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## The intermittent custody pilot: a descriptive study

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Intermittent custody was introduced through the Criminal Justice Act 2003. It was intended as a punishment for offenders who had committed serious offences, but who did not present such a risk to the public as to require immediate full-time custody. An aim of intermittent custody is that prisoners can retain their jobs or discharge their childcare responsibilities more successfully if they serve a custodial sentence only at weekends or only on weekdays. This report presents findings from a descriptive study of a pilot of intermittent custody that began in 2004.

### Key points

- During the first 18 months of the pilot, 284 intermittent custody orders were passed and in 2004, intermittent custody orders accounted for three per cent (n=148) of all custodial disposals (n=5,845) passed by the pilot courts.
- The offence categories most frequently receiving intermittent custody at Crown Court were violence against the person, fraud/forgery, theft/handling, and public order offences of affray and violent disorder. As a proportion of all custodial disposals, use of intermittent custody was highest for fraud and forgery offences.
- Judges who were interviewed were enthusiastic advocates of the disposal for cases involving serious 'one-off' offences committed by offenders with jobs or childcare responsibilities.
- Obstacles to uptake reported by sentencers and probation officers who were interviewed included: a restricted pool of eligible offenders; a lack of probation proposals for intermittent custody in pre-sentence reports; the time-consuming and complicated nature of passing an intermittent custody order; and, travel and childcare issues which disproportionately affected female offenders.
- The majority (87%, CI=84–90%, see Box 1, n=148) of intermittent custody prisoner interviewees who were employed prior to custody were able to keep their jobs, and all those living with dependent children (46%, CI=43–49%, n=104) continued to do so whilst serving their sentence.
- Analysis of Pre-Sentence Reports for offenders sentenced to intermittent custody revealed that, although a specific Offending Behaviour Programme (OBP) was recommended in 44% of cases (CI=38–50%, n=24), less than one per cent (CI=1–2%) of offenders who were interviewed were engaged in any formal OBP.
- Compliance was high with fewer than 10% (CI=9–11%, n=21) of offenders sentenced up to end-July 2005 breaching the conditions of their intermittent custody orders.

The rationale behind intermittent custody is that part-time imprisonment can avoid some of the negative outcomes of even relatively short custodial sentences, such as loss of employment and accommodation, or family breakdown (Home Office, 2002). The Criminal Justice Act 2003 introduced the sentence, and a pilot was

launched in January 2004. Two prisons (one male and one female) were selected as sites for the pilot and a standard-build residential unit (comprising 39 cells) was constructed outside the main perimeter fence at each establishment to accommodate offenders sentenced to intermittent custody.

**Box 1 Confidence intervals**

Confidence intervals (CI=) indicate the range within which we can be 95% confident that the true proportion attributable to the population lies. Confidence intervals are reported where there is missing data (i.e.,  $n < 284$ ).

Fifty-one courts in 11 Probation Service Areas in England were authorised to sentence adult offenders (aged 21 or over) to intermittent custody in the pilot. Potential candidates were required to:

- have suitable accommodation
- be able to travel each week to the intermittent custody centre (travel costs were covered by the Prison Service)
- give their consent to serve the custodial portion of the sentence intermittently.

Sexual offenders and offenders with serious substance misuse problems were excluded from consideration for the sentence.

The overall length of an intermittent custody sentence is expressed in weeks and incorporates a custodial element expressed in days. The minimum and maximum sentence lengths in respect of a single offence range from 14 to 51 weeks overall, incorporating between 14 and 90 custodial days. Offenders could be sentenced to either weekend (Friday evening to Sunday evening) or weekday (Monday morning to Thursday evening or Tuesday morning to Friday evening) intermittent custody, with one weekend counting as three custodial days, and a weekday period counting as four custodial days. During the intervening periods, and up to the end of the overall sentence, the offender was supervised on licence in the community.

