

# Examining the Use of Community Service Orders as Alternatives to Short Prison Sentences in Ireland

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**Summary:** Ireland's highly discretionary sentencing system provides a rare opportunity to study the behaviour of judges when relatively free of externally imposed constraints. While this is so, few studies have investigated sentencing trends. In 2011, Ireland introduced the Criminal Justice (Community Service) (Amendment) Act 2011 requiring courts to consider imposing Community Service Orders (CSOs) in cases where sentences of less than twelve months are deemed appropriate. A CSO is a direct prison alternative requiring offenders to complete between forty and 240 hours unpaid community work in lieu of a prison term. In order to complete comparative analysis, administrative data pertaining to all cases sentenced to a short term of imprisonment or CSO between 2011 and 2012 were linked and analysed. Analysis of offence groups showed that more cases convicted of drug, public order, and robbery or related offences received Community Service than was expected; however effect sizes were small. Findings showed the average number of Community Service hours equivalent to one month of imprisonment differed by offence type and District Court jurisdiction. As the first of its kind in Ireland, this study provides a rare glimpse of the use of these two alternative criminal justice sanctions. Findings and their implications are discussed.

**Keywords:** courts, sentencing, Ireland, Community Service Order, short term imprisonment, alternatives to imprisonment, community sanctions, Irish judiciary.

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## **Introduction**

Ireland's overuse of imprisonment as punishment has been well documented (Healy and O'Donnell, 2005; IPRT, 2009; Walsh, 2005). Recent European prison statistics revealed that Ireland's adjusted imprisonment rate of 86.5 per 100,000 head of population was less than the median European Prison Population Rate [PPR] of 133.5 prisoners per 100,000 in 2013. However, in 2012 a prison committal rate of 375.6 per 100,000 was much greater than a median of 163.5 per 100,000 across other European countries (Aebi and Delgrande, 2015). In Ireland, the majority of people are sent to prison for short periods. In 2014, 90.2 per cent of sentenced committals totalling 11,596 were for less than twelve months (Irish Prison Service, 2015).

In comparison, on 31 December 2013, the number of persons under the supervision or care of the Irish Probation Service was 143.4 per 100,000; while the European average sat at just over 209 per 100,000. The number of persons sanctioned to serve any community sanction or measure under the supervision of the Probation Service during 2013 was 136.2 per 100,000; considerably lower than the European average of 254.6 per 100,000 (Aebi and Chopin, 2014). These aggregate statistics demonstrate Ireland's use of imprisonment as its default approach to punishment, when compared to community based sanctions. As will be discussed below, these trends are worth noting as recent political and policy rhetoric attempts to stimulate greater use of non-custodial sanctions, in particular, the use of Community Service as an alternative to short prison sentences (Department of Justice Equality and Law Reform, 2009; McCarthy, 2014).

The Criminal Justice (Community Service) Act 1983 legislated for the use of Community Service Orders (CSOs) in Ireland. A CSO requires an offender to complete a specified number of hours' unpaid work in lieu of a custodial term.<sup>3</sup> Legislation enacting the use of CSOs in Ireland was introduced amidst growing prison committals, an increase in the use of short prison sentences, the use of longer prison sentences, and the associated cost of growing prison numbers (O'Donovan, 1990; Walsh and Sexton, 1999; Whitaker, 1985; Rogan, 2011). It is clear that legislation

<sup>3</sup> See McCarthy (2014) for a full account of how the CSO scheme operates in Ireland.

and policy introduced in England and Wales during the previous decade was used as a springboard to the development of Ireland's own legislation and policy in the area (Kilcommins, 2002;<sup>4</sup> Rogan, 2011).

In 2011, the introduction of the Criminal Justice (Community Service Amendment) Act 2011 which amended the Criminal Justice (Community Service) Act 1983 marked an important indicator of a governmental desire to encourage the use of Community Service by the Irish judiciary. Since October 2011, Irish courts are required to consider imposing CSOs in cases where a custodial sentence of twelve months or less is deemed appropriate. This amendment strengthened the original legislation as it now referred to the use of the CSO as a direct alternative to prison sentences, up to a specified length.

Notably, this amendment was introduced during major economic crisis in Ireland, as significant cuts to public sector funding were introduced. The cost of Ireland's prison system came under scrutiny during the so-called 'bailout' and reducing costs formed part of Ireland's National Recovery Plan 2011–2014 (Rogan, 2013). Encouraging the greater use of Community Service as a 'cost-effect' community measure (Comptroller and Auditor General, 2004; Department of Justice, Equality and Law Reform, 2009) was twinned with the need to alleviate prison overcrowding and the continued use of short prison sentences (McCarthy, 2014). McCarthy recognises a lack of clear ideology underpinning the CSO in Ireland, claiming it is at a 'crossroads' in Irish criminal justice policy and practice; its new evolving practice model as part of the Community Return Programme,<sup>5</sup> as well as its proposed use as an alternative to imprisonment for fine default recognises the 'potential elasticity' of Community Service in Ireland.

To date there has been a dearth of large scale empirical analysis on the use of Community Service in Ireland, in particular, its use as an alternative to imprisonment. A small scale examination of the scheme published in 1999 ( $n = 289$ ) concluded that unemployed, young, single males, who were poorly educated and living in their parental home, were those most likely to receive a CSO in Irish Courts. Over half of the sample had previous criminal records and a high proportion had previously been imprisoned. Court observations highlighted variability in how CSOs were imposed across District Courts. Orders imposed in rural

<sup>4</sup> See Kilcommins (2002) for an examination of the historical development of the CSO.

