

## Sentencing Academy News

March 2021

Welcome to the first edition of the monthly Sentencing Academy newsletter in which we round up developments in policy and practice in England and Wales and highlight new sentencing research and publications.

### **The Effectiveness of Sentencing Options: A review of key research findings**

The Sentencing Academy has published a paper examining the effectiveness of custodial sentences, suspended sentence orders and community orders in England and Wales. This paper is authored by Dr Melissa Hamilton and considers the available evidence on the re-offending rates of offenders sentenced to these three key sentencing disposals. The paper is available to read [here](#).



### **Out of Court Disposals: A review of policy, operation and research evidence**

We have also published a review of the use of out of court disposals in England and Wales, authored by Dr Cerys Gibson. The paper is available to read [here](#).



These papers follow the earlier publication of reports on Victim Personal Statements (available [here](#)) and Sentence Reductions for Guilty Pleas (available [here](#)).

## Other News

### **Police, Crime, Sentencing and Courts Bill published**

The Police, Crime, Sentencing and Courts Bill, which the Ministry of Justice suggests will cut crime, build safer communities and restore confidence in the criminal justice system, was published on 9 March 2021. The Bill's key provisions relating to sentencing include:

- Changing the starting point for the premeditated murder of a child to whole life and also making Whole Life Orders available in exceptional circumstances for offences committed by people aged 18 to 20 at the time of the offence (removing a previous prohibition on the imposition of a Whole Life Order on anyone aged under 21 at the time of the offence).
- Amending the starting point for a murder committed by a child. At present, there is a single starting point of 12 years that applies to everyone convicted of a murder committed when under the age of 18. Under the proposed reforms, the starting point will range between 8 years and 27 years depending on the age at the time of the offence and the circumstances of the offence. Subsequent reviews of the minimum term will be limited only to those who are still under the age of 18 at the time of sentencing.
- Increasing the maximum sentence for causing death by dangerous driving or by careless driving when under the influence of drink or drugs from 14 years to life imprisonment.
- Changing the test to depart from imposing a minimum custodial sentence for certain offences (for example, 'third strike' burglary) with a view to reducing the proportion of departures from these minimum sentences.
- Increasing the proportion of a standard determinate sentence of between four and seven years for certain 'serious' violent and sexual offences to be served in custody from one-half to two-thirds.
- Amending the general approach to calculating the length of a minimum term for discretionary life sentences: the minimum term will be calculated as being

two-thirds the length of the appropriate standard determinate sentence rather than one-half.

- Increasing the maximum sentence for criminal damage of a memorial to 10 years and doubling the maximum sentence for assaulting an emergency worker from 12 months to two years.
- 'Tougher' community sentences for adults and youths with greater use of electronic monitoring and curfews.
- Giving the Secretary of State for Justice a new power to refer to the Parole Board a prisoner who is deemed to pose a terrorist or other significant danger to the public who would otherwise be automatically released.

The full Bill is available [here](#) with its accompanying explanatory notes available [here](#). The Ministry of Justice has produced a series of 'factsheets' that are available [here](#) and the House of Commons Library has produced a number of briefings that are available [here](#). Furthermore, a number of impact assessments produced by the Ministry of Justice are available [here](#).

## Recent Publications

### **Sentencing for murder: The adverse and unintended effects of Schedule 21 to the Criminal Justice Act 2003 – Roberts, J. V. and Saunders, J. *Criminal Law Review* 2020, 10, 900-911**

In this article, authors Julian Roberts and Sir John Saunders explore the impact of Schedule 21 to the Criminal Justice Act 2003 (now Schedule 21 to the Sentencing Code) in creating starting points aimed to assist the courts in determining the minimum sentences for those convicted of murder. The article has been written against the backdrop of a dramatic increase to the average minimum term for murder since Schedule 21 came into effect. Although the authors discuss and advocate reform of the law of sentencing for murder, there are more general lessons to be drawn. Schedule 21 was hastily conceived and legislative review of the provisions was inadequate. As a result, murder sentencing in England and Wales has become much more severe, and suffers from a number of deficiencies. The authors argue that a number of adverse consequences have since followed – the Schedule's starting points flout ordinal proportionality and have resulted in minimum terms that exceed the severity that can be justified on grounds of deterrence or retribution.