**Uptake of intermittent custody by the pilot courts**

During the first 18 months of the pilot a total of 284 intermittent custody orders were passed. More male (209) than female offenders (75) received the sentence, although the male intermittent custody centre rarely reached capacity during the pilot period. In 2004, intermittent custody accounted for three per cent ( $n=148$ ) of all custodial disposals ( $n=5,845$ ) passed by the pilot courts (see Table 1). The offence categories most frequently receiving intermittent custody in the pilot Crown Court centres were violence against the person, fraud and forgery, theft and handling stolen goods and, for male offenders only, public order offences (affray and violent disorder). As a proportion of custodial disposals, use of intermittent custody was highest for fraud and forgery offences (see Table 2). In the pilot magistrates' courts, intermittent custody was most commonly used to sentence summary motoring offences (driving whilst disqualified and excess alcohol).

**Table 2 Intermittent custody as a proportion of custodial disposals for the four offence categories most frequently receiving the sentence at Crown Court in 2004**

Offence	Intermittent custody	Immediate custody	Total
Violence against the person	30 (5%)	571 (95%)	601(100%)
Fraud and forgery	24 (13%)	167 (87%)	191(100%)
Theft and handling	14 (4%)	326 (96%)	340(100%)
Public disorder (males only)	9 (6%)	145 (94%)	154(100%)
Total	77 (6%)	1,209 (94%)	1,286(100%)

Sentencing statistics do not provide any conclusive evidence that the availability of intermittent custody resulted in an increase in the use of custody. The use of custody for men sentenced at the pilot Crown Court centres reduced following the introduction of intermittent custody, and increased slightly for women. However, the possibility of a 'net-widening' effect cannot be excluded. For example, statistics on cases where an enquiry was made to the intermittent custody centre showed that 35% ( $n=279$ ) of cases eligible for intermittent custody resulted in a community sentence rather than a custodial outcome. It is impossible to hypothesise whether, in the absence of the intermittent custody option, all those cases receiving intermittent custody would have resulted in immediate custody.

Judges who were interviewed were enthusiastic advocates of the disposal. They viewed intermittent custody as a sentencing option that allowed them to impose a proportionate punishment for serious offences that had passed the custody threshold, whilst avoiding the disproportionately damaging effects of full-time custody for offenders in employment or with childcare responsibilities. Magistrates who were interviewed were less enthusiastic about the sentence. They were concerned that the proportion of offenders considered eligible for intermittent custody was too small to justify the option. Obstacles to uptake reported by sentencers and probation officers who were interviewed included a restricted pool of eligible offenders, a lack of probation proposals for intermittent custody in pre-sentence reports, the time-consuming and complicated nature of passing an intermittent custody order, and travel and childcare issues which disproportionately affected female offenders. Weekday custody was considerably underused; intermittent custody was predominantly ordered to be served at weekends (88%,  $n=251$ ), reflecting sentencers' use of the disposal primarily to

**Table 1 Intermittent custody orders as a proportion of all custodial disposals passed by the pilot courts in 2004**

	Pilot Crown Court centres (n=15)			Pilot magistrates' courts (n=36)		
	Males	Females	Both	Males	Females	Both
Intermittent custody	67 (2%)	34 (5%)	101 (3%)	38 (3%)	9 (1%)	47 (2%)
All custodial disposals	2,845(100%)	666(100%)	3,511(100%)	1,373 (100%)	961(100%)	2,334 (100%)

preserve employment and childcare responsibilities in cases where custody was considered unavoidable.

### Impact on offenders' employment, housing and childcare responsibilities

The majority (84%, CI=82–86%, n=191) of intermittent custody prisoner interviewees described their ethnicity as white British, and reported an average age of 33 years. There were some important gender differences in terms of employment and childcare (see Table 3). Male interviewees were more likely than the female offenders to be employed prior to their sentence (85%, CI=83–87%, n=147 versus 44%, CI=37–51%, n=24), while the females were more likely to be living with dependent children (74%, CI=68–80%, n=40 versus 37%, CI=34–40%, n=64). Overall, three-quarters (n=171) of offender interviewees were in employment prior to being sentenced, and of these the majority (87%, CI=84–90%, n=148) were able to keep their jobs.

There were some inevitable pressures in combining work and prison, including some loss of earnings because of reduced working hours. However, employers were generally willing to accommodate any changes to working hours to meet sentence requirements (usually leaving work early on a Friday in order to attend the intermittent custody centre on time).