<sup>5</sup> A back-door strategy for the early release of long term prisoners.

compared to urban courts were shorter. Notably, the length of orders and alternative prison sentences differed substantially. The authors concluded that some CSOs were issued in instances where custodial sentences were not considered appropriate (Walsh and Sexton, 1999). A similar experience has been reported in England and Wales (Mair, 2011; Pease, 1975; 1985).

The Comptroller and Auditor General (2004), during their review of the Probation Service, concluded that the decline in the use of Community Service could be attributed to a lack of suitability of such orders for offenders with substance misuse problems, a decline in requests for pre-sanction reports assessing suitability for Community Service, and a fall in unemployment rates meaning that ‘fewer offenders are available to undertake work in the community during normal work hours’ (p. 23).

In 2009 the Department of Justice, Equality and Law Reform published an evaluation of how the CSO scheme operated in Ireland. It identified that during 2006 a small number of District Courts were responsible for sanctioning the majority of CSOs; 60 per cent ( $n = 695$ ) of the total CSOs made in 2006 were from twelve courts. The equivalence rate between number of Community Service hours and month of alternative imprisonment ranged widely. The review identified that the low use of CSOs in certain areas could be attributed to judicial discretion, a lack of suitable Community Service projects, and/or the unsuitability of offenders. The review identified a clear underutilisation of Community Service and outlined a number of recommendations for future implementation. These included disseminating information to the judiciary, targeting the use of CSOs in specific areas, and upgrading information systems to collect relevant data (Department of Justice, Equality and Law Reform, 2009).

Sentencing in cases on the cusp of a custodial or non-custodial sanction, such as those that may attract a short prison sentence or alternative CSO, has attracted some research interest. It is acknowledged that the decision to imprison is influenced by a variety of confounding factors, and untangling the process is challenging (Meeker, Jesilow, and Aranda, 1992). Some sentencers refute the existence of ‘borderline’ or ‘cusp’ cases, claiming that if such choice was available a case would ‘never be tipped in favour of custody’ (Tombs, 2004, p. 48). Nevertheless, the majority of sentencers agree that certain factors influence their decision to imprison instead of imposing a non-custodial sentence, and vice versa (Tombs, 2004; Hough, Jacobson and Millie, 2003).

The location of the court is also said to have an effect on sentencing in borderline cases (Flood-Page, Mackie and Britain, 1998). The availability of community alternatives in a particular area may influence sentencers' decisions. If community alternatives are not available, the judge may perceive there to be no other option, but to impose custody. Some courts are more active than others and process more cases daily; this is particularly relevant in Ireland when caseloads of rural and urban courts are compared. This may have an influence on sentencing decisions as the judiciary may be required to pass a variety of sentencing decisions, on a variety of cases, on a particular day and then may not process similar cases for weeks in between (Charleton and Scott, 2013).

Studies show that the predominant influences when imposing imprisonment were the gravity of the offence, an offender's prior record, and their past experience of community sentences (Tombs, 2004; Hough *et al.*, 2003). Tombs (2004) reported the majority of sentencers chose imprisonment because of offenders' previous community sentence failures. Sentencers admitted that imprisonment was unlikely to be constructive, especially short term sentences. However some did trust that even short prison sentences have value, as they removed prolific offenders from their communities, and enabled sentencers to display the seriousness of particular offences. Notably, Hough *et al.* (2003) found that sentencers did not attribute a lack of suitable community sanctions as a reason for imprisoning offenders. Across both studies, a significant number of sentencers did not consider community sentences as equally punitive as a prison sentence.

The factors considered when imposing a community sanction encompassed an offender's current state and particular circumstances. Such factors included their age, health status, motivation to change, family situation, relationship status and employment status. Particular circumstances including previous convictions, related previous convictions, guilty plea, level of remorsefulness and co-operation with authorities were mentioned by participants as influential in their decisions (Hough *et al.*, 2003; Tombs, 2004). Remorse was cited as an important consideration when assessing cases on the cusp of community sanctions. If the judge was adequately convinced that an offender's remorse was authentic, and the offence was out of character, they would show greater compassion (Tombs, 2004). The subjective nature of imposing a community sanction appears to place much emphasis on an

offender's character and sentencer's perception of its likelihood of success (Tombs, 2004; 2008).

### **Sentencing research in Ireland**

Empirical research examining sentencing decisions in Ireland has also explored the imposition of custodial and non-custodial sanctions. Maguire (2008) found that variation in sentencing was most pronounced when Irish judges were required to choose between different non-custodial sanctions, for example, fines and CSOs. When participants agreed on what non-custodial sanctions should be imposed, there was dissimilarity in the level of penalty imposed. Community Service Order hours for an assault case varied between sixty and 200 hours, and for a burglary case hours varied between 120 and 240. When the decision to impose a prison sentence was reached, sentence lengths also varied considerably. Sentence lengths ranged from fourteen days to five months in an assault case, while for a theft case sentences ranged between thirty days and nine months and between two and twelve months in road traffic and burglary cases. According to Maguire (2010), her participants disagreed on the suitability of particular sanctions when judging the same case. She concludes that this irregularity may relate to how the Irish judiciary view particular offences, and in particular, certain types of offenders.

