

## Doing more with less?: Criminal justice demand and the three Bills

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### Summary

- This briefing considers the three criminal justice Bills currently before Parliament— the Sentencing Bill; the Criminal Justice Bill; and the Victims and Prisoners’ Bill— and estimates the impact they will have on the demand placed on the prisons and on probation specifically. (In a [separate briefing](#), we have looked specifically at how to strengthen provision for victims within the Victims and Prisoners’ Bill). We recognise our estimates include a good deal of guesswork but we have tried as far as possible to ground them in the existing Government figures in the public realm.
- The backdrop of these new Bills is stark. From court backlogs, high probation service caseloads and an overcrowded and overflowing population in the adult male prisons, the adult criminal justice system is already struggling with demand. The Sentencing Bill itself was originally announced as part of a broader response to acute prison capacity issues, and included a new executive early release scheme.
- Our assessment is that, taken together, the proposals to reduce demand on, and increase the capacity of, our prison system are unlikely to adequately deal with the acute pressures on the adult male prison estate in the medium term. Measures like a presumption against short sentences may delay the point at which demand outstrips supply but we estimate that, by December 2026, we are likely to reach a capacity crunch point again.
- Turning to probation, a number of the measures to alleviate prison demand place do so by placing additional burdens on the probation service (we estimate 14,000 extra cases over the next four years). There is currently insufficient assurance that probation have the workforce and resources to take this on. We have concerns that the current proposal to place individuals onto Suspended Sentence Orders (SSOs) as an alternative to short prison sentences could backfire due to this lack of probation resourcing, and this may further undermine judicial and public confidence in community sentences more generally.
- We suggest that the Ministry of Justice pay special attention to the recommendations of the Justice and Home Affairs Committee of the House of Lords report on community sentences that “Deferred sentencing can be used... to create incentives for low-level, repeat offenders to engage with more intensive rehabilitative activities.” We also recommend the Ministry of Justice extends existing alternatives to short prison sentences for women (both diversion away from the court system as well as problem-solving court alternatives for women), and ensure that the presumption against short sentences applies for people under 18 as well.
- Finally, we have concerns about the measures in the Criminal Justice Bill to tackle rough sleeping and nuisance begging through new civil orders which, if breached, can result in criminal proceedings. There is a lack of credible evidence advanced for these proposals and the Government’s own impact assessment seems to ignore the considerable evidence that similar attempts to use these types of order have been ineffective, poorly implemented, disproportionately punish the most vulnerable and do so while draining resources away from evidence-based preventative measures. We are also concerned that the proposals are accompanied by no assessment of their impact on the courts or other parts of the criminal justice system.

## Background

1. In this briefing, we consider the potential total demand that three Bills currently before Parliament will place on the adult criminal justice system. These are: Sentencing Bill; Criminal Justice Bill; Victims and Prisoners' Bill.
2. Our analysis of potential demand is done against the backdrop of acute current demand—in particular magistrate and Crown Court backlogs,<sup>1</sup> a faltering probation service struggling with caseloads,<sup>2</sup> and demand outstripping supply in the adult male prison estate,<sup>3</sup> leading to overcrowding and falls in prison conditions.<sup>4</sup> On the latter, we note from the Ministry of Justice's estimates in February 2023 (and before the Bills in question were announced) that the prison population is projected to increase from 84,844 in 2023 to 94,400 by March 2025 (+11.3%), and anywhere up to 106,300 in March 2027 (+25.3%).<sup>5</sup> Prison population projections 2023 to 2028 were delayed due to the policy announcements made on the 16th October, and are expected to be published in February 2024. This demand is being driven primarily by increases to sentence lengths (what we term sentencing inflation) and higher rates of recall.<sup>6</sup>
3. The pressures on the prison estate have already elicited a short term response. In an urgent response to overcrowding, on 16th October 2023, Justice Secretary Alex Chalk told the House of Commons that s248 of the Criminal Justice Act 2003 would be used to allow prisoners to be released from prison up to 18 days before their automatic release date.<sup>7</sup> This is similar to the End of Custody Licence scheme introduced by the Labour Government in June 2007 in response to a similar overcrowding situation.<sup>8</sup> It is not clear, at this point, how many prisoners have been released early under this latest release scheme.
4. To that end, we wanted to look at the three Bills in the round, and gauge what their collective impact is going to be on demand in in prisons and probation specifically, based on Ministry of Justice impact assessments.<sup>9</sup> We recognise there are likely to be wider impacts on police, prosecution, court and other services but have been unable to develop reasonable estimates in the time allotted. We have also not looked at the overall costs of these changes.
5. This briefing was written by Dr Ellie Brown, an associate of the Centre, and Phil Bowen.

