

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

Institute of Criminology

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



THAMES VALLEY
POLICE



NPIA
National Policing
Improvement Agency

**From Police
Constable to Chief
Constable and
Academic**



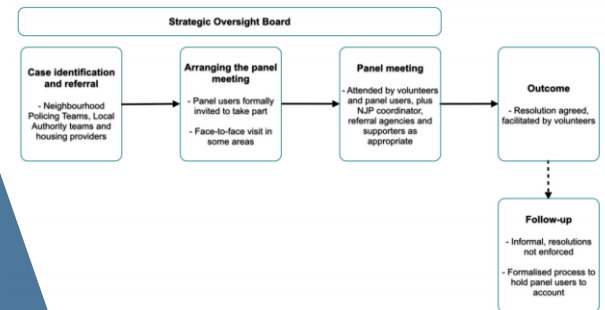


Instant Cautions, Implementing Cautioning, Family Group Conferencing and Youth Justice Teams

Restorative Justice and Neighbourhood Justice

Proceed with caution: an evaluation of the Thames Valley Police initiative in restorative cautioning

Figure 4.1: Overview of NJP delivery



THAMES VALLEY
POLICE



“An Apology for a Chief Constable” (Richard Littejohn, Sun)

Sorry I mugged you

by MATTHEW HICKLEY, Daily Mail

Criminals who commit serious offences including muggings and burglaries could escape prosecution simply by apologising to their victims and promising to behave in future.

The proposed 'conditional caution' is the brainchild of Peter Neyroud, the chief constable of Thames Valley Police, who chairs ACPO's working group on criminal punishments.

With existing police cautions, offenders admit to a crime but are not punished, although they are left with a criminal record.

Under the new caution, police and probation officers would draw up a special programme for each offender.

The offender would not be charged or be given a criminal record unless they breached the terms of the contract or committed another offence. Mr Neyroud admitted the scheme would attract criticism for being too soft, but insisted it could help reoffending rates.

'It is a "tough-love" approach, not a cosy out-in-the-community approach,' he said.

'I am not afraid of being told I'm a wishy-washy liberal. This is not wishy-washy liberal stuff.' An ACPO spokesman added: 'From our perspective not everyone who commits a crime is best served by going to prison.'

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



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

More criminals should be given community sentences instead of being jailed, says Britain's most senior judge



Shadd Maruna and 1 other liked



Alison Liebling @AlisonLiebling · Nov 6

'I want to see the prison population come down' - **David Lidington**, Sec State, to Parole Board/Butler Trust conf ..



1



13



26



Campbell Policy Brief on Sentencing

Campbell Policy Brief No.4
November 2017

The effects of sentencing policy on re-offending

A summary of evidence from 12 Campbell systematic reviews

The Brief in Brief

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

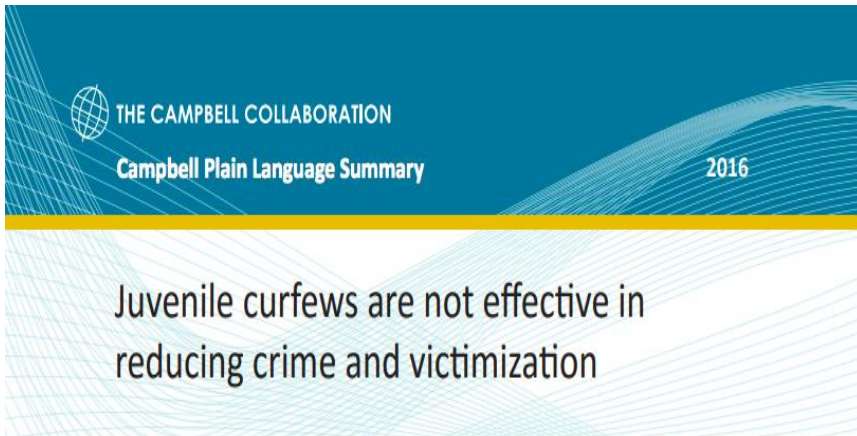


Plain Language Summary
Crime and Justice Coordinating Group

2017

Scared straight programs result in more crime

Curfews backfire



JUSTICE LAB

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.



Formal System Processing of Juveniles: Effects on Delinquency

Anthony Petrosino, Carolyn Turpin-Petrosino, Sarah
Guckenburg

“...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



Plain language summary
Crime and Justice

2018

**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



Plain Language Summary
Crime and Justice

2017

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



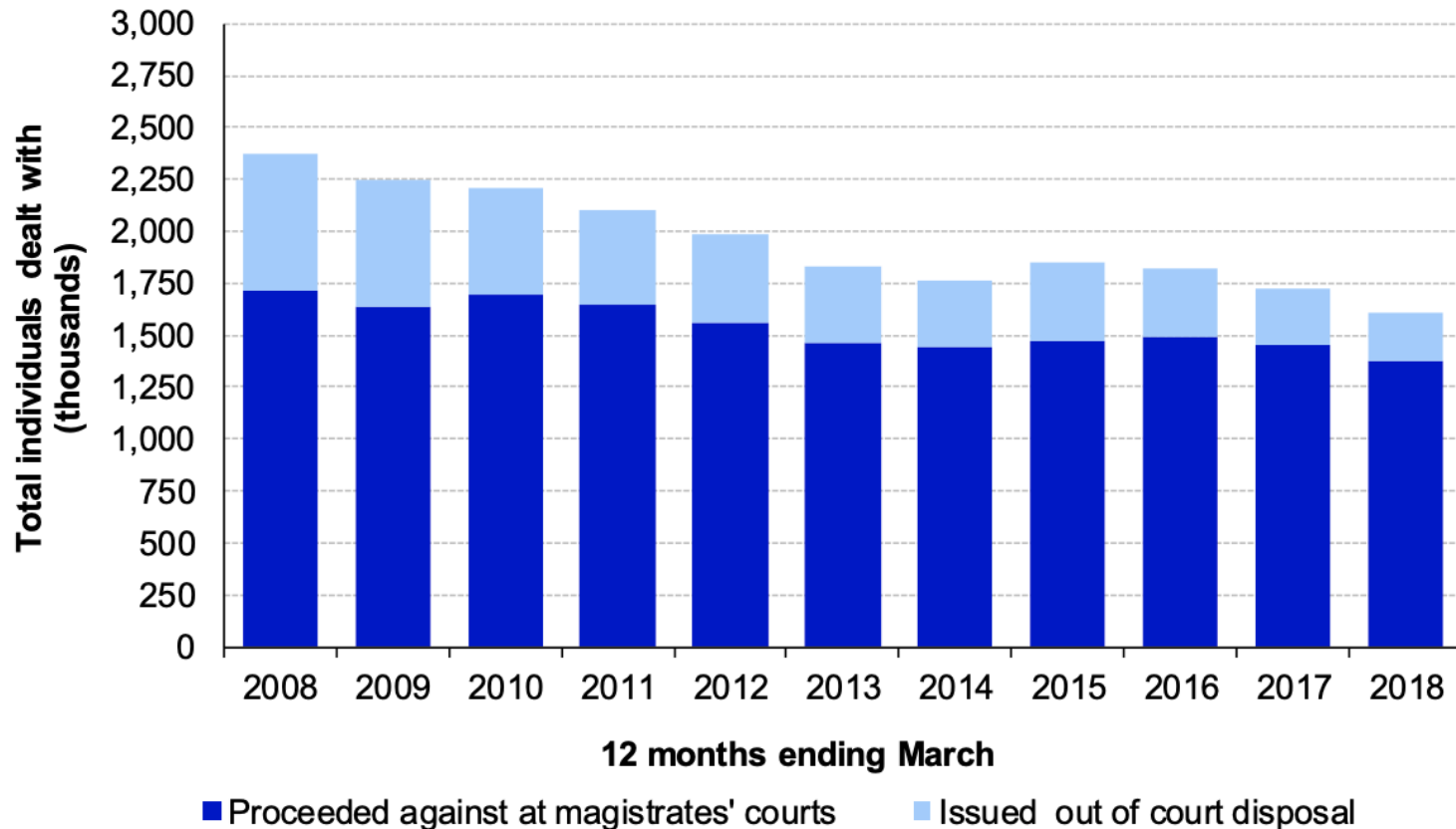
[Consultation Hub](#) [Find Consultations](#)