Riordan (2009) found reluctance amongst District Court judges to equate alternatives to prison with that of a custodial sanction. They believed CSOs were applicable to offenders who were out of employment, as it taught them about routine. However, offenders with drug or alcohol problems were not considered suitable. Riordan found that the judiciary were more likely to impose an alternative sanction when risk was low, be that reoffending risk, risk to the victim, or risk to the offender's community. Variation in the length of a CSO and alternative prison sentence if an offender breached the terms of their order was also observed. This again reiterated the differing patterns among sentencers when imposing non-custodial sanctions. This has been identified by the Court Service as a feature of Irish sentencing practice (Katharine Howard Foundation and Irish Penal Reform Trust, 2007).

As identified, there is a dearth of large scale empirical analysis of how the CSO scheme operates, in particular when compared to the use of short prison sentences. This paper aims to explore the use of CSOs in lieu of imprisonment in Ireland, by comparing offender characteristics

across groups, analysing the use of these alternative sanctions, as well as geographical sentencing patterns by District Court jurisdiction.

## Methodology

### *Participants*

The final data set created in this research consisted of  $n = 5,231$  Community Service Orders (CSOs) and  $n = 6,784$  short term prison sentences<sup>6</sup> (STPs) sanctioned between 2011 and 2012. A number of individuals in the short term prison group had been committed to prison on multiple occasions during 2011 and 2012, as well as between 2011 and 2012. This was also the case among CSO recipients. The 6,784 short term committals to prison during 2011 and 2012 represented 5,411 different persons. Similarly the 5,231 Community Service Order cases represented 4,824 different individuals during these two years. For analysis, individual records were included in each sentence dataset for as many times as they had received the relevant sanction during 2011 and 2012.

The total CSO sample were aged between sixteen and sixty-eight ( $M = 28.69$ ,  $SD = 8.45$ ), with 92 per cent ( $n = 4801$ ) of the sample being male and 8 per cent ( $n = 430$ ) female. Information regarding criminal convictions since 2003 was available for 61 per cent ( $n = 3202$ ) of the CSO sample; participants had on average 8.22 previous convictions ( $SD = 18.27$ ) with a median of 4.00. For the remainder of the CSO sample ( $n = 2029$ ) no prior criminal history since 2003 and no information available could not be delineated, therefore inferences about the number of first time offenders in the CSO group could not be made [see limitations]. The most common offence type committed by the CSO sample was public order and other social offences (22 per cent,  $n = 1125$ ).

The total short term prison (STP) sample were aged between sixteen and seventy-five ( $M = 29.7$ ,  $SD = 9.45$ ), sentenced to immediate imprisonment for a period of less than twelve months. 91 per cent ( $n = 6182$ ) of the sample were male and 9 per cent ( $n = 602$ ) female. On average, participants reported leaving full-time education aged 15.3 years ( $SD = 2.302$ ). Those serving a short term of imprisonment had an average of 8.74 previous convictions ( $SD = 8.78$ ) with a median of 7.00. 12 per cent ( $n = 764$ ) had no recorded previous convictions since 2003.

<sup>6</sup> Those committed to prison for less than twelve months, excluding those imprisoned for fine default and those missing sentence length information on prison committal records.

Theft and related offences was the most common offence group among the STP sample (20 per cent,  $n = 1366$ ).

#### *Court distribution*

The vast majority of cases were processed through the District Court (91.4 per cent,  $n = 10548$ ). The Circuit Court processed 8.4 per cent of cases ( $n = 973$ ) while other courts processed .1 per cent of cases ( $n = 15$ ). Over half were dealt with by an urban court<sup>7</sup> (56 per cent,  $n = 6160$ ) while 52 per cent were dealt with by a court in close proximity to a closed prison<sup>8</sup> ( $n = 5767$ ).

#### *Procedure*

##### Ethical procedure

Ethical approval was received from Dublin Institute of Technology (DIT) Research Ethics Committee, the Irish Prison and the Probation Service and An Garda Síochána. Access to data was facilitated by the Crime Section of the Central Statistics Office.

##### Data procedure

Data was collected from: the Irish Prison Services' prisoner information management system (PIMS) formally PRIS, the Probation Service's case management records and An Garda Síochána's PULSE system. Data from two offender populations was collated. The first, prisoners committed under sentence to Irish prisons for a period of less than twelve months between 1 January 2011 and 31 December 2012. The second, those required to complete a comparable CSO in lieu of a custodial sentence under the supervision of the Probation Service during that period. Data collected from the PRIS system included: prison establishment, principal offence committed, sentence length, sex, age, address, education level and attainment details, employment status at prison committal, court type, court location, and prisoner nationality. Data obtained from the Probation Service's case management records system included: principal offence committed, alternative sentence length (in lieu of a custodial sentence), sex, age, address, court type, and

<sup>7</sup> Urban areas were defined as Limerick city, Cork city, Dublin, Waterford city and Galway city.

<sup>8</sup> Courts in close proximity to a closed prison included Dublin, Portlaoise, Limerick, Cork and Castlereagh.

court location. Number of previous convictions since 2003 was calculated using Court data recorded on An Garda Síochána's PULSE system. Data was accessed at Central Statistics Offices in Cork where the researcher (first author) was assigned an office and a standalone computer for the duration of her data analysis. The linking of Prison and Probation Service generated data with data from An Garda Síochána was completed at Central Statistics Office premises by a designated member of the crime division of the CSO, using a combination of name, date of birth, and address details from both data systems. A mixed-model method incorporating automatic and manual matching was designed by the CSO to achieve 95 per cent matching between Irish Prison Service, Probation Service and An Garda Síochána's data systems in this research study.

### Statistical procedure

Chi-square analysis using Pearson's  $X^2$  and independent t-tests were carried out. The assumptions for these tests were met, and each prison committal or CSO received contributed to only one cell of the contingency table (Field, 2009).