## The Bills

### The Sentencing Bill

6. The [Sentencing Bill](#) had its [Second Reading](#) in the House of Commons on the 6th December 2023. The Bill contains a number of relevant clauses, including:
  - Making whole life orders mandatory for certain types of murder, except in exceptional circumstances (Clause 1).
  - Allowing for special sentences for some offenders convicted of rape and certain serious sexual offences (Clause 2).
  - Introducing a presumption that custodial sentences of 12 months or less should be suspended (Clause 6) (sometimes known as PASS).
  - Removing early release for certain sex offenders, meaning some prisoners sentenced for rape and other serious sexual offences will be required to serve their full custodial term in prison i.e. removing the possibility of release into the community under licence conditions (Clause 7).
  - Extending the availability of home detention curfew (HDC) to certain prisoners (Clause 8).

### The Criminal Justice Bill

7. The [Criminal Justice Bill](#) was debated at its [Second Reading](#) on Tuesday 28th November 2023 and is in Committee stage, which should provide its report to the House by 30th January 2024. This Bill contains a number of relevant clauses, including:
  - creating a power to seize, retain and destroy bladed articles found on private property

(Section 18); and creating a criminal offence to possess a bladed article with the intent to use it in unlawful violence (Section 9);

- Powers to transfer prisoners to foreign prisons (Section 25);
- Replacing provisions of the Vagrancy Act 1824 with offences and prevention orders for ‘nuisance begging’ (Section 39) and ‘nuisance rough sleeping’ (Section 52) and creating a new offence of ‘arranging or facilitating begging’ (Section 50).

### The Victims and Prisoners’ Bill

8. The **Victims and Prisoners’ Bill** had its **Second Reading** in the House of Lords, on 18th December 2023. It contains one relevant clause, including:

- Changes to the parole system – including amendments to the test for release (Section 43), requiring parole boards to include individuals with law enforcement experience (Section 54), greater ministerial powers of oversight and the ability to overrule release decisions (Sections 46 and 47).

## Impact on demand

### Overall assessment

9. We have developed estimates of (i) the future ‘steady state’ of the prison population (i.e. including existing sentencing inflation based on Government estimates) and ‘steady state’ prison capacity (based on our estimates when some of the 20,000 new prison spaces will come on line); (ii) future prison population estimates and prison capacity estimates based the new measures in these Bills. We have also looked at the overall caseload net impact on probation. These are our best guesses of what the impact of these measures might be on demand between now and December 2027.

### Prison demand

Centre for Justice Innovation estimates	Dec-23	Dec-24	Dec-25	Dec-26	Dec-27
Prison population (steady state)	87175	90306	93438	96569	99700
Prison capacity (steady state)	88987	90987	92987	94987	96987
Prison population (additional measures)	87175	90106	92828	95674	98930
Prison capacity (additional measures)	88987	90987	93087	95187	97287

10. As the table shows, without any new measures, we estimate we will run out of prison places in December 2025. With the additional measures, the point at which demand outstrips supply is delayed but, by December 2026, we estimate that point will be reached again.<sup>10</sup> Our overall assessment suggests that given the other changes proposed, as well as existing ‘sentencing inflation’ that is already driving up future prison population projections, any (potential) demand reduction measures are likely to be overwhelmed. These estimates assume that HMPPS will not be able to build all of the additional 20,000 places it is committed to building by ‘mid 2020s’, which we believe is reasonable given (i) historic patterns of delivery of promised places; (ii) the need to take some existing old prison places out of use.

### Probation caseload

11. Based on Government estimates, we estimate that there could be around 14,000 extra cases for probation to manage over the next four years. We have assumed that both the PASS and HDC measures will taper over time.