The authors assess these consequences and advocate for the repeal or the reform of Schedule 21. One key step forward would entail the creation of a guideline for murder, issued by the Sentencing Council. Such a guideline would be relatively straightforward to produce since the structure of Schedule 21 lends itself to the creation of a Council-style guideline. The Schedule contains starting point sentences and aggravating and mitigating factors, both elements of the definitive sentencing guidelines. Without such a guideline, courts are required to sentence offenders convicted of the most serious offence with less guidance than that which is available for lesser crimes, most of which are now covered by a Sentencing Council guideline.

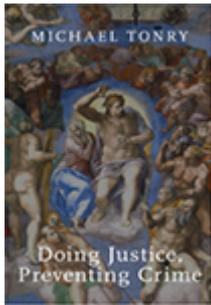
The authors also query the significantly longer sentences imposed for some specific forms of murder, and suggest that a late sentence review of the minimum terms in such cases would be appropriate. Such a review exists for young offenders and should be extended to adult offenders serving life sentences for murder.

### **Exemplary sentencing for terrorist offenders: The Counter-Terrorism and Sentencing Bill 2020 – Azmeh, U. *Criminal Law Review* 2021, 1, 5-19**

In this article, Umar Azmeh considers the potential implications of the Counter-Terrorism and Sentencing Bill 2020 that is currently passing through Parliament. Following two recent acts of terrorism committed by offenders shortly after their release from prison, the Bill introduces a number of key changes. Firstly, it will increase beyond the current limited specified offences the number of offences that may be determined by a court to have a terrorist connection leading to, among other things, offenders spending longer in prison. Secondly, it introduces a new type of sentence – a ‘serious terrorism sentence’ – for offenders who are deemed to be dangerous and have been convicted of a ‘serious terrorism offence’ that ‘was very likely to result in or contribute to (whether directly or indirectly) the deaths of at least two people’; unless there are ‘exceptional circumstances’, such offenders must be sentenced to at least 14 years’ imprisonment with an extension period of at least seven years but no more than 25 years. Thirdly, it limits the maximum reduction in sentence for someone who pleads guilty to an offence that attracts the serious terrorism sentence to one-fifth (rather than the usual one-third). Finally, a significant amendment to the early release scheme is proposed for some terrorist offenders: certain offenders must serve their entire custodial term in prison, with no prospect of early release.

The author raises, in particular, concerns about the impact of the minimum sentence provisions of the serious terrorism sentence on the principle of proportionality, which underpins the system of sentencing in England and Wales. An example of this is given: where two co-defendants are aged 18-years-old and 30-years-old respectively and perform the same role in the commission of an offence that engages the minimum sentence of 14 years, is the relative youth and immaturity of a recently-turned 18-year-old to be ignored with the consequence that he receives an identical sentence to his 30-year-old co-defendant? Ordinarily the youth of the 18-year-old would be considered a mitigating factor that would reduce their sentence below that of an identically-situation 30-year-old. Furthermore, the author notes a problem that will arise with how the serious terrorism sentence may interact with the Definitive Guideline for terrorist offences already issued by the Sentencing Council in April 2018. Some offenders will be sentenced to a term of imprisonment that is greatly in excess of the appropriate sentence indicated by the guideline, for example as the engagement of the serious terrorism sentence provision will necessitate the imposition of at least 14 years’ imprisonment which may be in stark contrast to a much lower sentence if the Definitive Guideline was followed.

The author concludes by calling for wider consultation before this Bill is enacted to ensure that the legislation is as tight and coherent as possible.



***Doing Justice, Preventing Crime* by Michael Tonry.  
Oxford University Press (2020)**

Michael Tonry is one of the world's leading sentencing scholars. Over the past 40 years he has authored or edited many volumes exploring sentencing in common law jurisdictions, particularly the United States and Western Europe. His latest volume represents the culmination of his thinking and writing over the course of his career. Accordingly, it is recommended reading for all sentencing scholars, policy makers and practitioners. Coming in under 200 pages, the volume summarises the latest scholarship and research in the area of sentencing concisely and comprehensively.

In the last chapter entitled 'Doing Justice Better' Tonry summarises the arguments and analyses of his book and distils a number of lessons for all western jurisdictions. He proposes a number of specific reforms. These include: introducing greater 'insulation' of judges and prosecutors from political pressure; the repeal of mandatory sentencing laws and the use of life without parole (Whole Life Orders in England and Wales); and the abolition of plea bargaining. Tonry's reform proposals would likely benefit all western countries, not simply the U.S.



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