## Findings

### *A comparison of Community Service Order and short term prison groups*

Chi-Square tests and independent t-tests were conducted to establish whether demographic and offence variables differed between Community Service Order (CSO) and short term prison (STP) groups. On average, cases in the STP group ( $M = 29.7$ ,  $SD = 9.5$ ) were older than those in the CSO group ( $M = 28.7$ ,  $SD = 8.4$ ). This difference was significant  $t(11755) = 6.18$ ,  $p < .001$ ; however the magnitude in the differences in the mean (mean difference = 1.01, 95 per cent CI: 0.7 to 1.3) was very small,  $r = .06$ . For those with recorded previous convictions since 2003, cases in the STP group ( $M = 8.7$ ,  $SD = 8.8$ ) had on average slightly more previous convictions compared to those in the CSO group ( $M = 8.2$ ,  $SD = 18.3$ ). This difference was not significant  $t(3955) = 1.51$ ,  $p = .13$  and represented a very small effect size  $r = .02$ . Significant associations were detected in the thirteen offence categories as presented in table 1. Analysis showed that more cases convicted of a drug or public order offence received Community Service than was expected, however these effect sizes were small.

**Table 1:** Associations between sanction type, demographic, and offence characteristics

<i>Demographic and offence characteristics</i>	<i>CSO group</i> <i>n</i>	<i>CSO group</i> <i>%</i>	<i>STP group</i> <i>n</i>	<i>STP group</i> <i>%</i>	<i>Chi-squared test</i>	<i>Stan. Res.</i>	<i>Effect Size</i>
Gender					$X^2 = 1.607, df = 1, p = .205$		.01
Male	4801	91	6182	91		0.3	
Female	430	8	602	9		-0.9	
Offence categories							
Sexual offences**	14	22	50	78	$X^2 = 11.857, df = 1, p = .001$	-2.6	.03
Assaults and related offences***	564	48	610	52	$X^2 = 12.777, df = 1, p = .000$	2.6	.03
Dangerous and negligent acts**	304	38	491	62	$X^2 = 8.324, df = 1, p = .004$	-2.1	.03
Robbery and related offences**	52	61	33	39	$X^2 = 11.360, df = 1, p = .001$	2.5	.03
Burglary and related offences**	272	37	463	63	$X^2 = 11.992, df = 1, p = .001$	-2.5	.03
Theft and related offences***	833	38	1366	62	$X^2 = 30.341, df = 1, p = .000$	-3.8	.05
Fraud and related offences*	132	37	226	63	$X^2 = 5.903, df = 1, p = .015$	-1.8	.02
Drug offences***	594	59	419	41	$X^2 = 108.465, df = 1, p = .000$	7.5	.09
Weapons and explosives offences**	130	36	234	64	$X^2 = 8.429, df = 1, p = .004$	-2.2	.03
Crimes against property**	256	38	421	62	$X^2 = 8.285, df = 1, p = .004$	-2.1	.03
Public order offences***	1125	51	1076	49	$X^2 = 70.037, df = 1, p = .000$	5.7	.07
Road traffic offences*	756	46	901	54	$X^2 = 4.863, df = 1, p = .027$	1.5	.02
Offences against government***	109	24	346	76	$X^2 = 70.937, df = 1, p = .000$	-6.2	.07

#Homicide, kidnapping, and offences not elsewhere classified were omitted due to low cell counts.

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$

*The use of Community Service Orders and short prison sentences*

There has been notable fluctuation in the use of short term prison sentences and CSOs over recent years. Most recent figures show a decline in the use of both short prison sentences and Community Service Orders. As can be seen in table 2, the numbers of CSOs imposed have decreased: from 2,738 in 2011; to 2,569 in 2012; to 2,354 in 2013; to 2,197 in 2014. Since 2011, committals to prison for less than twelve months, excluding those committed for fine default, have declined at an even greater rate when compared to CSOs.

**Table 2:** A comparison of the use of short custodial sentences and Community Service Orders: 2010–2014

<i>Year</i>	<i>Committals 12 months</i>	<i>% change</i>	<i>Committals 12 months minus those committed for fine default</i>	<i>% change</i>	<i>Number of CSOs</i>	<i>% change</i>
2010	10,928	-	4,240	-	1,972	-
2011	11,214	+2.6%	3,700	-12.7%	2,738	+38.8%
2012	11,844	+5.6%	3,540	-4.3%	2,569	-6.2%
2013	11,182	-5.6%	3,061	-13.5%	2,354	-8.4%
2014	11,596	+3.7%	2,617	-14.5%	2,197	-6.7%

#Figures were extracted from the Irish Prison and Probation Services’ annual reports 2011–2014.

During 2011, across all cases, an average short prison sentence amounted to 4.8 months. In 2012 this fell to 3.6 months. In the case of CSOs, an alternative prison sentence was attached to each order by the presiding judge. An offender may have had to serve this sentence if found to have breached their order. During 2011 and 2012 the average length of a CSO was 153 hours [5.2 months’ equivalent prison sentence] and 150 hours [5.8 months’ equivalent prison sentence] respectively.

Across the entire CSO sample, the average equivalence was 27.6 Community Service hours per alternative month of imprisonment [*n* = 5225]. This average differed noticeably by offence category. The average equivalence was highest for dangerous and negligent acts (31 hours), public order offences (36.2 hours) and offences against government (34

hours) and lowest for sexual offences and robbery and related offences, both 13.3 hours. See table 3.