Probation caseload	Dec-23	Dec-24	Dec-25	Dec-26	Dec-27
PASS	0	0	3700	3700	3700
HDC	0	200	600	850	850

## Discussion

12. In this section, we look at each Bill and discuss the measures that we believe significantly impact on demand for prison places and probation which we have included in our estimates above.

### Reducing demand: (i) Presumption against short prison sentences (PASS) (clause 6, Sentencing Bill)

#### Prison demand assessment

13. In the Sentencing Bill, clause 6 would introduce a presumption against short prison sentences of 12 months' custody or less. A court may still impose a sentence of immediate custody where there are exceptional circumstances<sup>11</sup> justifying not passing a suspended sentence.
14. Short prison sentences were imposed on around 3,700 individuals in England and Wales in 2022,<sup>12</sup> 59% of all custodial sentences passed that year. Latest figures show that they accounted for 21% of all prison receptions, and 67% of all prison receptions for sentenced prisoners (i.e. excluding remand receptions).<sup>13</sup> Despite these high volumes, they accounted for only 5% of the number of prison places in June 2022 (latest figures).
15. The Ministry of Justice's impact analysis of the presumption against short prison sentences as a prison demand reduction measure assumes, in its central scenario, that the net impact of the policy on prison places will save between 200 to 1000 prison places a year. The assessment recognises that this demand reduction is uncertain (depending as it does on judicial behaviour), that it will include some people being given longer sentences (known as 'up-tariffing'), and that the savings are unlikely to be cashable i.e. it will not lead to realisable monetary savings such as the closure of a prison. We note that the realisation of benefits under a presumption against short prison sentences is complex, as shown by the experience in Scotland, where a similar set of presumptions have been introduced since 2011 (see case study below).

#### Case study: Scotland's presumption<sup>14</sup>.

Scotland introduced a 'presumption against short sentences (PASS) of 3 months or less' in 2011. PASS is a presumption against, not abolition, of short prison sentences. Sheriffs are still free to impose such a sanction where they feel it is justified and appropriate, but they are required to state their reasons for doing so and to have them formally recorded by the court. A review of the presumption in 2015 found that 40 of 72 sheriffs who were surveyed felt that the presumption had either *little* or *no* impact on sentencing outcomes, and 20 felt that the presumption had led them to impose slightly *longer* sentences, an outcome known as up-tariffing. Introducing PASS could lead to more severe sentences<sup>15</sup> and have an impact contrary to the policy intention behind it.

PASS was extended in Scotland to sentences of 12 months or less in 2019 (with effect from 4 July 2019). The Scottish Government published monitoring data in 2020, which found evidence that the proportion of prison sentences that were for less than 12 months or less was decreasing. However, Scotland was already seeing an increase in the use of community disposals, and a decrease in custodial sentences, and it is not clear whether – and to what extent – these trends were driven by PASS. The report accepted that it was 'too early' to attribute changes to sentencing patterns to PASS and further monitoring was needed, to identify trends and to explore how other factors (such as court type, offence aggravators) impacted sentencing outcomes. The most recent data (2021) shows that, despite Scotland's PASS, 75% of custodial sentences were for 12 months or less, demonstrating, as Karyn McCluskey (Chief Executive of Community Justice Scotland) observes, a real "chasm between policy intent and evidence of implementation."<sup>16</sup>

