

The Penal Paradox

What is to be Done?

18th Council of Europe Conference of Directors of Prison Administration with
Directors of Probation Services, Brussels

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Management of Execution of Penal Sanctions: Underlying Issues



Entry and Release Dynamics

Worn out release?

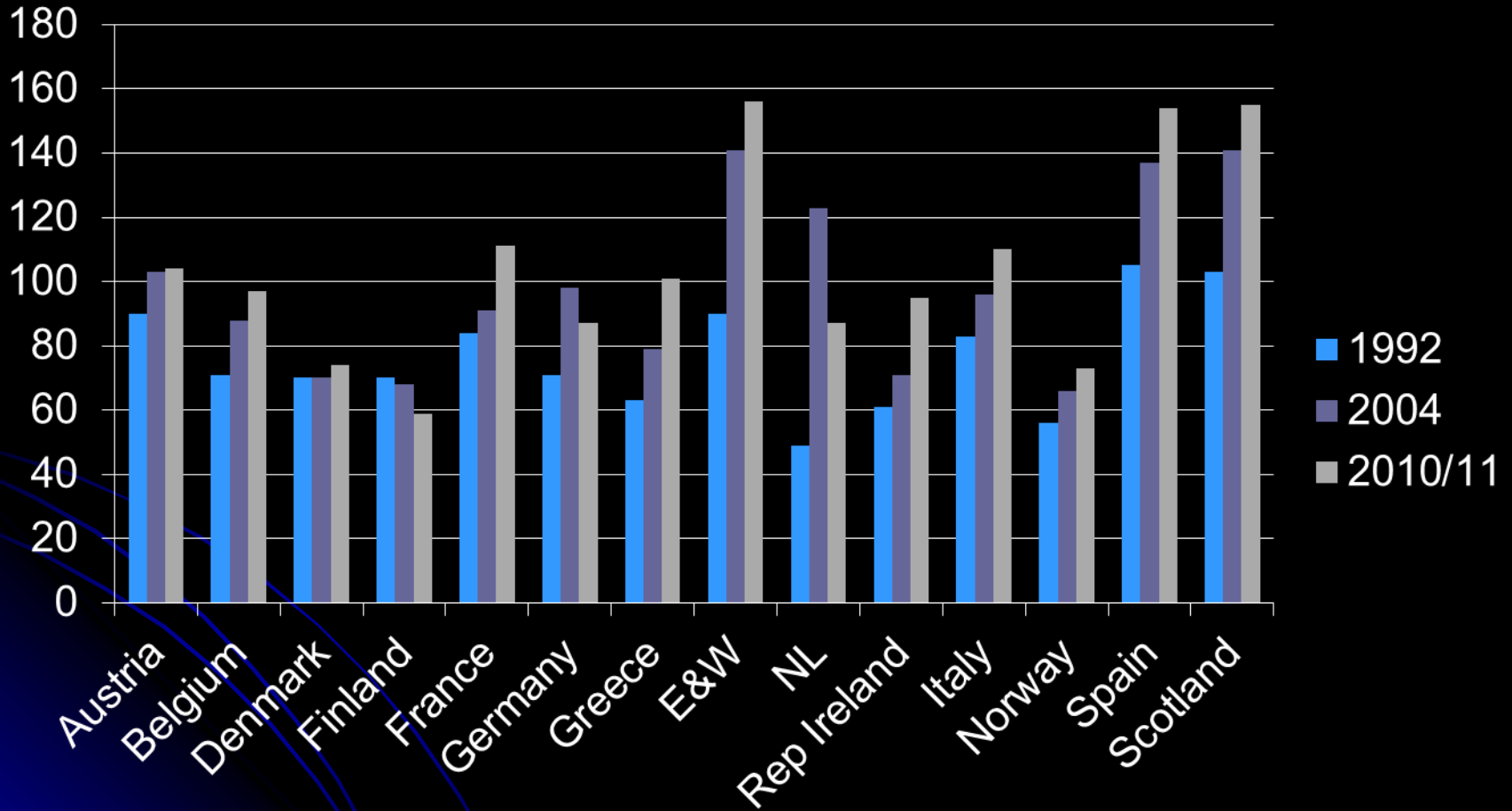


More 'efficient' release?