Consultation on out of court disposals

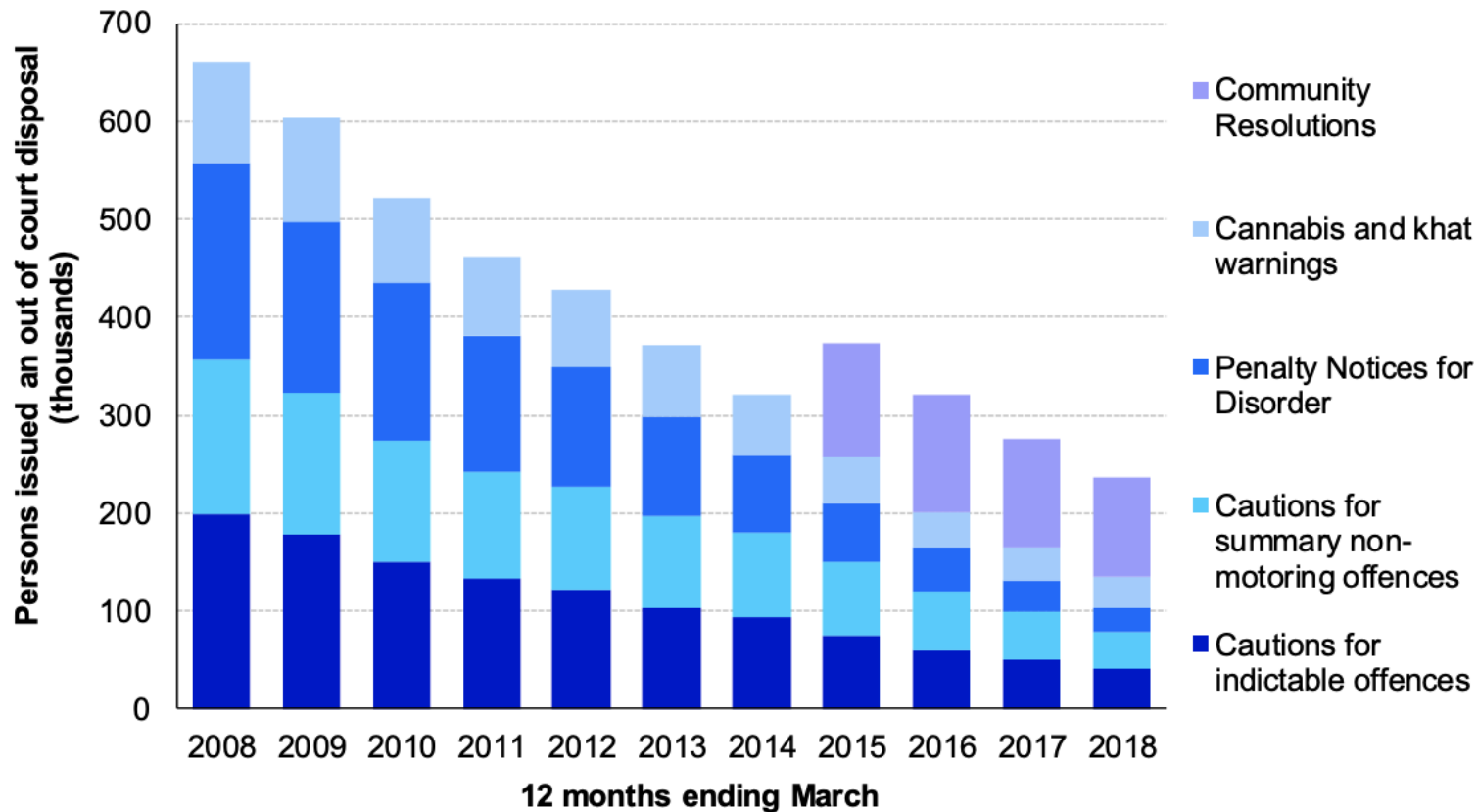
Falling levels of Out of Court Disposals

Figure 1: Individuals dealt with formally by the CJS³, 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)