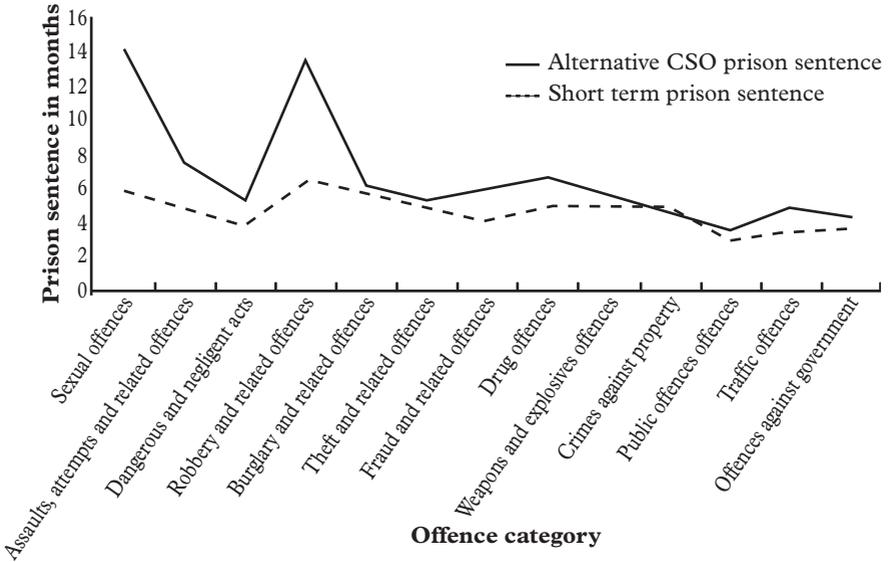
Figure 1 is a comparison of average alternative prison sentence to average short prison sentence received by the STP group, by offence category. Prison sentences received by the short term prison group were longer for all offence categories except crimes against property for which they were equal. This increased length was most pronounced for sexual offences and robbery and related offences.

**Table 3:** A comparison of equivalence rate per month of imprisonment and average alternative prison sentence by offence category\*

<i>Offence categories</i>	<i>CSO N</i>	<i>Average CSO length</i>	<i>CSO hours equivalent to one month of imprisonment</i>	<i>Average alternative prison sentence in months</i>
Sexual offences	13	$M = 189$ hrs $SD = 51.6$	13.3	14.2
Assaults, attempts and related offences	564	$M = 164$ hrs $SD = 60.8$	21.8	7.5
Dangerous and negligent acts	304	$M = 165$ hrs $SD = 55.7$	31	5.3
Robbery and related offences	52	$M = 181$ hrs $SD = 59.8$	13.3	13.6
Burglary and related offences	271	$M = 156$ hrs $SD = 60.1$	25.3	6.2
Theft and related offences	832	$M = 144$ hrs $SD = 58.2$	26.7	5.4
Fraud and related offences	132	$M = 156$ hrs $SD = 60.7$	25	6.2
Drug offences	593	$M = 164$ hrs $SD = 56.1$	24.3	6.7
Weapons and explosives offences	130	$M = 149$ hrs $SD = 58.1$	26.2	5.7
Crimes against property	255	$M = 146$ hrs $SD = 60.6$	29.3	5
Public order offences	1124	$M = 131$ hrs $SD = 54$	36.2	3.6
Traffic offences	756	$M = 162$ hrs $SD = 55.2$	33.9	4.9
Offences against government	109	$M = 148$ hrs $SD = 53.8$	34	4.4
Total equivalence rate	5225	$M = 151$ hrs $SD = 58.5$	27.6	5.5

\*Homicide, kidnapping, and offences not elsewhere classified are not displayed due to low cell counts.

**Figure 1:** Short prison sentence and alternative prison sentence attached to Community Service Orders by offence category



More detailed analysis by specific offence type displayed similar results. The most common offence types across both groups were: no insurance by the user, an offence contained in the traffic offences category [CSO:  $n = 230$ , STP:  $n = 663$ ]; theft contrary to section 4 of the Theft Act 2011, contained in the theft and related offences category [CSO:  $n = 669$ , STP:  $n = 927$ ] and threatening/abusive/insulting behaviour in a public place, contained in the public order offences category [CSO:  $n = 369$ , STP:  $n = 700$ ]. As can be seen in table 4, the average alternative sentence attached to recipients' Community Service Orders was longer than the custodial time received by the short term prison group for these specific offence types.

**Table 4:** A comparison of average alternative prison sentence and short custodial sentence received by specific offence type

<i>Offence types</i>	<i>Alternative sentence attached to recipients CSOs [months]</i>	<i>Prison sentence received by STP group [months]</i>
No insurance by the user	4.4 ( <i>n</i> = 230)	3.5 ( <i>n</i> = 663)
Theft contrary to section 4 of the Theft Act 2011	5.2 ( <i>n</i> = 669)	4.6 ( <i>n</i> = 927)
Threatening abusive behaviour in a public place	2.6 ( <i>n</i> = 369)	2.5 ( <i>n</i> = 700)

*Analysis of the use of Community Service Orders and short prison sentences by court type*

Table 5 identifies the average number of Community Service Order hours equivalent to one month's imprisonment by court type. The average equivalence per month of imprisonment was highest across District Courts (34) and lowest across Circuit Courts (10.1).