Prison Population Rates 1992-2011

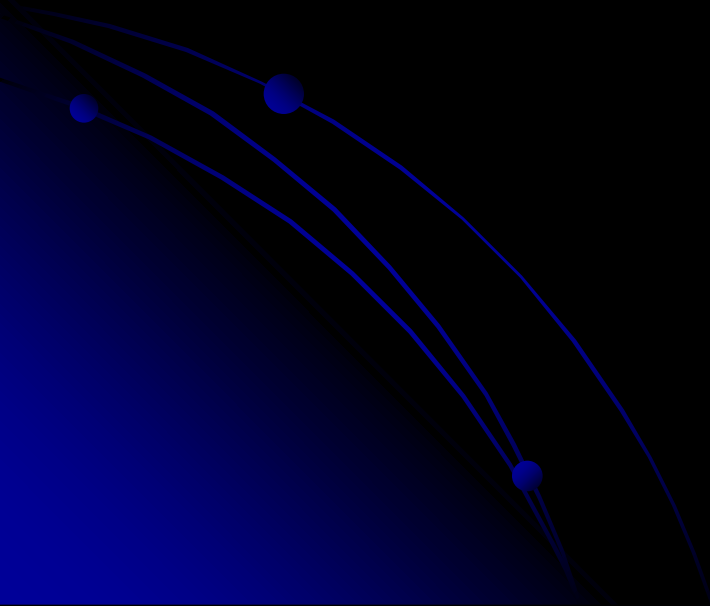
ICPS/Allen 2012



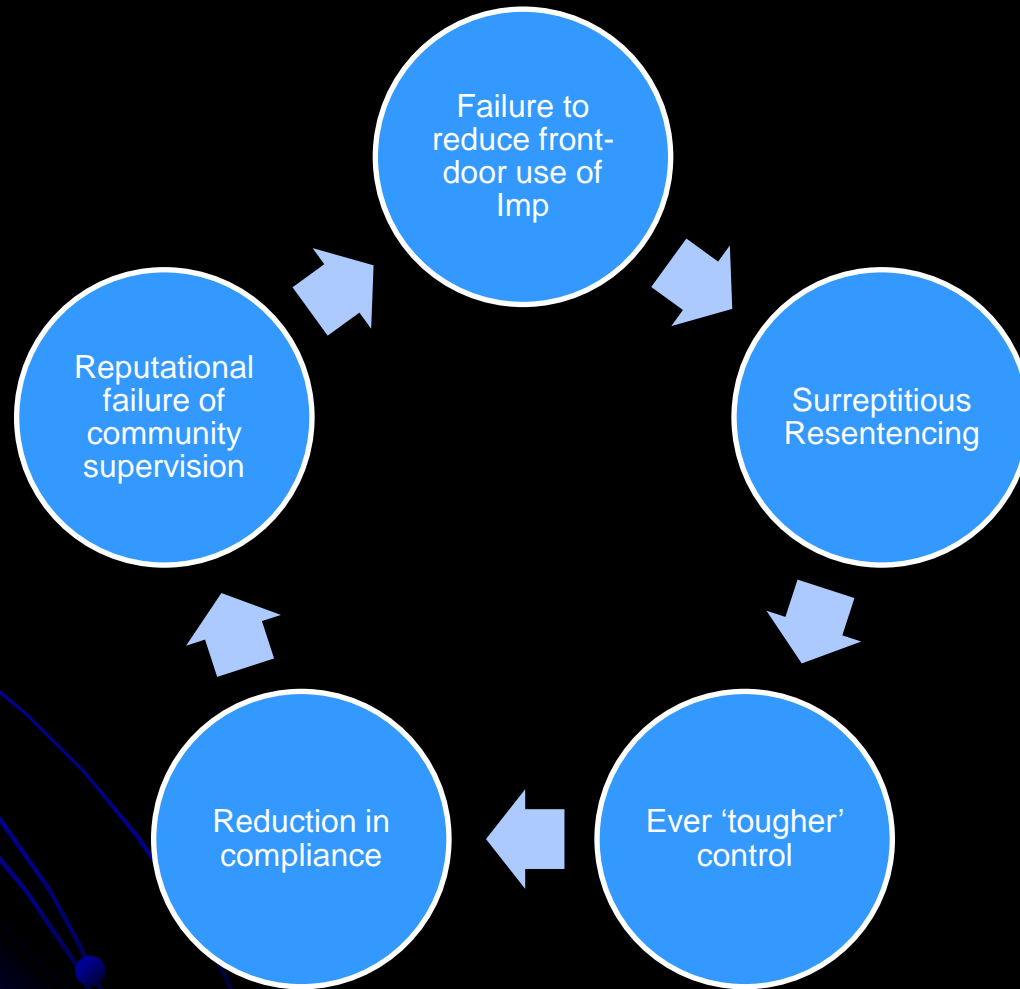


More of the Same? Executive Release

- Back-Door Release
- Conditional /Unconditional
- Unintended Consequences

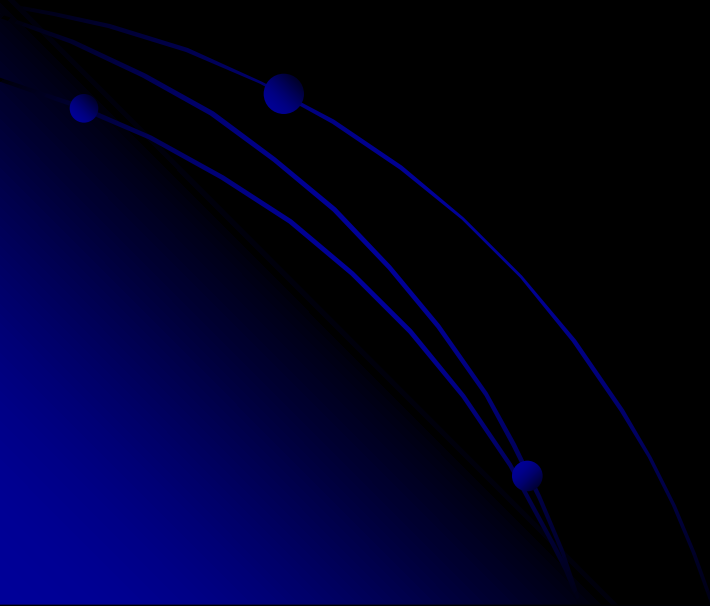


A Counter-Productive Cycle?