England & Wales, 2002-2015: base of 2002

Approximate Cambridge CHI

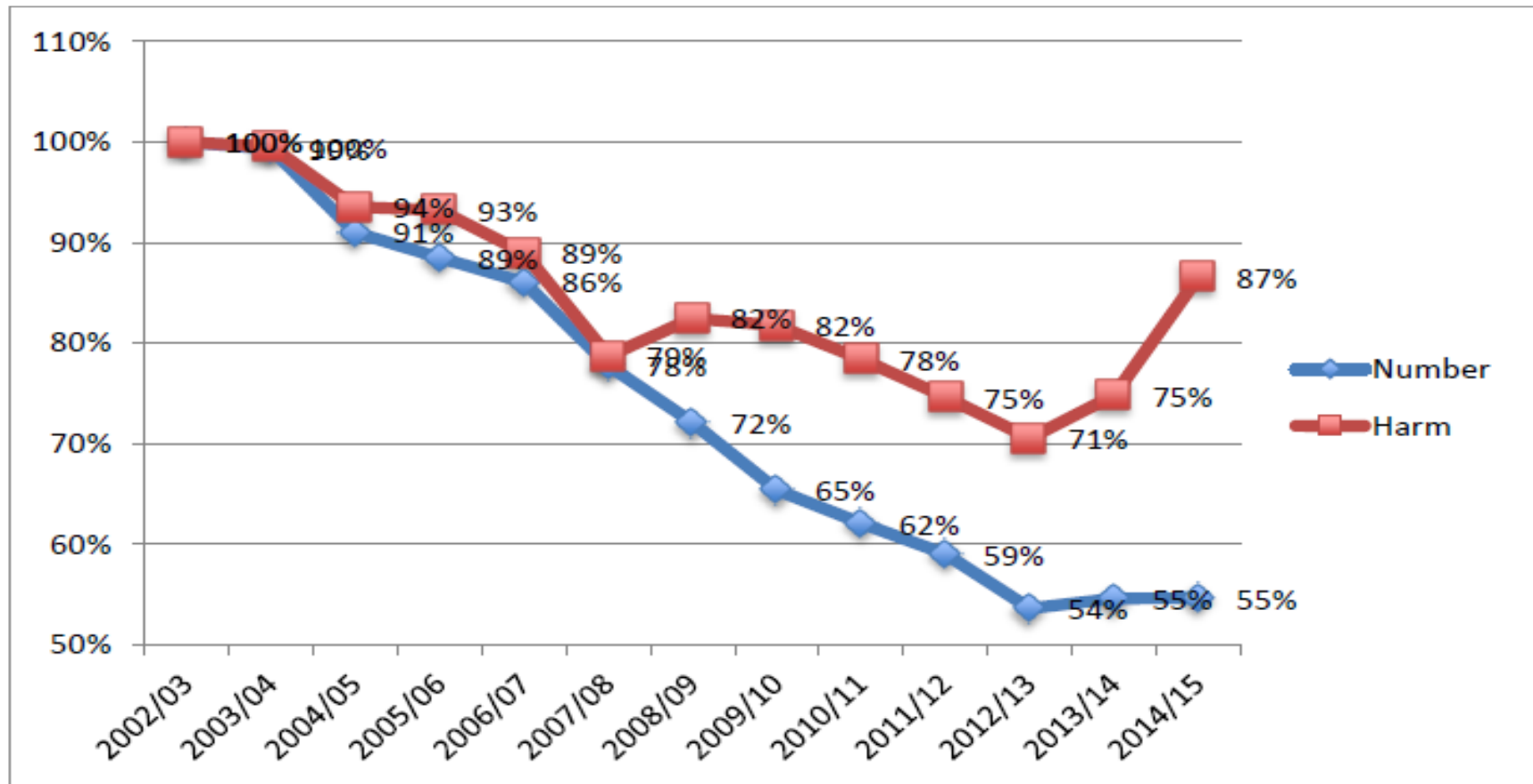
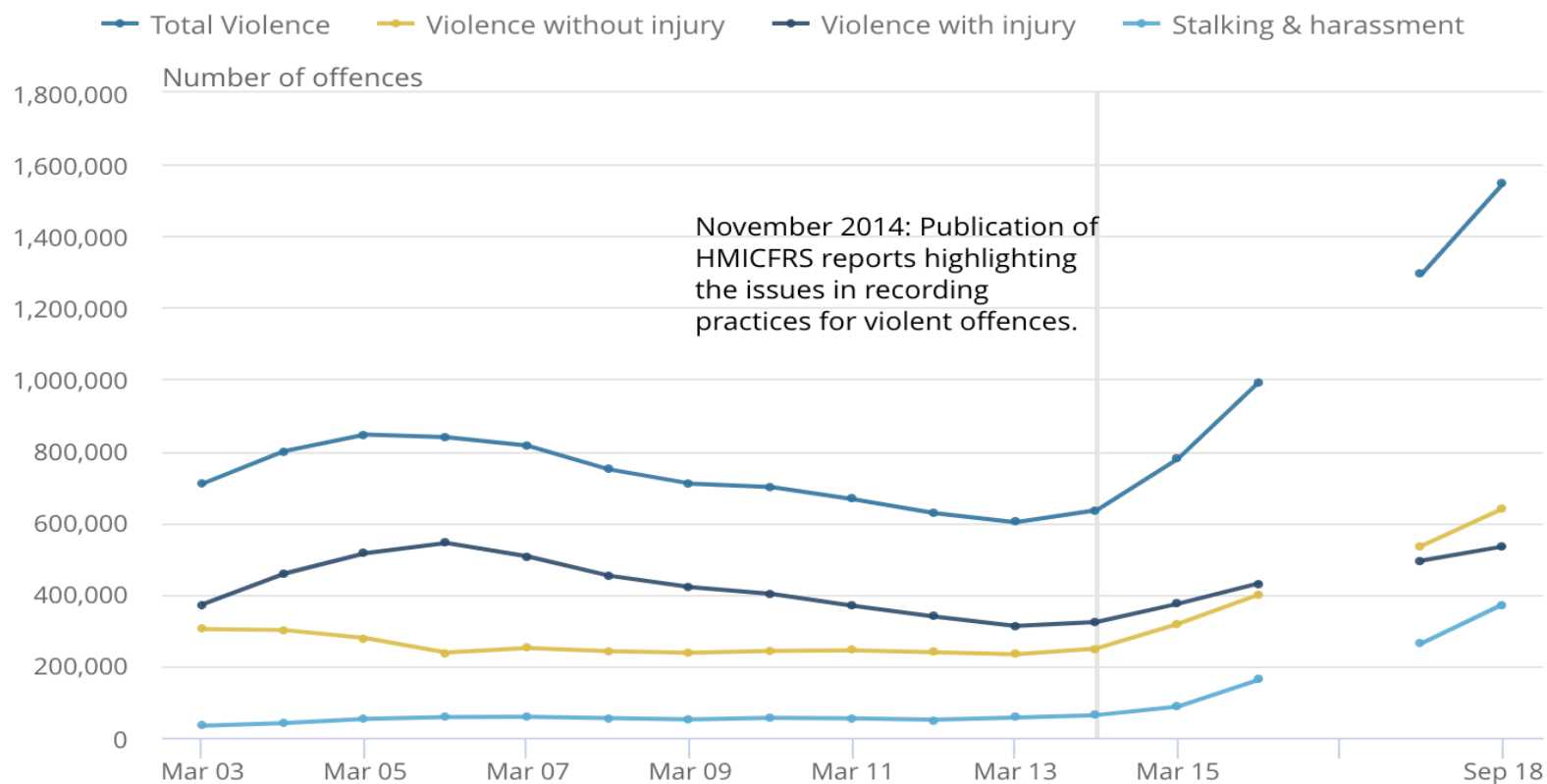


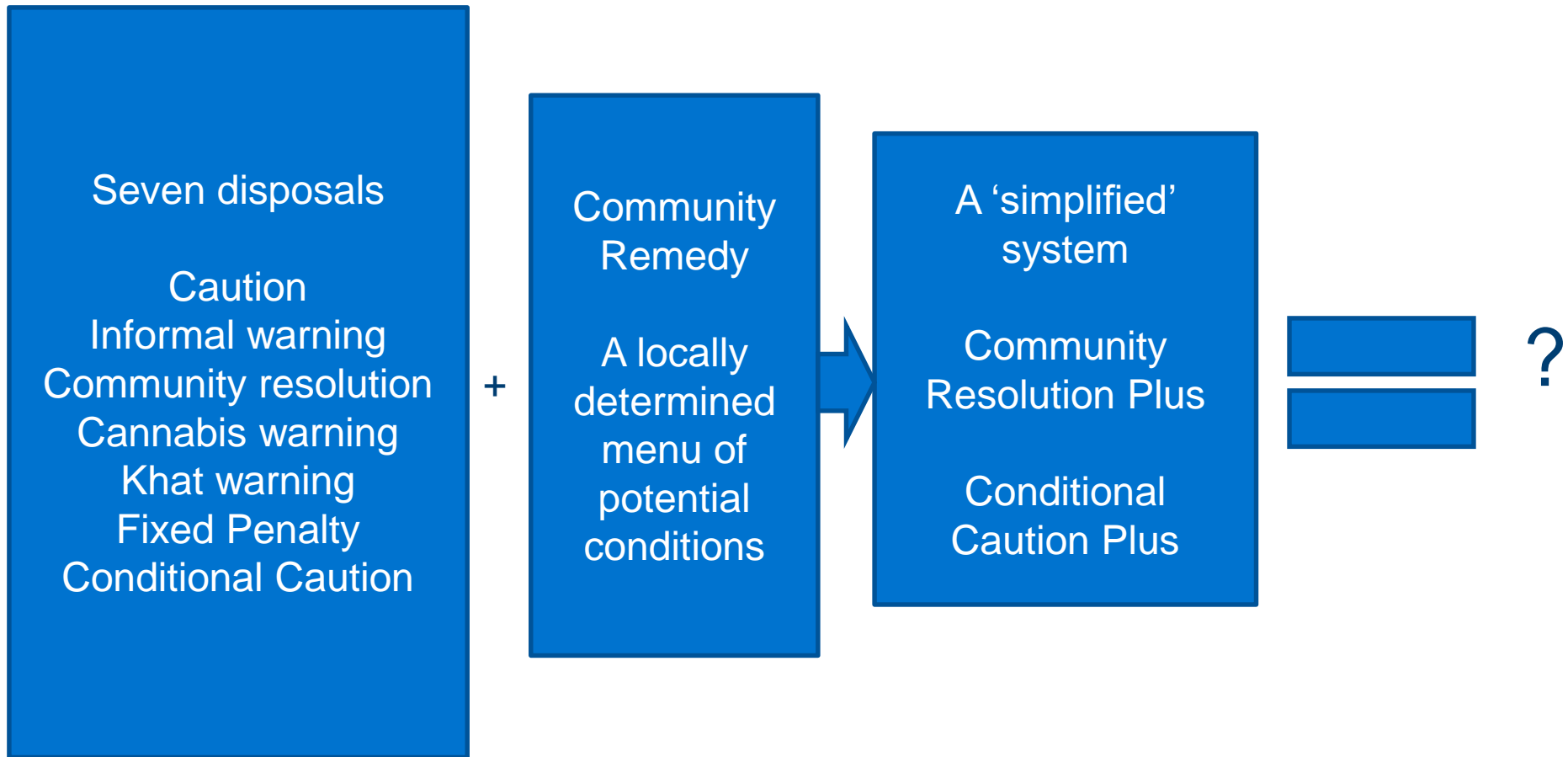
Figure 1. Percentage change in numbers of crimes and CHI for total crime, by year.
Data (2016) obtained from Eleanor Neyroud by personal email, July 3, 2018.