### **Probation demand assessment**

16. The Government proposes that the courts, where they decide the presumption applies, should sentence an individual to a Suspended Sentence Order (SSO). According to the Ministry of Justice, “where courts impose a suspended sentence, they can suspend it for up to two years and have a range of robust powers to ensure offenders are effectively managed during that period...These sentences can be extremely tough to punish the offender and protect the public.”<sup>17</sup> The impact assessment suggests that it is likely to result in additional demand being placed on probation, of between 1,700 to 6,700 additional cases in the community. The assessment assumes that the additional annual running costs of community supervision will be between £3.1m to £4.2m to the probation service.
17. However, there are important questions not currently answered. For example, will SSOs be imposed for substantially longer periods than an individual would have served in prison? Will we see SSOs for 6-24 months, in place of 3 months’ custody? The Ministry of Justice’s impact assessment estimates the length of suspension to be 19.7 months on average (based on the current average of SSOs). Although not relevant to the issue of demand, it raises questions about proportionality– is it proportionate to impose an SSO for so many months more than what would have been the original short prison sentence and is this likely to impact an individual’s likely compliance? Again, we note the Scottish experience. Community Justice Scotland<sup>18</sup> highlight just how difficult it can be for people to comply with multi-requirement community sentences. Individuals with complex needs, who may be homeless or struggling with mental health issues, or who may have caring responsibilities, may find it more difficult to keep appointments, to show up to supervisions, to attend unpaid work or to meet the rehabilitation activity requirements. Such individuals may more readily breach the SSO. This is not always down to ‘wilfulness’ but, instead, can be because of deficits they cannot control or address on their own.<sup>19</sup> If people are placed on SSOs that they can’t comply with, leading to breaches, it is likely that sentencers will lose confidence in imposing them.
18. Moreover, due to the Sentencing Guidelines’ direction that custody must be imposed following a breach of an SSO, this will significantly narrow the overall prison demand reduction this policy can realise (as opposed, for example, to using community orders or deferred sentences as an alternative).<sup>20</sup>
19. The assessment assumes that benefits will accrue from lower levels of re-offending,<sup>21</sup> which the current evidence base does indeed indicate.<sup>22</sup> However, we note that while this might mean avoided additional sentences in the future for specific individuals, there are countervailing trends (sentencing inflation, complexity of the cases etc.) which means this freed up demand is likely to not be realised.

### **Children and young people**

20. At present, we note that the presumption only applies to people aged 18 or over.<sup>23</sup> Short prison sentences lead to poor outcomes for children as well, in large part because they are disruptive to engagement in education, work, key socialisation periods and family ties. It is important that a similar presumption is created for children and young people.

### **Reducing demand: (ii) Extending eligibility for Home Detention Curfew (HDC) (clause 8, Sentencing Bill)**

21. Clause 8 legislates to extend eligibility for Home Detention Curfew (HDC) to those sentenced to four years or more. It also introduces a more proportionate approach to eligibility for those who have been previously recalled or returned to custody, or who have previously breached the conditions of a home detention curfew. The same exclusions that prevent people convicted of violent, sexual and terrorist offences, and those convicted of domestic abuse, from being eligible for the scheme will continue to apply.

22. The Ministry of Justice's impact analysis of the change suggests it will increase the number of people on the HDC caseload by 850 cases a year, and reduce demand on prison places by the same number. It estimates that the additional cost to probation (and electronic monitoring services) will be £7.1m per year.

### **Increasing capacity: (i) Transfer of prisoners to foreign prisons (Clause 25, Criminal Justice Bill)**

23. There is one measure which seeks to explicitly increase capacity in the adult criminal justice system, namely within prisons capacity. This is the proposal within the Criminal Justice Bill (Clause 25) to relocate prisoners to foreign prisons, where there is an agreement in place with a partner country.
24. The Ministry of Justice's (most likely) estimate is this will add 600 places (at a cost of £202.9m) by 2033/34.

### **Increasing demand: (i) Whole Life Orders (clause 1, Sentencing Bill)**

25. Whole Life Orders (WLOs) are the most severe form of punishment that the courts can impose. They have no minimum term and no possibility of Parole Board release, and are reserved for the most heinous cases of murder. Clause 1 of the Bill will create a new duty on the court to impose a WLO in those cases for which a WLO is currently the starting point, unless there are exceptional circumstances which relate to the offence (or the combination of the offence and one or more offences associated with it) or the offender which justify not imposing a WLO.
26. The Ministry of Justice's impact analysis of this change is that this is likely to require an additional 31 prison places by 2074.