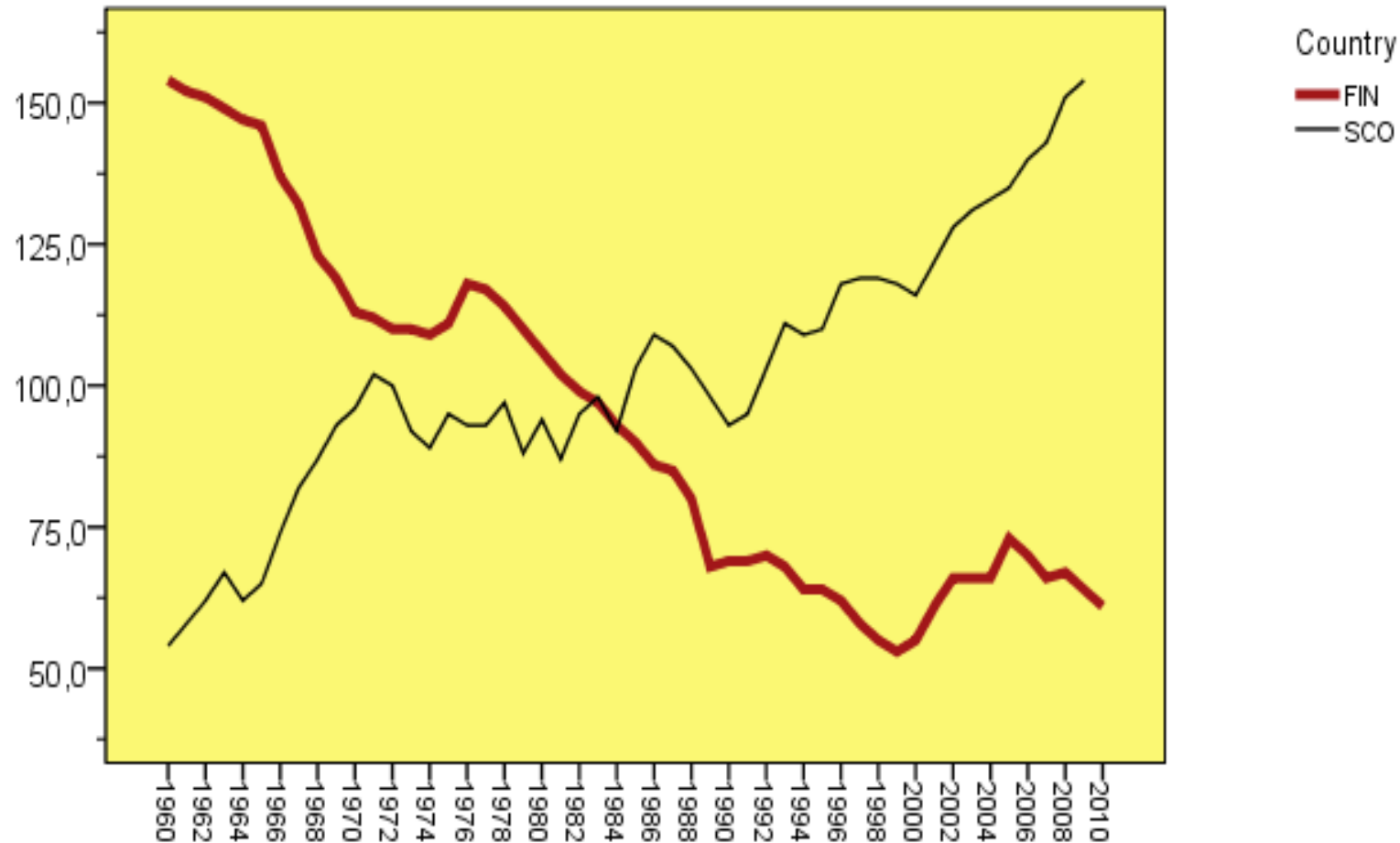


Paradox

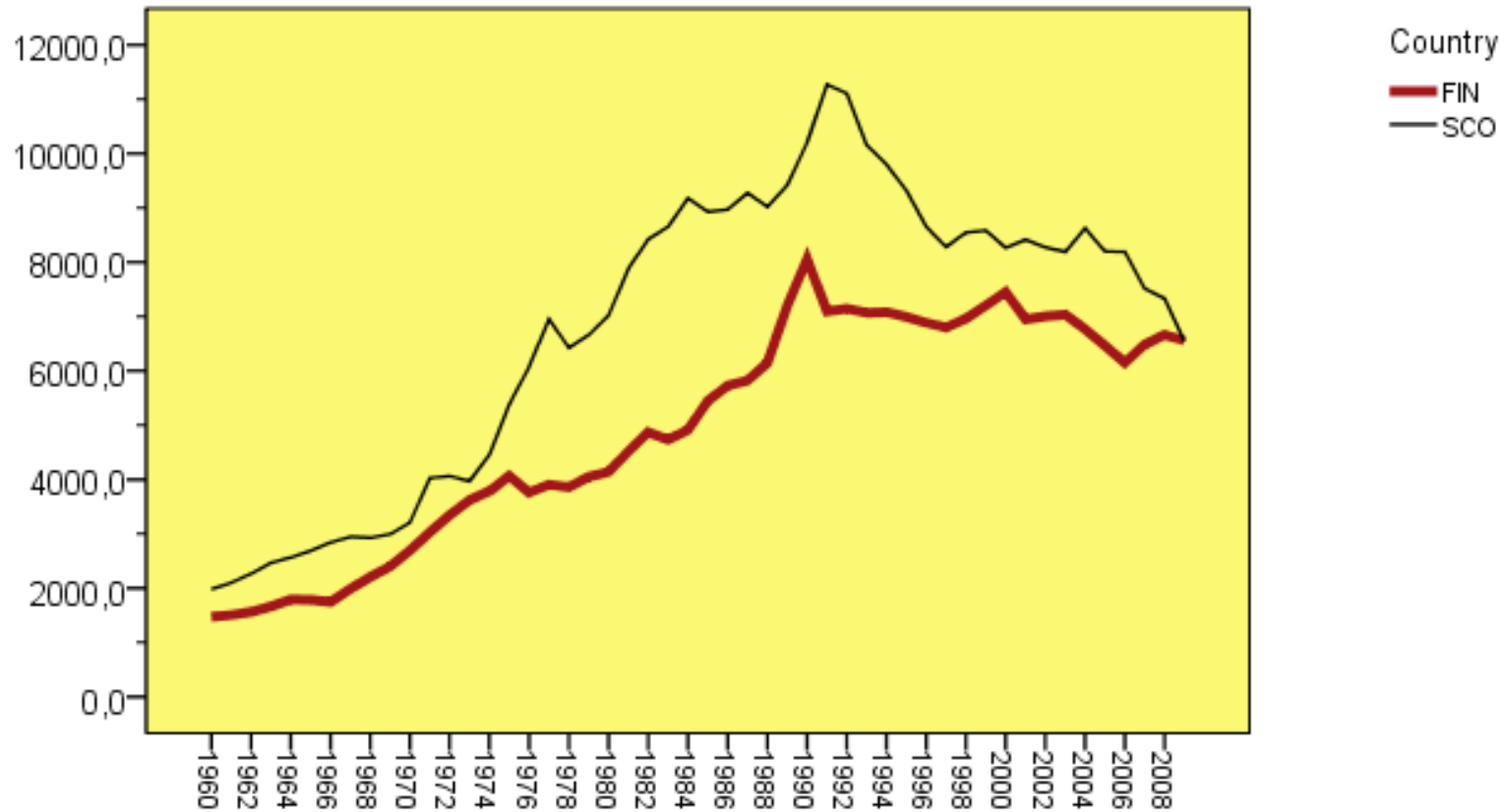
- Rising Imprisonment yet falling crime
- So does prison cut crime?
- At best Marginal Impact, overall
- Other non-CJS factors more important