**Table 5:** CSO hours equivalent to one month's imprisonment by court type

<i>Court type</i>	<i>N</i>	<i>Average CSO length</i>	<i>CSO hours equivalent to one month of imprisonment</i>	<i>Average alternative prison sentence in months</i>
District Courts	4784	<i>M</i> = 149 hrs <i>SD</i> = 56.9	34	4.4
Circuit Courts	436	<i>M</i> = 179 hrs <i>SD</i> = 67.4	10.1	17.7
Urban courts	2466	<i>M</i> = 152 hrs <i>SD</i> = 57.1	29.2	5.2
Rural courts	2252	<i>M</i> = 154 hrs <i>SD</i> = 59.2	26.9	5.7
Courts close to prison	2235	<i>M</i> = 152 hrs <i>SD</i> = 57.5	29	5.2
Courts close to prison (excluding Dublin Courts)	605	<i>M</i> = 146 hrs <i>SD</i> = 51	35.8	4.1
Court not close to a prison	2483	<i>M</i> = 154 hrs <i>SD</i> = 58.7	27.2	5.7
Dublin courts	1630	<i>M</i> = 154 hrs <i>SD</i> = 59.6	27.2	5.7
Courts outside Dublin	3088	<i>M</i> = 152 hrs <i>SD</i> = 57.3	28.5	5.3

Analysis of court characteristics was carried out through the creation of a number of dichotomous variables. Courts were classified according to three criteria: whether they were in a rural or urban location, if they were in close proximity to a prison, and finally if they were located within the Dublin Metropolitan region. There were significant associations between sanction received and whether the court was located in a rural or urban area: more CSOs than expected were sanctioned by rural courts [ $X^2(1, n = 11,029) = 43.648, p = .000, \phi = .1$ ]. The odds of receiving a CSO in a rural court were 1.2 times higher than receiving a short prison sentence in a rural court. In courts not located close to a prison more people than expected received a CSO [ $X^2(1, n = 11,029) = 80.685, p = .000, \phi = .1$ ]. This was also the case in courts located outside the Dublin region [ $X^2(1, n = 11029) = 17.091, p = 0.000, \phi = .04$ ]. Noteworthy, however, was that all effect sizes were very small.

*Analysis of geographical sentencing patterns by District Court jurisdiction*

Across all District Courts the average number of Community Service Order hours per month of imprisonment was thirty-four. This varied when examined by District Court jurisdiction. District Courts are organised on a regional basis into twenty-three District Court jurisdictions, as well as the Dublin Metropolitan District.<sup>9</sup> In District 18 the average equivalence was 70.5 hours, in comparison to twenty-three hours in District 15. Examination by offence category showed that Community Service hours per month of alternative prison sentence also fluctuated across District Court jurisdictions. For example, an offender in District 6 received an average of twenty-three hours' Community Service per one month alternative prison sentence for a public order offence, whereas an offender in District 9 received an average of 92.6 hours per one month alternative prison sentence. More detailed analysis of the offence threatening/abusive/insulting behaviour in a public place ( $n = 366$ ), a crime within the public order offence category, indicated notable variation. On average, offenders received 50.1 hours' Community Service Order per month of alternative prison sentence; however this ranged from 102 and thirty hours when examined across all District Court jurisdictions. This was also observed for the offence intoxication in a public place ( $n = 400$ ), another crime within the public order offence category. Community Service Order hours per alternative month imprisonment ranged between

<sup>9</sup> District Court (Districts) Order, 2013.

91.4 and thirteen hours across District Court jurisdiction for this specific offence.

Analysis also examined the association between sanction received and District Court jurisdiction. Quite a number of significant associations were detected. As can be seen in table 6, only those reaching Cohen's criteria for a small effect are worth noting. More Community Service Orders were sanctioned in District 1 than expected, whereas fewer than expected were sanctioned in District 4 and District 13. The odds of receiving a CSO in District 1 were seven times higher than receiving a short prison sentence. The odds of receiving a short prison sentence in District 4 were eleven times greater than receiving a CSO and in District 13, four times higher.

## **Discussion**

### *A comparison with existing evidence*

Between 1996 and 1997, the average length of a Community Service Order was 141 hours (Walsh and Sexton, 1999). This fell to 136 hours in 2006 (Department of Justice, Equality and Law Reform, 2009). In 2006 a public order offence attracted an alternative prison sentence of 3.5 months, while a drug offence carried on average an alternative prison sentence of 6.7 months (Department of Justice, Equality and Law Reform, 2009). During 2011, the average length of a CSO was 152 hours. This decreased slightly during 2012 to 150 hours. During 2011 and 2012 a public order offence carried an average equivalent custodial sentence of 3.6 months, while a drug offence attracted an alternative prison sentence of 6.7 months. Findings show that although the mean number of Community Service Order hours per order is now greater, the average alternative custodial sentence has remained broadly similar when stratified by offence category.

There are no guidelines regarding the appropriate number of Community Service Order hours per one month of alternative imprisonment to be set by the judiciary. Walsh and Sexton (1999) found that on average, one month of imprisonment equalled twenty-seven hours of Community Service, but substantial variations were detected when courts were examined individually. During 2006, the average alternative prison sentence was thirty hours per one month's imprisonment (Department of Justice, Equality and Law Reform, 2009). During 2011