The majority (99%, CI=98–100%, n=224) of intermittent custody prisoner interviewees reported secure housing prior to starting their sentence, and 92% (CI=90–94%, n=209) remained in the same accommodation during their sentence. A minority (3%, CI=2–4%, n=7) reported changes in housing as a result of being sentenced (three offenders gave up tenancies expecting immediate custody, and four moved home for practical reasons relating to intermittent custody). One-fifth (CI=18–22%, n=46) of interviewees reported difficulties with rent or mortgage payments resulting from serving an intermittent custody sentence.

Just under half (46%, CI=43–49%, n=104) of offender interviewees were living with dependent children before starting intermittent custody, and all of them continued to do so

during their sentences. However, there were statistically significant (at the 99.9% confidence level) gender differences in childcare and travel arrangements. While 88% (CI=81–95%, n=56) of the male respondents living with dependent children reported that a partner or ex-partner was providing childcare while they were in custody, this was the case for less than a quarter (23%, CI=14–32%, n=9) of the female respondents with dependent children. Family members, including grandparents and older siblings were the most common temporary carers for female respondents' children.

Another gender difference emerged in terms of travel to the intermittent custody centres. Female offender interviewees were more likely than the male offender interviewees to be dependent on public transport to get there and back (72%, CI=66–78%, n=39 versus 30%, CI=27–33%, n=52). In addition, the geographically larger female pilot catchment area meant that female offender interviewees spent longer travelling to the intermittent custody centre (two hours versus one hour on average).

Notwithstanding difficulties relating to employment, housing, childcare and travel, three-quarters (CI=73–79%, n=170) of offender interviewees stated they had been expecting a custodial sentence, and many expressed relief they had been given the option of an intermittent custody sentence. These offender interviewees believed their employment, accommodation and care of dependent children would have been at risk had they received a full-time custodial sentence.

### Offenders' experiences of custody and supervision

Offenders serving weekend intermittent custody orders typically spent 12 weekends at the intermittent custody centre. The custodial regime comprised education and training courses and unpaid community work, although male prisoners benefited from a wider range of courses and greater provision of unpaid work than female offenders. The majority (94%, CI=92–96%, n=181) of prisoners who were interviewed stated they had participated in education and/or training at the intermittent custody centre, and 71% (CI=64–78%, n=139) reported finding the education/training

**Table 3 Self-report profile of intermittent custody prisoner interviewees**

	Males		Females		Total	
Black and Minority Ethnic group	27	(16%)	9	(17%)	36	(16%)
Secure housing <sup>1</sup>	172	(99%)	52	(96%)	224	(99%)
Qualifications	116	(67%)	36	(67%)	152	(67%)
Employed <sup>2</sup>	147	(85%)*	24	(44%)*	171	(75%)
Employment as main source of income	143	(83%)*	21	(39%)*	164	(72%)
Living with partner	95	(55%)**	17	(31%)**	112	(49%)
Children under 17 years	105	(61%)	41	(76%)	146	(64%)
Living with children under 17 years	64	(37%)*	40	(74%)*	104	(46%)
Previous convictions	114	(66%)**	23	(43%)**	137	(60%)
Previous custodial sentence	68	(39%)**	9	(17%)**	77	(34%)
Total	173	(100%)	54	(100%)	227	(100%)

Notes 1 Living in owner-occupied, council/housing association/private rented sector, supported accommodation, or traveller with own caravan or boat (excludes hostels, squats, and any other temporary accommodation). 2 Employed on a full, part-time or temporary basis in four weeks prior to custody.

\* Chi-squared test for male and female samples  $p < 0.001$  (difference is statistically significant at the 99.9% confidence level).