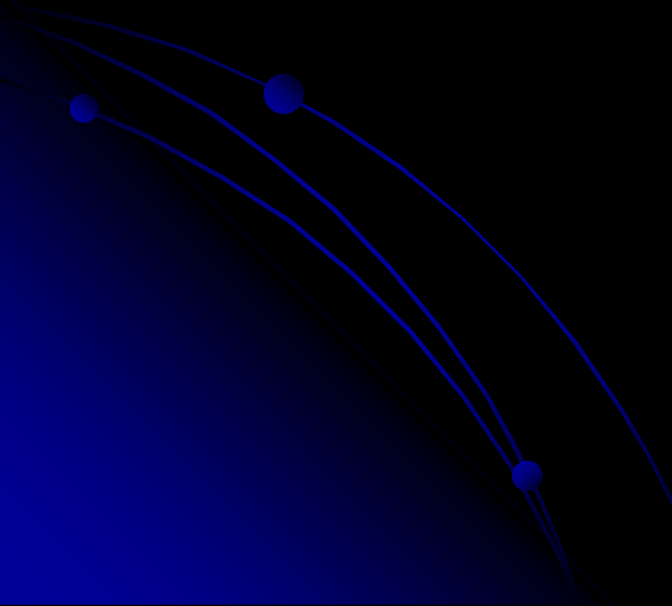
Imprisonment Rates: Finland & Scotland 1960-2010



Total Reported Crime Finland and Scotland



What Facilitates stopping/reducing? Understanding 'Desistance'

- From 'Risk & Needs' to Motivation
 - Object >>> Subject
 - Fatalism >>> Discovering Autonomy
 - Life Course – a re-lapsing condition
- 