And an upward march of violent crime..

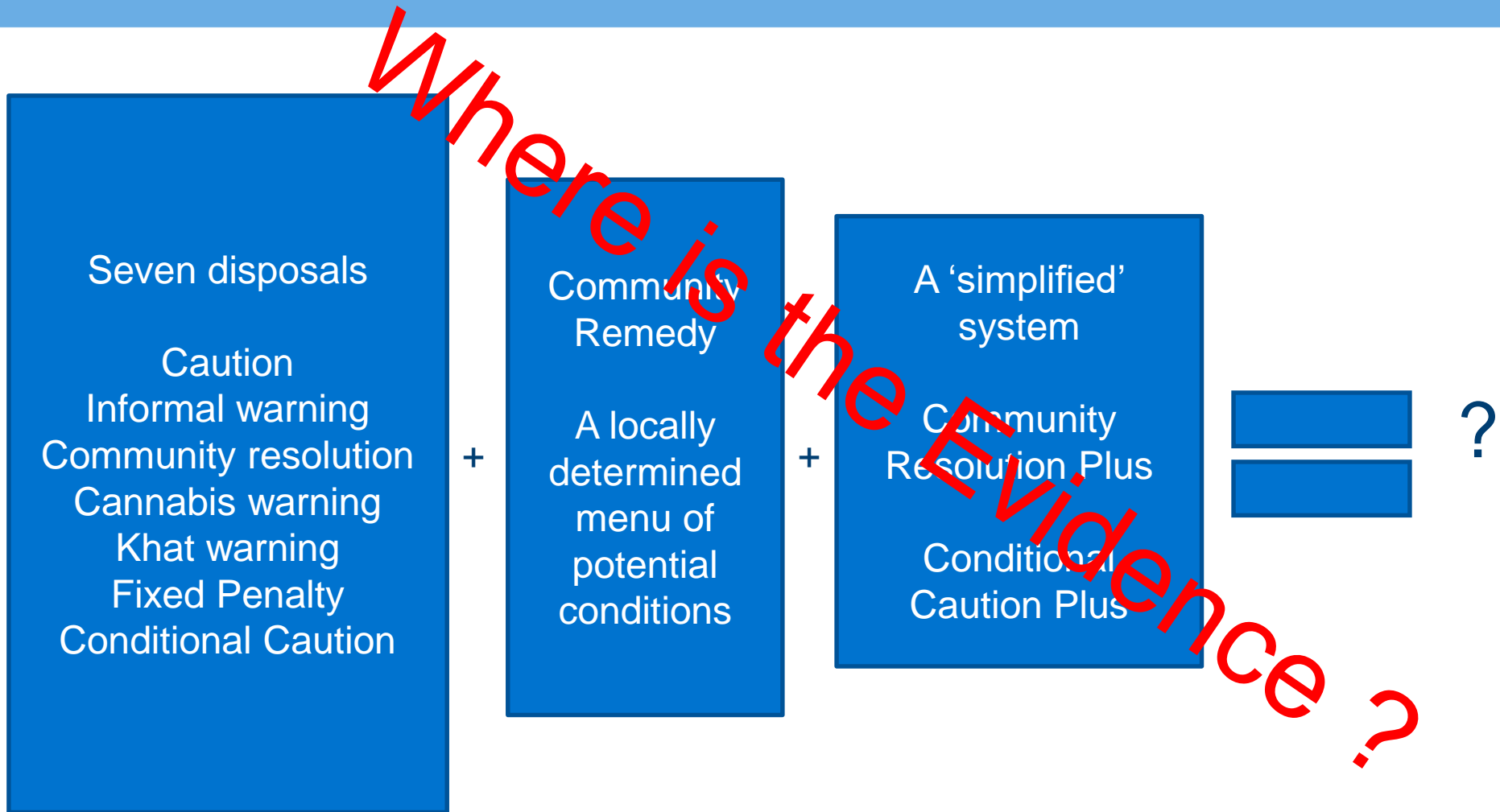
England and Wales, year ending March 2003 to year ending September 2018



Home Office and The Ministry of Justice “reforms”

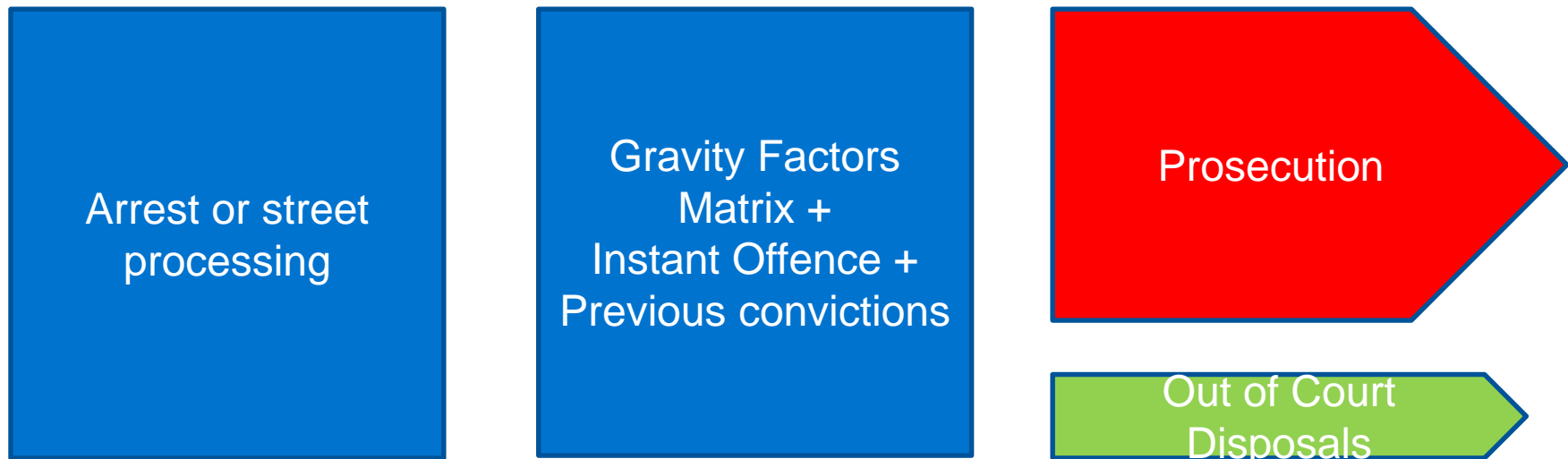


Home Office and The Ministry of Justice “reforms”



From the present...

