impact back to the victim

3. **Court:** Explain outcomes received by Turning Point cases assigned to court

4. **Address impacts:** Explain how Turning Point would try to address each impact, including stopping the crime from happening again to the victim/others

5. **Identify underlying goals:** “why?”
“Satisfied” or “Very Satisfied”

45% increase for TPP

\[ p = .010; d = .58 \]
The Big Difference?

Turning Point sample was more likely to think what happened in their case is going to stop the offender from doing it again.

…effect was not likely without attention to communication
% Victims Satisfied with their Case Handling

- + Explanation: 50%
- Alone: 54%
- Total: 73%
3. Reduced cost of justice by 45%
All costs of processing (All Courts, CPS, Police)

<table>
<thead>
<tr>
<th></th>
<th>Court</th>
<th>TPP</th>
</tr>
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<tbody>
<tr>
<td>Total Cost</td>
<td>£366,501.40</td>
<td>£201,332.60</td>
</tr>
<tr>
<td>Average Per Person</td>
<td>1762.03</td>
<td>977.34</td>
</tr>
</tbody>
</table>

45% Less total cost
TPP saved £165,000 over 206 cases
And new evidence TESTED in the UK...

Triage + Navigators setting conditions on deferred prosecution

Live Experimental stage

The proposals in this response will simplify the adult disposal framework, putting victims at the heart of the system. They will also give police powers to tackle low-level offending in a way that will have more impact on offenders. This new system will be piloted in three police forces - West Yorkshire, Leicestershire and Staffordshire - from 3 November and is expected to run for 12 months.
Field Experiments and Replications under way

Met police to defer prosecutions for some young offenders

Scheme aims to cut crime and re-offending, and reduce racial bias in criminal justice system

Britain’s biggest police force is to begin deferring prosecutions for minor offences in an attempt to reduce youth crime and lessen racial bias in the criminal justice system.
Conclusions of the Evidence Review?

“Out of Court Disposals, whether with conditions or without, are effective, compared to court prosecution, at reducing harm and reoffending and sustaining victim confidence and satisfaction. This finding applies to young offenders, young adults and adults”
OOCD’s are effective with low harm, low risk offenders but they may also be effective with moderate risk offenders.

OOCD’s with conditions appear to be promising in reducing harm, including domestic violence.
In order to be effective, OOCD’s with conditions must be implemented well and three areas require particular attention:

• the eligibility screening of offenders;
• the needs assessment to match conditions to the offender;
• the setting and tracking of conditions
Questions?