The Desistance Trinity



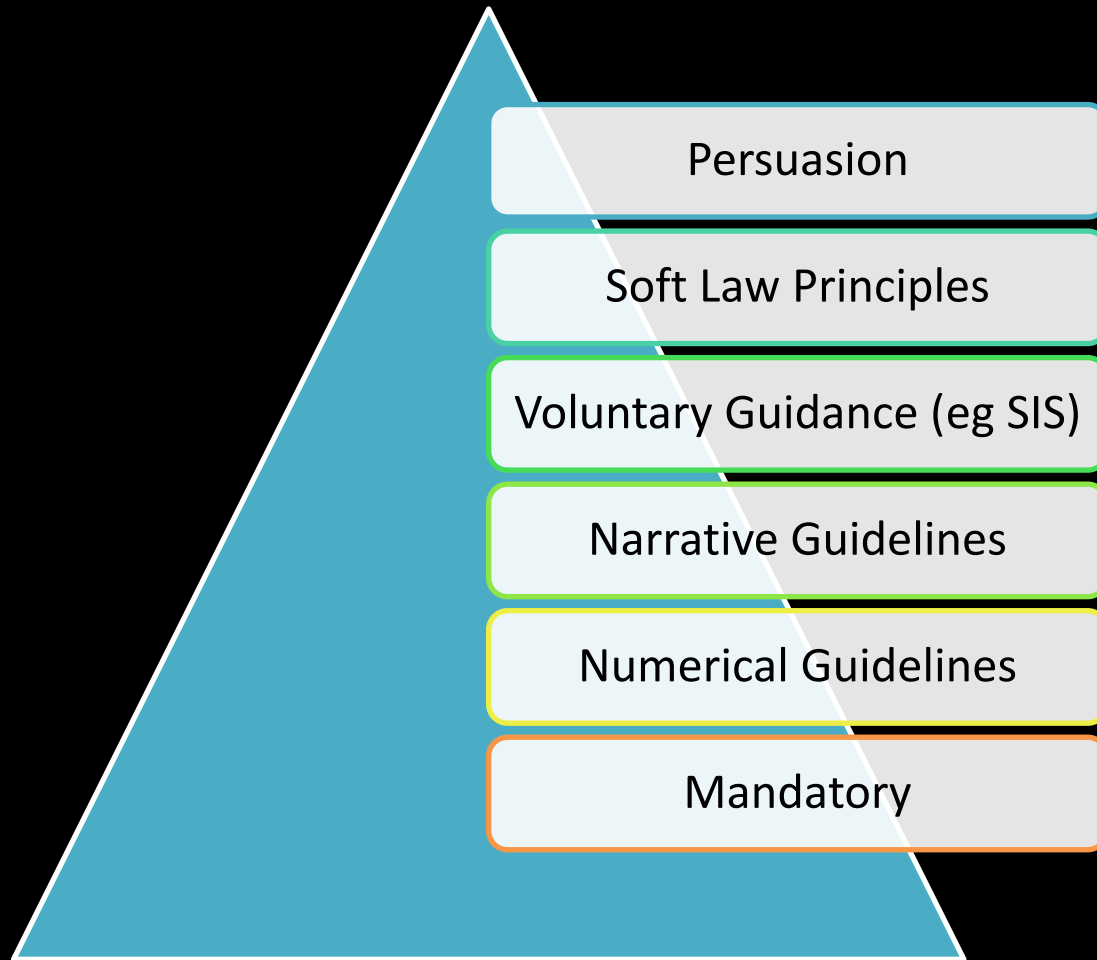
Basic Principles of Desistance-Centred Practice

- Realism about Re-lapse
- Avoid stigma
- Help to build positive soc bonds
- Respect for individuality
- Recognise social situation
- Role of language in new identity
- Redemption is in sight
- >>> Use imprisonment very sparingly**

Penal Reduction

- “Rationales for sentencing should be set by the legislator or other competent authorities with a view to, inter alia, reducing the use of imprisonment...”
- “last resort...only, where the seriousness of the offence would make any other sanction or measure clearly inadequate”
- Council of Europe Committee of Ministers Recommendation No. R(99) 22

Sentencing Reform Options



Strategy 1: Mandatory Reduction

Advantages

- Direct
- De-criminalise
- Non-imprison-able offences
- Abolish short-term imprisonment (explicit / implicit)

Questions

- Almost always Presumptive?
- Exceptions and caveats?
- Secondary effects?

Toothpaste Tube Effect



Strategy 2: Numerical Sentencing Guidelines

Table 1
Sentencing Table (in Months of Imprisonment)

Criminal History Category (Criminal History Points)