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



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

the **Howard League** for Penal Reform

Offender desistance policing (Sherman and Neyroud, 2012)

Harm prediction rather than offence being dealt with

ARREST or STREET
PROCESS

T
R
I
A
G
E

HIGH HARM (2%)

MEDIUM HARM

LOW HARM (60+%)

Does “it” work? For whom? How? Why?



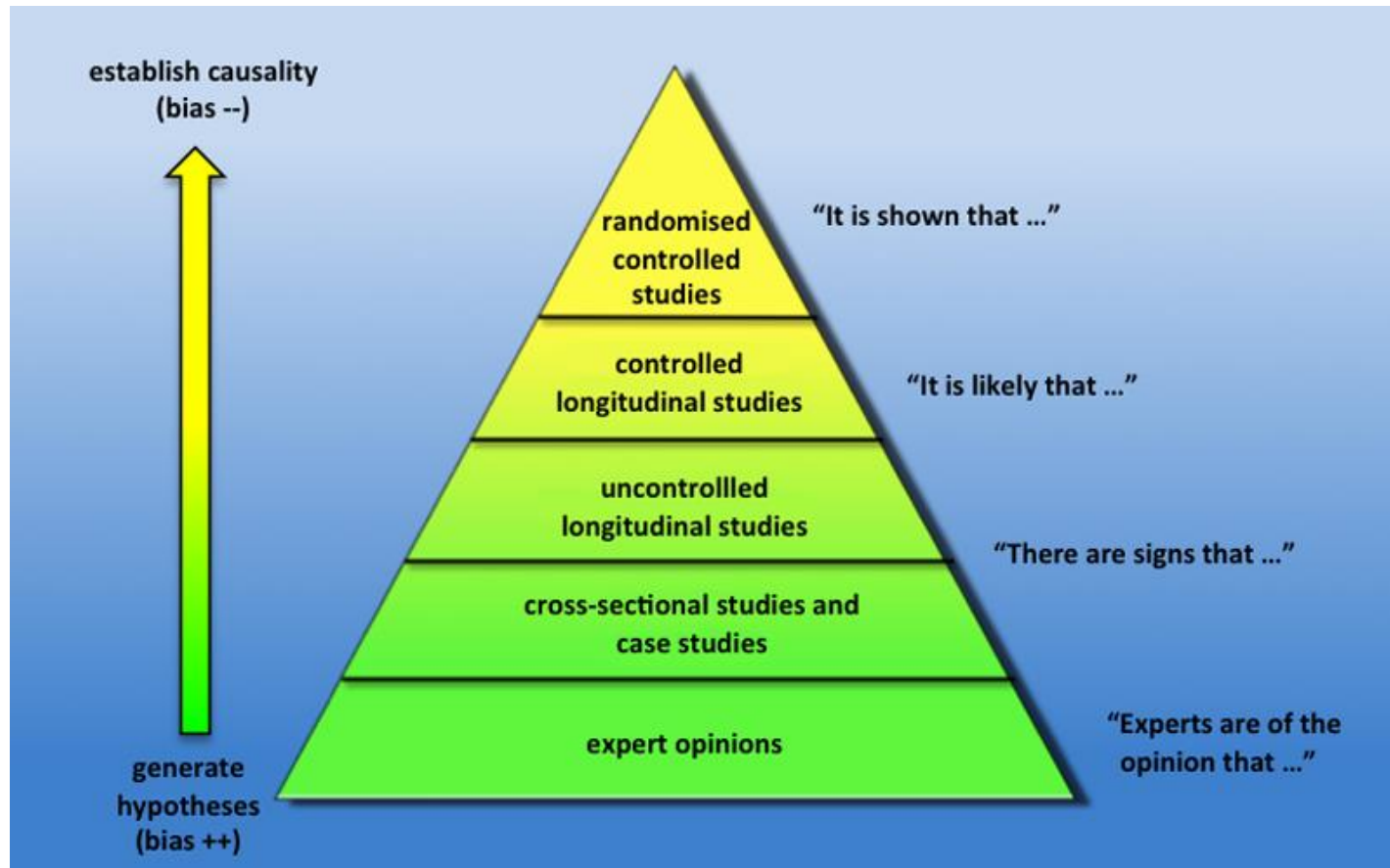
Out of Court Disposals managed by the Police: a
review of the evidence

Dr Peter Neyroud¹

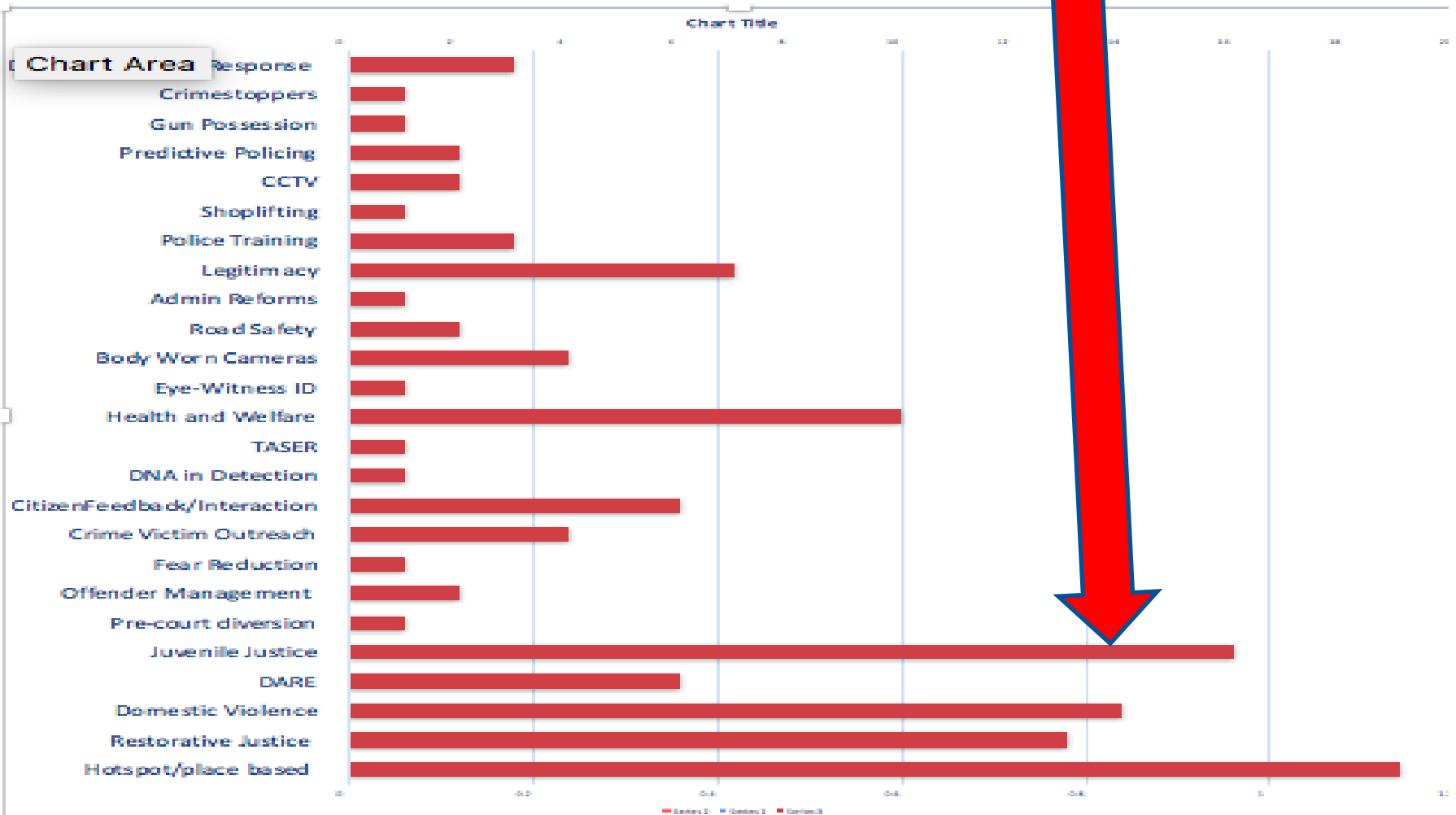
Commissioned by the National Police Chief's Council of England and Wales