**Table 6:** Association between sanction and District Court jurisdiction

<i>District Court jurisdiction versus sanction</i>	<i>CSO group</i> <i>n</i>	<i>%</i>	<i>STP group</i> <i>n</i>	<i>%</i>	<i>Chi-squared test</i>	<i>Stan. Res.</i>	<i>Effect Size</i>
Dublin Metropolitan District***	1482	40	2232	60	$X^2 = 23.607, df = 1, p = .000$	-2.9	.05
District 1 County Donegal***	261	82	56	18	$X^2 = 206.093, df = 1, p = .000$	10.7	.1
District 2 Counties Leitrim, Donegal and Sligo	45	38	74	62	$X^2 = 1.342, df = 1, p = .265$	-0.9	.01
District 3 County Mayo	66	40	101	60	$X^2 = 0.859, df = 1, p = .386$	-0.7	.01
District 4 Counties Galway and Roscommon***	13	7	188	93	$X^2 = 111.902, df = 1, p = .000$	-7.9	.1
District 5 Counties Cavan and Monaghan***	234	61	151	39	$X^2 = 51.362, df = 1, p = .000$	5.3	.07
District 6 County Louth***	240	65	127	35	$X^2 = 77.615, df = 1, p = .000$	6.5	.09
District 7 County Galway	103	37	174	63	$X^2 = 3.987, df = 1, p = .049$	-1.5	.02
District 8 County Tipperary	67	51	65	49	$X^2 = 3.247, df = 1, p = .077$	1.4	.02
District 9 Counties Longford and Westmeath**	137	36	247	64	$X^2 = 8.833, df = 1, p = .003$	-2.2	.03
District 10 Counties Louth and Meath***	19	10	179	90	$X^2 = 92.153, df = 1, p = .000$	-7.2	.1
District 12 Counties Clare and Galway	58	37	100	63	$X^2 = 2.626, df = 1, p = .106$	-1.2	.02
District 13 County Limerick***	54	17	274	83	$X^2 = 91.121, df = 1, p = .000$	-7.2	.1
District 15 Counties Laois and Offaly***	179	57	133	43	$X^2 = 26.964, df = 1, p = .000$	3.9	.1

District 16 County Wicklow*	49	34	96	66	$X^2 = 5.133, df = 1, p = .028$	-1.7	.02
District 17 County Kerry***	8	8	88	92	$X^2 = 47.627, df = 1, p = .000$	-5.2	.1
District 18 Cork County 1***	50	25	148	75	$X^2 = 26.071, df = 1, p = .000$	-3.8	.1
District 19 Cork City	601	45	733	55	$X^2 = 2.533, df = 1, p = .116$	1.1	.02
District 20 Cork County 2*	101	50	100	50	$X^2 = 4.344, df = 1, p = .044$	1.6	.02
District 21 Counties Tipperary and Waterford**	99	56	79	44	$X^2 = 11.688, df = 1, p = .001$	2.6	.03
District 22 Counties Carlow and Kilkenny	100	46	116	54	$X^2 = .953, df = 1, p = .332$	0.9	.01
District 23 County Wexford***	119	64	68	36	$X^2 = 32.960, df = 1, p = .000$	4.3	.1
District 24 Waterford City***	131	67	65	33	$X^2 = 46.160, df = 1, p = .000$	5.1	.1
District 25 County Kildare	133	45	161	55	$X^2 = 0.596, df = 1, p = .473$	0.6	.01

\* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$

and 2012 the average alternative prison sentence was just under twenty-eight hours per one month's imprisonment. The average equivalence was highest for dangerous and negligent acts (thirty-one hours) and lowest for robbery and related offences and sexual offences (13.3 hours). Across all District Courts the average number of Community Service Order hours per month of imprisonment was thirty-four. This ranged considerably when stratified by District Court jurisdiction. Variability across offence category and District Court jurisdiction outlined in this paper, identified unpredictability of Community Service Order hours and equivalent custodial sentence allocation in Ireland, in particular when examined by District Court jurisdiction, offence category, and even specific offence type.

Analysis of offence types showed that public order offences (27 per cent), road traffic offences (15 per cent), theft (14 per cent), drug offences (9 per cent), assault (9 per cent), and criminal damage (4 per cent) accounted for the majority of Community Service Orders sanctioned during 2006 (Department of Justice, Equality and Law Reform, 2009). During 2011 and 2012 a similar distribution was observed. The majority of CSOs were sanctioned for public order and related offences (22 per cent), road traffic offences (15 per cent), and theft and related offences (16 per cent). Notably, the majority of short prison sentences were received for theft and related offences (20 per cent), public order and related offences (16 per cent) and road traffic offences (13 per cent).

Results identified that drug offences received proportionally more CSOs than short prison sentences. Interestingly, previous research in this jurisdiction identified that the judiciary did not consider a Community Service Order suitable for those with substance misuse problems (Comptroller and Auditor General, 2004; Riordan, 2009). This finding is dissimilar to analysis of sentencing trends in Scotland, which identified no notable patterns in the types of offences receiving custodial and non-custodial sanctions, except those sentenced for drug offences. In Scotland offenders convicted of a drug offence received proportionately more custodial sentences (Tombs, 2004).

### *Implications of findings*

Thanks to improvements in ICT, data collection, and multi-agency working between Irish criminal justice agencies, a national comparison of the use of these two alternative sanctions could be completed. This is the first national study comparing case characteristics between sanctions.

Although differences were evident, they were not as stark as expected. More detailed data is required in order to complete more meaningful analysis between groups. Recent strategy documents have committed to increased evaluation across the criminal justice system (Irish Prison and Probation Service, 2015; Department of Justice and Equality, 2015). A co-ordinated overarching strategy for the collection and dissemination of criminal justice data would greatly enhance future research.