Offense Level	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	0-6
3	0-6	0-6	0-6	0-6	0-6	0-6
Zone A						
4	0-6	0-6	0-6	0-6	0-6	0-6
5	0-6	0-6	0-6	0-6	0-6	0-6
6	0-6	0-6	0-6	0-6	0-6	0-6
7	0-6	0-6	0-6	0-6	0-6	0-6
8	0-6	0-6	0-6	0-6	0-6	0-6
9	0-6	0-6	0-6	0-6	0-6	0-6
Zone B						
10	0-6	0-6	0-6	0-6	0-6	0-6
11	0-6	0-6	0-6	0-6	0-6	0-6
12	0-6	0-6	0-6	0-6	0-6	0-6
Zone C						
13	0-6	0-6	0-6	0-6	0-6	0-6
14	0-6	0-6	0-6	0-6	0-6	0-6
15	0-6	0-6	0-6	0-6	0-6	0-6
16	0-6	0-6	0-6	0-6	0-6	0-6
17	0-6	0-6	0-6	0-6	0-6	0-6
18	0-6	0-6	0-6	0-6	0-6	0-6
19	0-6	0-6	0-6	0-6	0-6	0-6
20	0-6	0-6	0-6	0-6	0-6	0-6
21	0-6	0-6	0-6	0-6	0-6	0-6
22	0-6	0-6	0-6	0-6	0-6	0-6
23	0-6	0-6	0-6	0-6	0-6	0-6
24	0-6	0-6	0-6	0-6	0-6	0-6
Zone D						
25	0-6	0-6	0-6	0-6	0-6	0-6
26	0-6	0-6	0-6	0-6	0-6	0-6
27	0-6	0-6	0-6	0-6	0-6	0-6
28	0-6	0-6	0-6	0-6	0-6	0-6
29	0-6	0-6	0-6	0-6	0-6	0-6
30	0-6	0-6	0-6	0-6	0-6	0-6
31	0-6	0-6	0-6	0-6	0-6	0-6
32	0-6	0-6	0-6	0-6	0-6	0-6
33	0-6	0-6	0-6	0-6	0-6	0-6
34	0-6	0-6	0-6	0-6	0-6	0-6
35	0-6	0-6	0-6	0-6	0-6	0-6
36	0-6	0-6	0-6	0-6	0-6	0-6
37	0-6	0-6	0-6	0-6	0-6	0-6
38	0-6	0-6	0-6	0-6	0-6	0-6
39	0-6	0-6	0-6	0-6	0-6	0-6
40	0-6	0-6	0-6	0-6	0-6	0-6
41	0-6	0-6	0-6	0-6	0-6	0-6
42	0-6	0-6	0-6	0-6	0-6	0-6
43	0-6	0-6	0-6	0-6	0-6	0-6
44	0-6	0-6	0-6	0-6	0-6	0-6
45	0-6	0-6	0-6	0-6	0-6	0-6
46	0-6	0-6	0-6	0-6	0-6	0-6
47	0-6	0-6	0-6	0-6	0-6	0-6
48	0-6	0-6	0-6	0-6	0-6	0-6
49	0-6	0-6	0-6	0-6	0-6	0-6
50	0-6	0-6	0-6	0-6	0-6	0-6
51	0-6	0-6	0-6	0-6	0-6	0-6
52	0-6	0-6	0-6	0-6	0-6	0-6
53	0-6	0-6	0-6	0-6	0-6	0-6
54	0-6	0-6	0-6	0-6	0-6	0-6
55	0-6	0-6	0-6	0-6	0-6	0-6
56	0-6	0-6	0-6	0-6	0-6	0-6
57	0-6	0-6	0-6	0-6	0-6	0-6
58	0-6	0-6	0-6	0-6	0-6	0-6
59	0-6	0-6	0-6	0-6	0-6	0-6
60	0-6	0-6	0-6	0-6	0-6	0-6
61	0-6	0-6	0-6	0-6	0-6	0-6
62	0-6	0-6	0-6	0-6	0-6	0-6
63	0-6	0-6	0-6	0-6	0-6	0-6
64	0-6	0-6	0-6	0-6	0-6	0-6
65	0-6	0-6	0-6	0-6	0-6	0-6
66	0-6	0-6	0-6	0-6	0-6	0-6
67	0-6	0-6	0-6	0-6	0-6	0-6
68	0-6	0-6	0-6	0-6	0-6	0-6
69	0-6	0-6	0-6	0-6	0-6	0-6
70	0-6	0-6	0-6	0-6	0-6	0-6
71	0-6	0-6	0-6	0-6	0-6	0-6
72	0-6	0-6	0-6	0-6	0-6	0-6
73	0-6	0-6	0-6	0-6	0-6	0-6
74	0-6	0-6	0-6	0-6	0-6	0-6
75	0-6	0-6	0-6	0-6	0-6	0-6
76	0-6	0-6	0-6	0-6	0-6	0-6
77	0-6	0-6	0-6	0-6	0-6	0-6
78	0-6	0-6	0-6	0-6	0-6	0-6
79	0-6	0-6	0-6	0-6	0-6	0-6
80	0-6	0-6	0-6	0-6	0-6	0-6
81	0-6	0-6	0-6	0-6	0-6	0-6
82	0-6	0-6	0-6	0-6	0-6	0-6
83	0-6	0-6	0-6	0-6	0-6	0-6
84	0-6	0-6	0-6	0-6	0-6	0-6
85	0-6	0-6	0-6	0-6	0-6	0-6
86	0-6	0-6	0-6	0-6	0-6	0-6
87	0-6	0-6	0-6	0-6	0-6	0-6
88	0-6	0-6	0-6	0-6	0-6	0-6
89	0-6	0-6	0-6	0-6	0-6	0-6
90	0-6	0-6	0-6	0-6	0-6	0-6
91	0-6	0-6	0-6	0-6	0-6	0-6
92	0-6	0-6	0-6	0-6	0-6	0-6
93	0-6	0-6	0-6	0-6	0-6	0-6
94	0-6	0-6	0-6	0-6	0-6	0-6
95	0-6	0-6	0-6	0-6	0-6	0-6
96	0-6	0-6	0-6	0-6	0-6	0-6
97	0-6	0-6	0-6	0-6	0-6	0-6
98	0-6	0-6	0-6	0-6	0-6	0-6
99	0-6	0-6	0-6	0-6	0-6	0-6
100	0-6	0-6	0-6	0-6	0-6	0-6