<https://www.npcc.police.uk/Publication/NPCC%20Out%20of%20Court%20Disposals%20Evidence%20assessment%20FINAL%20June%202018.pdf>

Using the best evidence of effectiveness



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 have not always been applied consistently (Mott, 1983, Laycock and Tarling, 1985, Giller and Tutt, 1987, Sandars, 1988 and Evans and Wilkinson, 1990)
- 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?



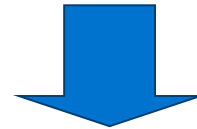
- Voluntary participation
- Agreed 'Turning-Point Plan'
- Compliance = no prosecution

- Non-compliance

- Failure to keep to plan
- Reoffending



Breach



Prosecution

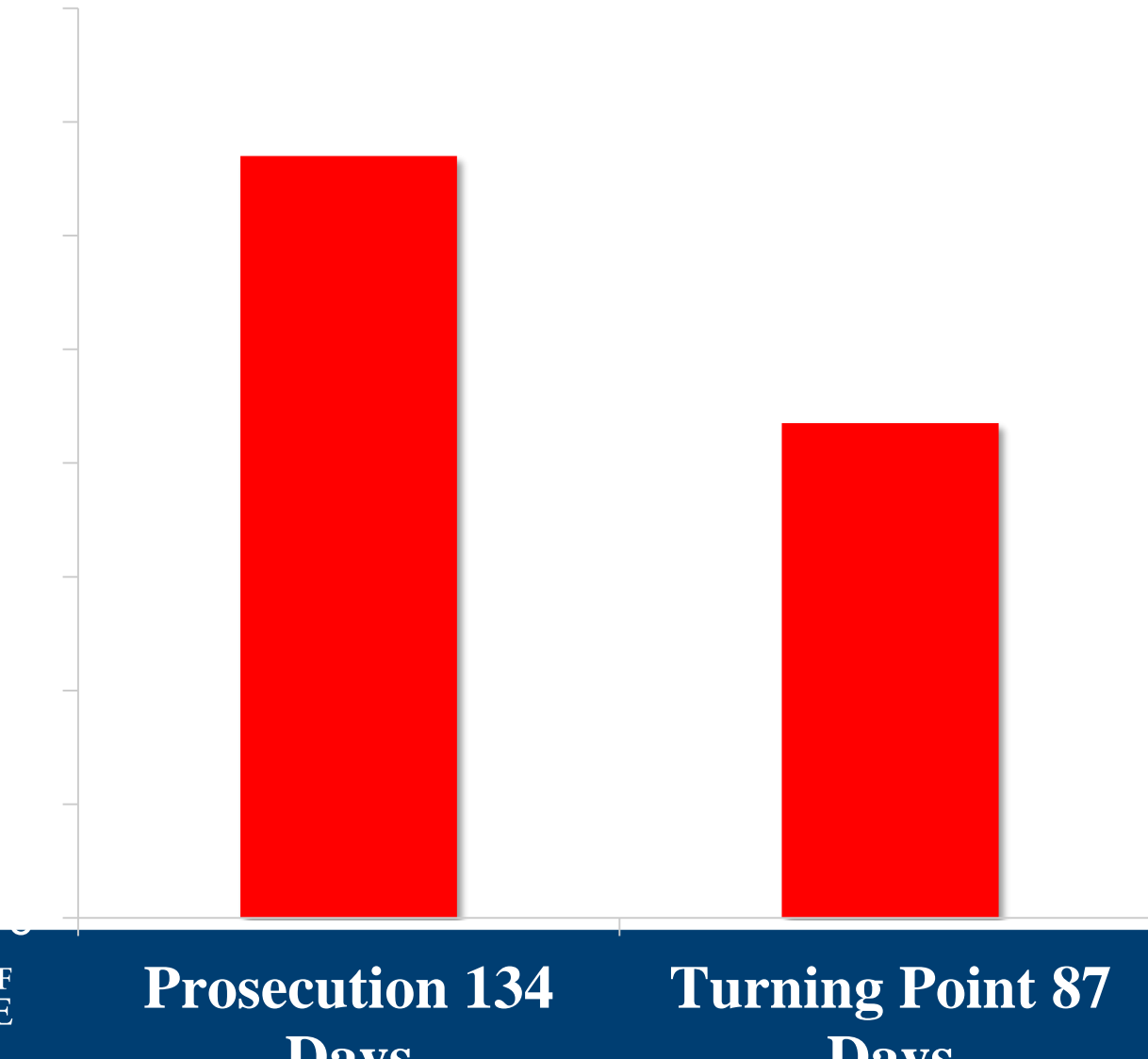
3 Key Findings

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

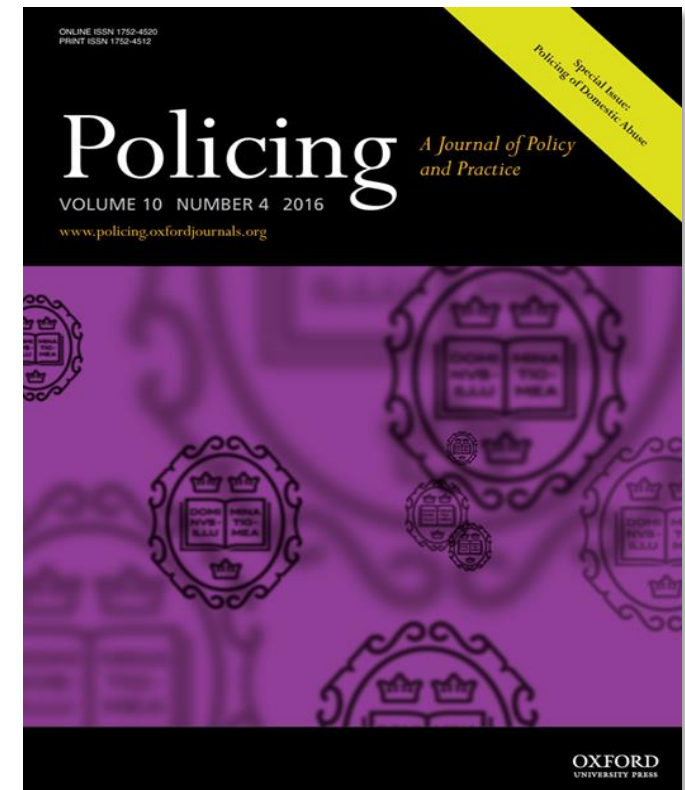


Cambridge Crime Harm Index

Article

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

Prosecution

27,872 days

Over 365 =

76 years in prison

= 5 homicides

= 76 robberies

= 15 rapes

= 1,394 burglary dwellings

Turning Point

17,922 days

Over 365 =

49 years in prison

= 2 **fewer** homicides

= 27 **fewer** robberies

= 5 **fewer** rapes

= 498 **fewer** burglaries

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

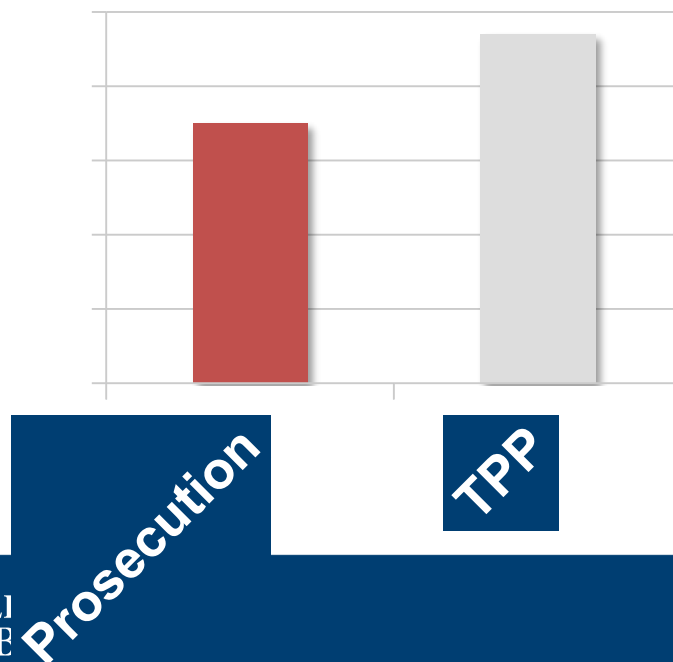


Diversion vs. Prosecution

% “Punishment” Defined as “Consequences”