Findings revealed strong variation in the use of Community Service Orders and short prison sentences across court type and jurisdiction. A case had slightly greater odds of receiving a CSO rather than a short prison sentence from a rural compared to an urban court. More notable were the much greater odds of receiving a short prison sentence in some District Court jurisdictions. In only eight District Court jurisdictions were more Community Service Orders made compared to short custodial sentences imposed. The low use of Community Service Orders when compared to short term imprisonment highlights further Ireland's preference for the use of imprisonment as punishment.

It has been claimed that members of the judiciary do not consider the function of non-custodial sanctions equivalent to that of imprisonment, nor are they confident that adequate alternatives can achieve the deterrent effect of imprisonment. This seems to apply in Ireland, as well as across jurisdictions (Ashworth, 2010; Hough *et al.*, 2003; Mair, 2011; Millie, Tombs, and Hough, 2007; Riordan, 2009; Tombs, 2004). The alternative sentence attached to a CSO, in case of breach, was higher for all offence categories except crimes against property. This was also evident when detailed analysis of three specific crime types was completed. Attaching very punitive equivalent prison sentences to Community Service Orders may be a method employed by the Irish judiciary of increasing the deterrent effect of Community Service. As outlined by Riordan (2009), the judiciary are more likely to impose an alternative sanction when risk is low. Attaching a long alternative prison sentence may be a method of avoiding or minimising risk by the judiciary, as a CSO's punitive bite if breached is much greater. This, however, may result in the up-tariffing of offenders in receipt of Community Service or may deter them from consenting to complete the Community Service in the first instance.

It has been established that offenders who receive high-tariff community sanctions expend alternatives to prison more quickly; therefore, they attract prison sentences early in their criminal careers (Hine, 1993;

Hough *et al.*, 2003; Tombs, 2008). As stated by Walsh, 'the CSO benefits from a degree of legislative and executive regulation that is unparalleled in any other criminal justice sanction in Ireland' (2005, p. 75) as it can only be used as an alternative to imprisonment; however the judiciary's aversion for the restrictive nature of the Criminal Justice (Community Service) Act 1983 has been stated on a number of occasions (Riordan, 2009; Department of Justice, Equality and Law reform 2009; Walsh and Sexton, 1999). Unfortunately whether those in receipt of a CSO were more likely to be a first time offender compared to those in receipt of a short prison sentence could not be ascertained definitively. The large number of CSO recipients without previous convictions since 2003, which included those for whom information regarding previous criminal convictions was unavailable, tentatively suggests that a large proportion of cases may have been first time offenders. This tends to suggest that the sanction is not being used as a direct alternative or substitute for a custodial sanction in all cases. This is similar to experiences in other jurisdictions (Mair, 2011; Pease, 1975; 1985). A more nuanced approach to monitoring sentencing practice in Ireland is required to prevent large scale net widening across the criminal justice system.

### *Limitations*

In Ireland a court may impose, together with a CSO, an additional penalty for the same offence. This data could not be accessed; therefore some cases in the CSO group will have received another criminal justice sanction alongside their CSO. Demographic data collected by criminal justice agencies is not comparable. It is important to note the limitations of the analysis completed above. The data available for analysis was weak. Comparing group differences using only the variables available does not provide a comprehensive overview of how similar or dis-similar both groups were. Number of previous convictions dates from 2003, therefore it is only a limited indicator of criminal history. Those in the CSO group with no prior convictions and those whose information could not be accessed could not be separated due to the structure of the data set and a lack of unique identifier across criminal justice agencies; this limited the interpretation of the use of CSOs for first time offenders. Details of prior imprisonment and prior experience of Community Service across samples, and the availability of Community Service by District Court jurisdiction were unavailable at the time of analysis;

however the authors hope that this information can be obtained and results updated accordingly.

## **Conclusion**

A pragmatic approach to criminal justice policy making in Ireland is particularly evident during times of crisis (Campbell, 2008; Rogan, 2011). The Criminal Justice (Community Service) Act 1983 was implemented in order to relieve strains on accommodation across the prison system. Economic pressure and cuts to public sector funding motivated the amendment of the original Act, attempting to increase the use of Community Service as an alternative to short term imprisonment. As McCarthy (2014) notes, a ‘preoccupation with increased quantity’ (p. 150) has dominated discourse among criminal justice actors, whereas discussion of the quality and experience of Community Service has been neglected.

Ireland affords high levels of discretion to its sentencers, the use of mandatory sentencing is limited, and scholars claim it is largely avoided by the judiciary (Bacik, 2002; O’Malley, 2006). It is unclear whether the Criminal Justice (Community Service Amendment) Act 2011 is having the desired decarcerative effect. There has been a decrease in the number of Community Service Orders made; however, an even greater decrease in the use of short prison sentences has been observed over the past number of years when you exclude those imprisoned for fine default. As the first study of its kind, the findings outlined in this paper contribute to a better understanding of how the judiciary use Community Service Orders and short term imprisonment in Ireland.

A shift towards evidence informed practice across criminal justice policy and practice has gained considerable momentum in recent decades. The strive towards ‘effectiveness’ is said to have been ‘a particular preoccupation in Anglophone jurisdictions’ (McNeill and Beyens, 2013, p. 7). The purposes of community based sanctions and alternatives to custody, like the Community Service Order, are not well defined; therefore the types of evidence used to evaluate such community interventions need to be ‘varied and diffuse’ (McNeill, Farrall, Lightowler, and Maruna, 2012, p. 3). Comparative recidivism analysis planned as part of a wider doctoral study will provide much needed analysis of the outcomes of these two facets of the Irish criminal justice system. A co-ordinated,

standardised, evaluation and review process focussing on outcomes from this policy change, as well as other policies and interventions in the criminal justice system is urgently required.

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