### **Increasing demand: (ii) Sexual offending in the Sentencing Bill (clause 2-5 and 7, Sentencing Bill)**

27. In Clauses 2 to 5 (special custodial sentences for certain sex offenders) and Clause 7 (removal of early release for certain sex offenders), the Government seek to expand the number of offences which fall within scope of the Sentence for Offenders of Particular Concern (SOPC) to include several defined sexual offences including rape. This means that if a court does not impose a life sentence or an extended determinate sentence (EDS) following conviction for one of the listed offences, then it has no option but to impose a SOPC. The provisions also alter the release point for people who receive an EDS or SOPC so that they will now serve the entirety of the custodial term in custody, with no referral to the Parole Board at the two-thirds point of the term.
28. The Ministry of Justice's impact analysis of changes to sentencing for serious sexual offences is likely to require an additional 1,500 prison places by 2034 (and an additional 2,850 by 2048).

### **Increasing demand: (iii) Sentencing provisions in the Criminal Justice Bill (overall assessment)**

29. Moving to the Criminal Justice Bill, the Home Office impact assessment of the overall Bill suggests that its measures will result in "prison construction costs of between £20.4 million and £49.4 million, with a central estimate of £31.4 million" over the next ten years.
30. The measure that is associated with the largest increase in prison places is the new offences badged under 'Articles used in serious crime and vehicle theft' (making new offences for individuals found possessing or supplying 'articles' where it is found they did so for illegal purposes, such as possession and supply of vehicle concealments, templates for 3D printed firearms components, pill presses used in the supply of illegal drugs and signal jammers used in vehicle theft).
31. The Home Office's impact analysis of these changes is an additional 79 prison places by 2034.

32. The Criminal Justice Bill also includes provisions for additional offences and powers to address knife crime. Though the overall anticipated costs of these measures are expected to be £10.9m, how these costs have been calculated and the impact of these provisions on demand in the prison and probation system are not addressed within the impact assessment.

### **Increasing demand: (iv) Reform to parole (Part 3 in the Victims and Prisoners Bill)**

33. Part 3 of the Bill creates a top-tier cohort of offenders with a Ministerial oversight function to be able to review the release of the most dangerous offenders and refer to a superior court where this is required for public protection.
34. The latest impact assessment, published on 19th December 2023, estimates that these changes will require between 10 and 500 additional places by 2033/34, with the assessment suggesting the most likely result is an additional 40 prison places only, at an annual running cost of £3m. This carries prison construction costs of £16.0m, over the next 10 years. Additional costs, over the next 10 years, will occur in other parts of the system, including for the Parole Board (average annual costs of £0.05m), additional Public Protection Casework Section (average annual costs of £1.4m), legal aid (average annual costs of 30.2m) and HM Courts & Tribunals Service - Upper Tribunal will be £0.1m through increased caseloads (2023/24 prices).
35. Costs are not solely in monetary terms. Non-releases and reduced licence periods could disrupt people's family relationships and may reduce opportunities for rehabilitation in the community. The Ministry of Justice's impact assessment recognised that this has the potential to lead to higher reoffending, due to less post-custody rehabilitation activity delivered by probation.
36. We suggest that the Ministry of Justice also pay special attention to the recommendations of the Justice and Home Affairs Committee of the House of Lords report on community sentences that "Deferred sentencing can be used... to create incentives for low-level, repeat offenders to engage with more intensive rehabilitative activities." We also urge the Ministry of Justice to extend existing effective alternatives to short prison sentences for women (where they are investing in both diversion away from the court system as well as problem-solving court alternatives for women.) These do not require legislation and, in the debates on the Bills, we believe further commitments ought to be made to extend these.

### **Criminalisation of begging and rough sleeping (clauses 38 to 64, Criminal Justice Bill)**

37. Clauses 38 to 64 provide for "a package of measures to tackle nuisance begging and rough sleeping where it causes damage, disruption or distress to the public, while avoiding criminalising the genuinely vulnerable. This includes creation of a new offence to tackle organised begging; move on powers for nuisance rough sleeping and begging; and the creation of new civil notices and orders to prevent nuisance begging and rough sleeping that is likely to cause damage, distress, harassment, disruption, health, safety or security risk."
38. Specifically looking at the impact of these new provisions on the adult criminal justice system, the Home Office provides no assessment of the impact of them for courts, for probation or for prison places. We do not believe this is adequate— we think it is clear that these new powers, which the Home Office indicates will require police to familiarise themselves with, will be used and that this will have implications for the rest of the criminal justice system.
39. Data from National Lottery 'Fulfilling Lives' programme shows that people experiencing multiple disadvantage (such as homelessness, offending, domestic abuse and substance use)<sup>24</sup> are disproportionately represented in the criminal justice system, making up 28% of arrests and 21% of magistrates' court proceedings.<sup>25</sup> Yet the assessment makes un-evidenced claims that these new changes will result in falls in people begging/homeless. We believe these measures further risk criminalising individuals who are vulnerable and who have complex unmet needs—drawing people into justice system is unlikely to be helpful in changing outcomes,<sup>26</sup> and may have a significant detrimental impact on individuals.