\*\* Chi-squared test for male and female samples  $p < 0.01$  (difference is statistically significant at the 99% confidence level).

useful. The majority (92%, CI=90–94%, n=159) of male prisoner interviewees reported participating in unpaid work during their time in custody, many describing undertaking a variety of group projects or individual placements in the local community, to which they felt they had made a positive contribution. In contrast, only one-third (n=18) of female prisoner interviewees reported participation in unpaid work (again, this gender difference is statistically significant at the 99.9% confidence level). Both male and female offender interviewees were especially positive about staff-prisoner relations at the intermittent custody centres, commenting that staff attitudes were ‘firm but fair’, and encouraged a relaxed but respectful and purposeful atmosphere.

Sentence plans predominantly focused on offenders’ time in custody and there was no common sentence plan which covered both the custodial and supervision on licence elements of the sentence. Supervision on licence tended to be restricted to reporting only. The most obvious gap in the substance of the sentence as it currently operates is that of addressing offending behaviour. Less than one per cent of offenders were engaged in any formal offending behaviour programme despite 40% (CI=38–42%, n=98) of offenders sentenced to intermittent custody being assessed as medium or high risk of reoffending by the Probation Service (data were available for 244 offenders). Nevertheless, offenders’ compliance with intermittent custody orders was high; of all offenders sentenced during the first 18 months of the pilot, fewer than 10% (CI=8–12%, n=21) had failed to comply with the conditions of their intermittent custody sentence. However, there were some disciplinary issues mainly relating to reporting for custody under the influence of alcohol or drugs, but also bringing drugs into the intermittent custody centre.

## Conclusions

Three key conclusions can be drawn from this descriptive study of the intermittent custody pilot. Firstly, intermittent custody was regarded as a valuable addition to the sentencing menu among judges, probation officers and

offenders interviewed as part of the study. It was viewed as a useful sentence that allowed sentencers to pass a custodial sentence whilst avoiding disproportionate damage to offenders’ employment, housing and childcare responsibilities. Secondly, however, it was considered to be a ‘niche’ sentence, appropriate for only a minority of offenders. Thirdly, because female offenders encountered more practical difficulties in serving intermittent custody than male offenders, the sentence was perceived by sentencers and probation officers who were interviewed as gender-biased in terms of uptake.

This study highlights a number of other issues which would affect the operation of intermittent custody as a nationally available sentence. One key problem is the lack of uptake for weekday intermittent custody, meaning that prison cells would lie empty during the week (Roberts, 2003). In other jurisdictions where accommodation within the existing prison estate has been used for intermittent custody sentences, prison population pressures tend to take precedence over retaining spaces for weekend-only prisoners (Lackey, 1999). In addition, unless special provisions were put in place, intermittent custody prisoners would have little or no regime at weekends and sentencers may see less merit in a reduced level of purposeful activity. Roll-out within the existing open prison estate would also make it difficult to keep intermittent custody and full-time prisoners entirely separate, a factor which was considered undesirable by sentencers, probation officers and prison staff.

The infrequency with which the disposal is likely to be used may not justify the cost of implementation in terms of briefing sentencers, courts and probation service staff. The pilot has demonstrated that without ongoing briefing and awareness training, the intermittent custody disposal is at risk of being forgotten or overlooked because of its rarity. The Criminal Justice Act 2003 has increased the options for punishment and rehabilitation within the community and it remains to be seen whether the new suspended sentence (‘custody minus’), to which a range of rehabilitative and punitive requirements can be attached, may be favoured above intermittent custody.

## Methodological note

The main research methods used in the study included: analysis of baseline sentencing data to assess the uptake of intermittent custody (sentencing information for the 51 pilot courts authorised to impose intermittent custody from 26 January 2004 was collated for the 12 months prior to the availability of intermittent custody, and also for the first 12 months of the pilot period); analysis of enquiries (n=804) made to the intermittent custody centres by the courts and Probation Service concerning offenders under consideration for the sentence to see what sorts of offence and types of offender were being considered for intermittent custody, as well as the disposal outcome; 92 qualitative interviews with 57 key personnel (sentencers, probation officers and prison staff) involved in the pilot, conducted at two points in time to assess any change in the uptake and operation of intermittent custody over time; and, semi-structured questionnaire interviews conducted with 80% (n=227) of intermittent custody prisoners sentenced up to 31 July 2005, examining their experiences of serving the sentence, and its impact on their employment, housing and childcare responsibilities.

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