PROSECUTION

70% Consequences



TPP DEFERRAL

94% Consequences

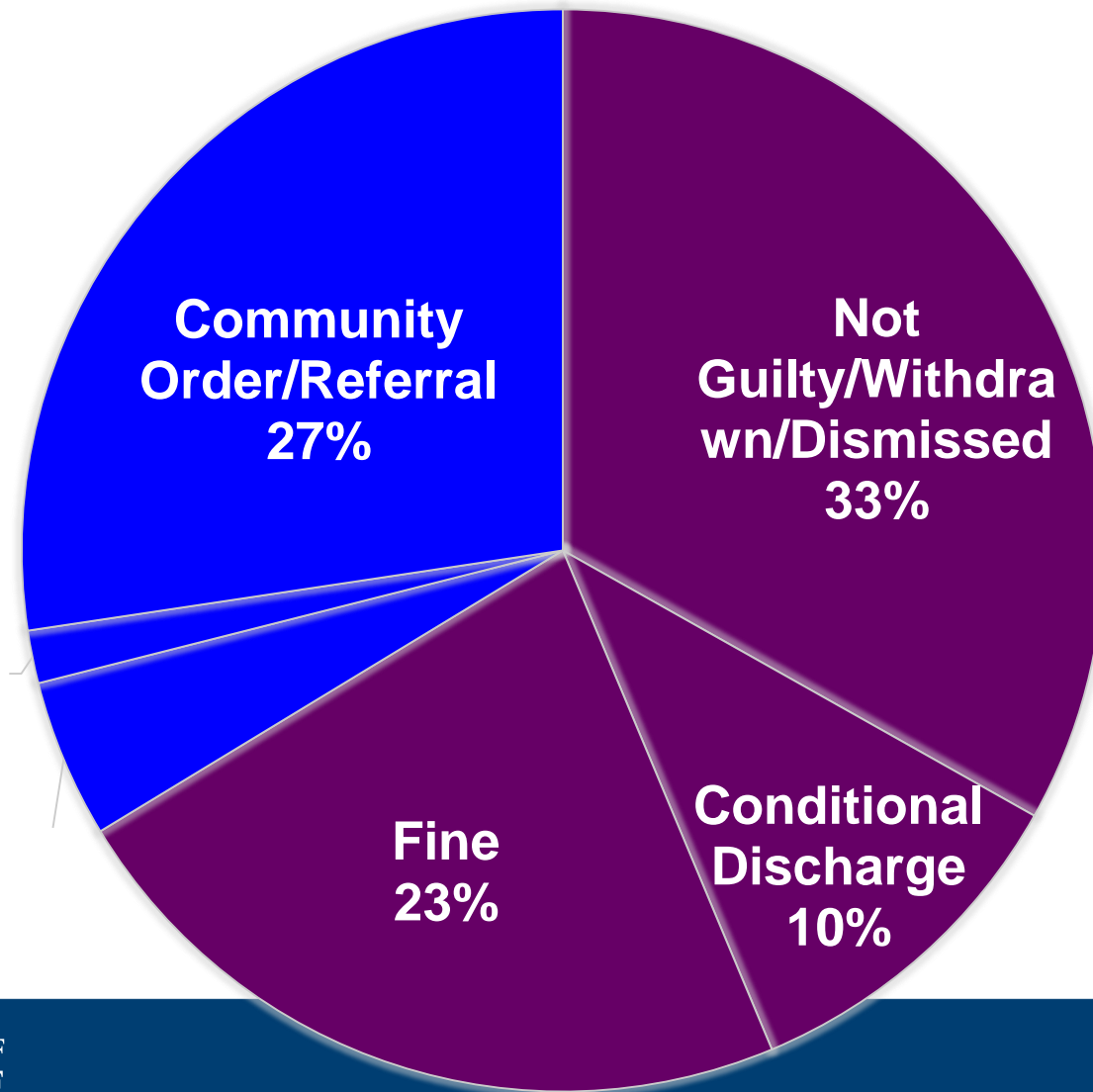
34% higher in TPP

$d=.64, p=.000$

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



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

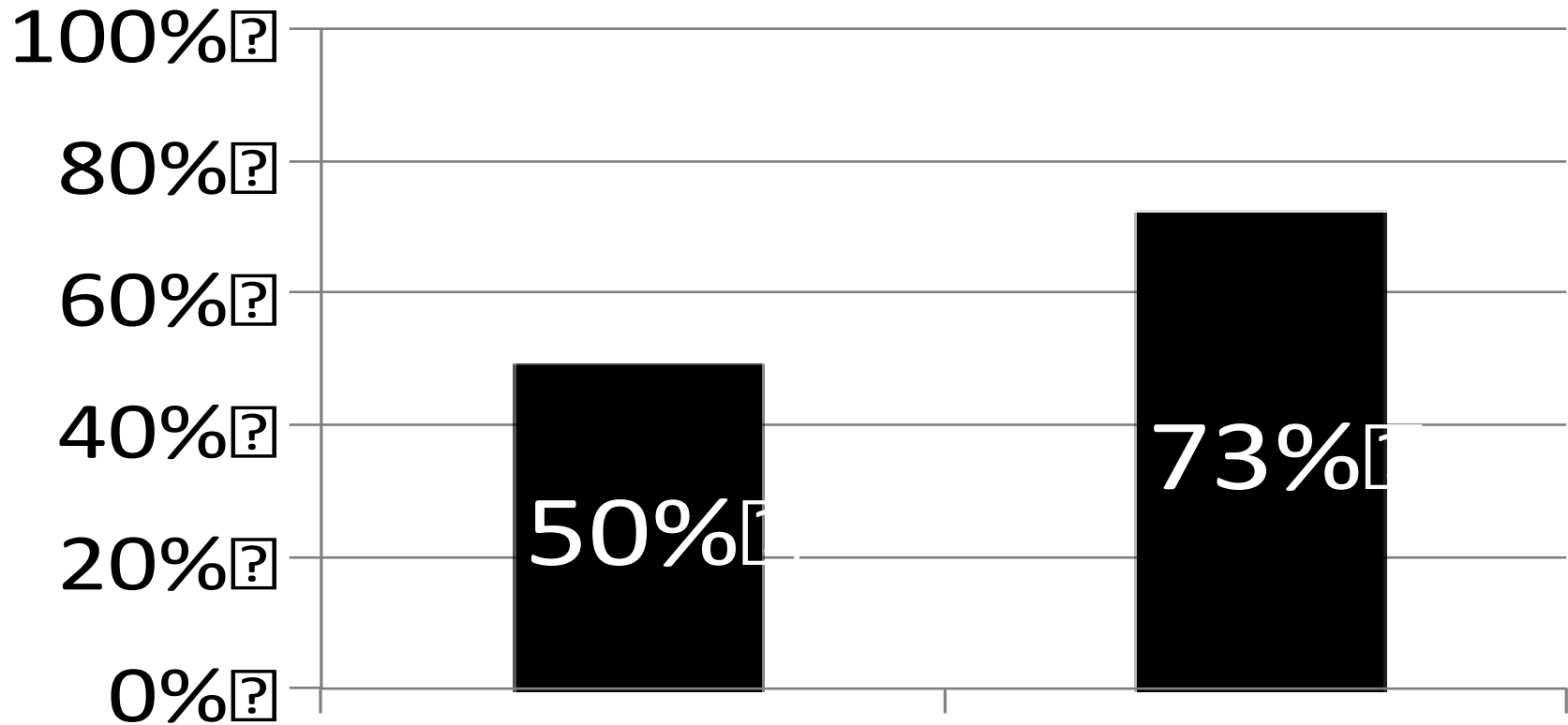
- 142 Victims of cases randomly assigned to prosecution or Turning Point over a 6-month period
- 70% response rate

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



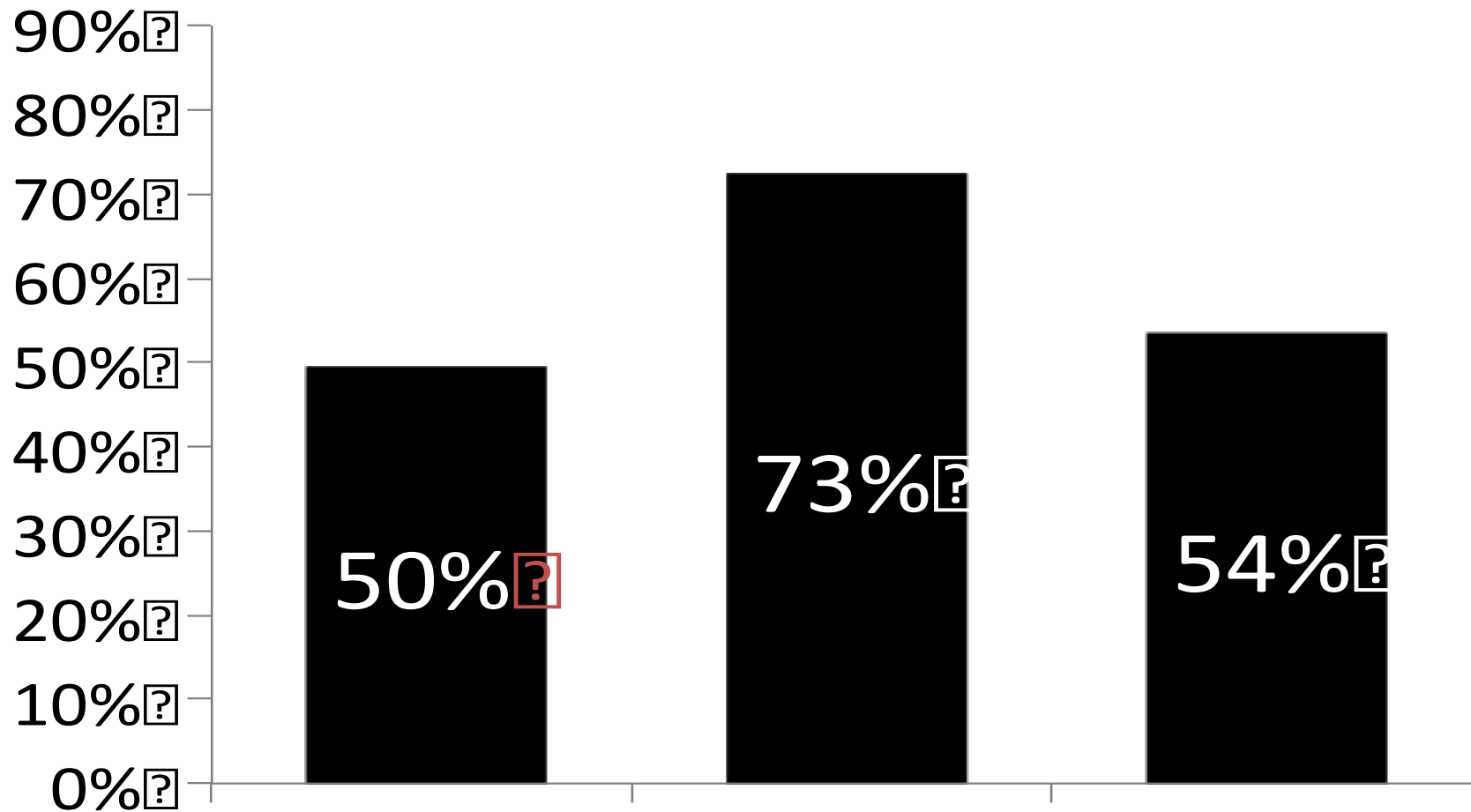
$p = .010$; $d = .58$

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



3. Reduced cost of justice by 45%

All costs of processing (All Courts, CPS, Police)

Court

- Total Cost **£366,501.40**
- Average Per Person
1762.03

TPP

- Total Cost
£201,332.60
- Average per person
977.34

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



▲ Offences considered for deferred prosecution could include minor assault and fraud. Photograph: Matthew Chattle/Rex/Shutterstock

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”



**Low risk?
Hate Crime?
Domestic
Violence?**

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



Implementing well matters

In order to be effective, OOC'D'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?