40. The proposed 'prevention orders'<sup>27</sup> provoke particular concerns. The Government has routinely failed to provide robust evidence that orders of this nature – 'behaviour control orders' – are effective in changing behaviour.<sup>28</sup> In fact, previous reviews have found that orders of this kind are used punitively, discriminately, and disproportionately impact the most vulnerable.<sup>29</sup>
41. Moreover, this overall approach is likely to push up demand within the criminal justice system, absorbing resources in catching, convicting and sentencing vulnerable people– resources which could be better used within social and care services to tackle the root causes of these issues, such as shifting investment into mainstream accommodation with holistic support, such as Housing First initiatives.



## ENDNOTES

1. Ministry of Justice. (2023). *Criminal court statistics quarterly, England and Wales, July to September 2023*. Available at: [https://assets.publishing.service.gov.uk/media/657999910467eb000d55f6c7/ccsq\\_bulletin\\_jul\\_sep\\_2023.pdf](https://assets.publishing.service.gov.uk/media/657999910467eb000d55f6c7/ccsq_bulletin_jul_sep_2023.pdf)
2. HM Inspectorate of Probation. (2023). *Annual Report 2022/2023*. Available at: <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2023/09/2022-2023-HMIP-Probation-Annual-Report-v1.0.pdf>
3. Ministry of Justice. (2023). *Prison population figures: 2023*. Available at: <https://www.gov.uk/government/publications/prison-population-figures-2023>
4. There have been three urgent notifications from HMI Prisons in 2023 (HMP Bedford, Woodhill, Bristol).
5. Ministry of Justice. (2023). *Prison Population Projections 2022 to 2027, England and Wales*. Available at: [https://assets.publishing.service.gov.uk/media/63f62718e90e077baea173c1/Prison\\_Population\\_Projections\\_2022\\_to\\_2027.pdf](https://assets.publishing.service.gov.uk/media/63f62718e90e077baea173c1/Prison_Population_Projections_2022_to_2027.pdf)
6. Ministry of Justice. (2020). *Story of the Prison Population. 1993 – 2020*. Available at: [https://assets.publishing.service.gov.uk/media/5f9959aae90e0740770c85af/Story\\_of\\_the\\_Prison\\_Population\\_1993-2020.pdf](https://assets.publishing.service.gov.uk/media/5f9959aae90e0740770c85af/Story_of_the_Prison_Population_1993-2020.pdf)
7. Hansard. (2023). *Prison Capacity debate*. Available at: <https://hansard.parliament.uk/commons/2023-10-16/debates/50D29A75-C1E4-4FFC-A77D-11BBC20BCD99/PrisonCapacity>
8. House of Commons. (2010). *End of Custody Licence*. Available at: <https://commonslibrary.parliament.uk/research-briefings/sn04851/>
9. Impact assessments can be found for the Sentencing Bill [here](#), for the Criminal Justice Bill [here](#) and the Victim and Prisoners Bill (parole changes) [here](#).
10. Ministry of Justice. (2020). *Story of the Prison Population. 1993 – 2020*. Available at: [https://assets.publishing.service.gov.uk/media/5f9959aae90e0740770c85af/Story\\_of\\_the\\_Prison\\_Population\\_1993-2020.pdf](https://assets.publishing.service.gov.uk/media/5f9959aae90e0740770c85af/Story_of_the_Prison_Population_1993-2020.pdf)
11. The duty to suspend a short sentence will not apply where there is a significant risk of physical or psychological harm to an individual, so that perpetrators of domestic abuse continue to be punished by custodial sentences where appropriate. In addition, where the offender has breached an order of the court, often the case with prolific offenders, courts will retain full discretion to impose a sentence of immediate custody. Equally, there will be no duty to suspend a sentence where an offender reoffends whilst on licence or subject to post-sentence supervision.
12. <https://researchbriefings.files.parliament.uk/documents/POST-PB-0052/POST-PB-0052.pdf>
13. Ministry of Justice. (2023). *Prison receptions: April to June 2023*.
14. Data taken from: <https://www.gov.scot/publications/extended-presumption-against-short-sentences-monitoring-information-january-december-2020/pages/3/>
15. This was observed by the Australian Law Reform Commission as a 'key concern' when considering the abolition of short sentences of imprisonment. See Ashworth, A and Kelly, R. Reducing the Use of Short Custodial Sentences. [https://discovery.ucl.ac.uk/id/eprint/10132833/1/Kelly\\_AARJKCustodythreshold%20accepted.pdf](https://discovery.ucl.ac.uk/id/eprint/10132833/1/Kelly_AARJKCustodythreshold%20accepted.pdf)
16. For sake of transparency, Karyn McCluskey is the Chair of the Centre for Justice Innovation's trustee board.
17. Ministry of Justice. (2023). *Sentencing Bill Factsheet*. Available at: <https://www.gov.uk/government/publications/sentencing-bill-2023/sentencing-bill-factsheet-short-sentences#:~:text=Where%20courts%20impose%20a%20suspended,offender%20and%20protect%20the%20public>
18. Community Justice Scotland. (2019). *Call for Evidence on the Presumption Against Short Sentences*. Available at: <https://communityjustice.scot/wp-content/uploads/2019/06/PASS-Written-Evidence-for-Justice-Committee.pdf>
19. <https://communityjustice.scot/wp-content/uploads/2019/06/PASS-Written-Evidence-for-Justice-Committee.pdf>
20. The sentencing guidelines on SSOs states "the court must activate the custodial sentence unless it would be unjust in all the circumstances to do so." See: <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/breach-of-a-suspended-sentence-order/>
21. There is extensive evidence that short prison sentences are ineffective at preventing further crime and rehabilitation (two of the five purposes of sentencing). Latest figures show that 63% of people sentenced to a short prison sentence of 12 months or less reoffend within one year— and the outcomes are worse for women, with 71% of women reoffending within 12 months of release. Latest data on children and young people finds similarly high re-offending rates, with 67.5% of children sentenced to 6 months or less re-offending, and 73.3% of children sentenced to between 6-12 months re-offending.