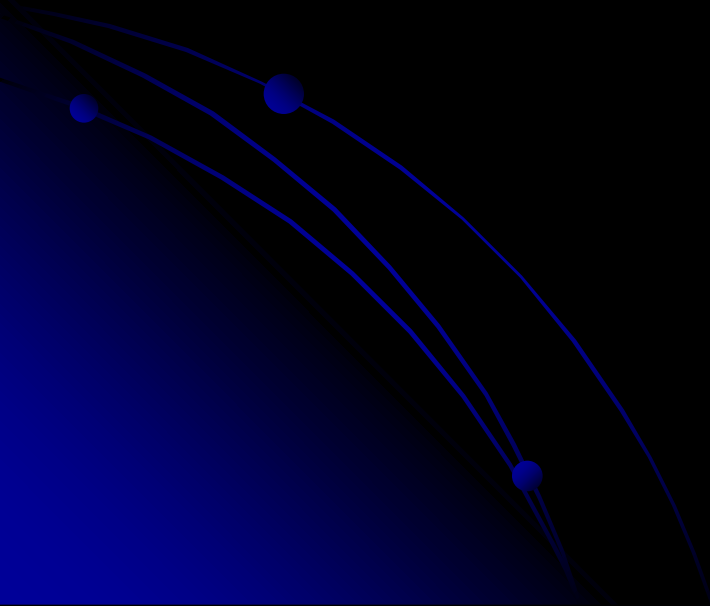
Strategy 2: Numerical Guidelines

Advantages

- Many different types
- Precise
- Democratised

Questions

- Who Decides and how?
- Loss of sensitivity?
- Toothpaste Tube Effect
- Worries about politicisation
- Resistance
- Globalisation?



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American Trickle-down effect?



Strategy 3: Narrative Guidelines

Advantages

Legislature/Council
Court of Appeal
develops
Jurisprudence
'Starting points'

Questions

- Multi-offence cases?
- Measure Compliance?
- Needs to combine with systematic information

Strategy 4: Voluntary Guidance Eg Sentencing Information System

Advantages

- Draws on existing knowledge
- Taxonomy can be tailored
- Flexible/sensitive

Questions

- Too conservative? – can combine with Guidelines
- Measure compliance?
- Authority

Strategy 5: Soft Law:

Advantages

- Principles can matter
- Normative Lead -
Authoritative statement to
set standards
- A way of encouraging
discussion and informed
debate
- A start!

Questions

- Principles used
defensively
- Achieving consensus?
- Compliance?

Possible Soft Law in Action?

- “The severity of penalties must not be disproportionate to the criminal offence.”
[EU (2000) Charter of Fundamental Rights Article 49.3]
- “last resort...only, where the seriousness of the offence would make any other sanction or measure clearly inadequate”
- ECtHR has noted imprisonment can assist rehabilitation/reintegration, but not as an express primary purpose for prison sentencing

Strategy 5: Persuade Judiciary (and public) about non-custodial Community Sentences

Advantages

- Sweet Subtle persuasion
- Eg Pre-Sentence Reports
- Credibility of Community-based Sentences
- Doesn't interfere with judicial status

Questions

- Is Impact contingent?
- How communicated?
- Danger of encoded messages?

Conclusions

We need to think about the *dynamic* relationship of Entry and Release

Until now, many states relied on just one strategy

Mixed Approach

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One Club is Not Enough



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