22. Eaton & Mews. (2019). *The impact of short custodial sentences, community orders and suspended sentence orders on reoffending*. Ministry of Justice.
23. See proposed amendments to s264 of the Sentencing Act 2020, set out in Section 6 of the Sentencing Bill.
24. Data suggests that approximately 58,000 people in England have homelessness, offending and substance use issues. See: Bramley, G and Fitzpatrick, S (2015) *Hard Edges: Mapping Severe and Multiple Disadvantage*. Lankelly Chase Foundation.
25. Number of participants with at least one interaction in their first quarter on the programme. Lamb, H. et al (2019) *What Has Fulfilling Lives Achieved?* Method Notes. National Lottery Community Fund.
26. Recent data suggests around 1/3 of people leave prison with nowhere to stay. <https://www.crisis.org.uk/ending-homelessness/law-and-rights/prison-leavers/>
27. Nuisance Begging Protection Notices (BPN) and Nuisance Begging Prevention Orders (BPO), Nuisance Rough Sleeping Prevention Notices and Nuisance Rough Sleeping Prevention Orders.
28. See Justice's report *Lowering the Standard: A Review of Behavioural Control Orders in England and Wales*. Available at: <https://justice.org.uk/behavioural-control-orders-report/>
29. Ibid

## Written by:

Dr Ellie Brown & Phil Bowen

## About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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### Centre for Justice Innovation

Unit 102, Edinburgh House  
170 Kennington Lane, London SE11 5DP  
Telephone +44 (0) 203 735 9436

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Company limited by guarantee no. 8274430



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