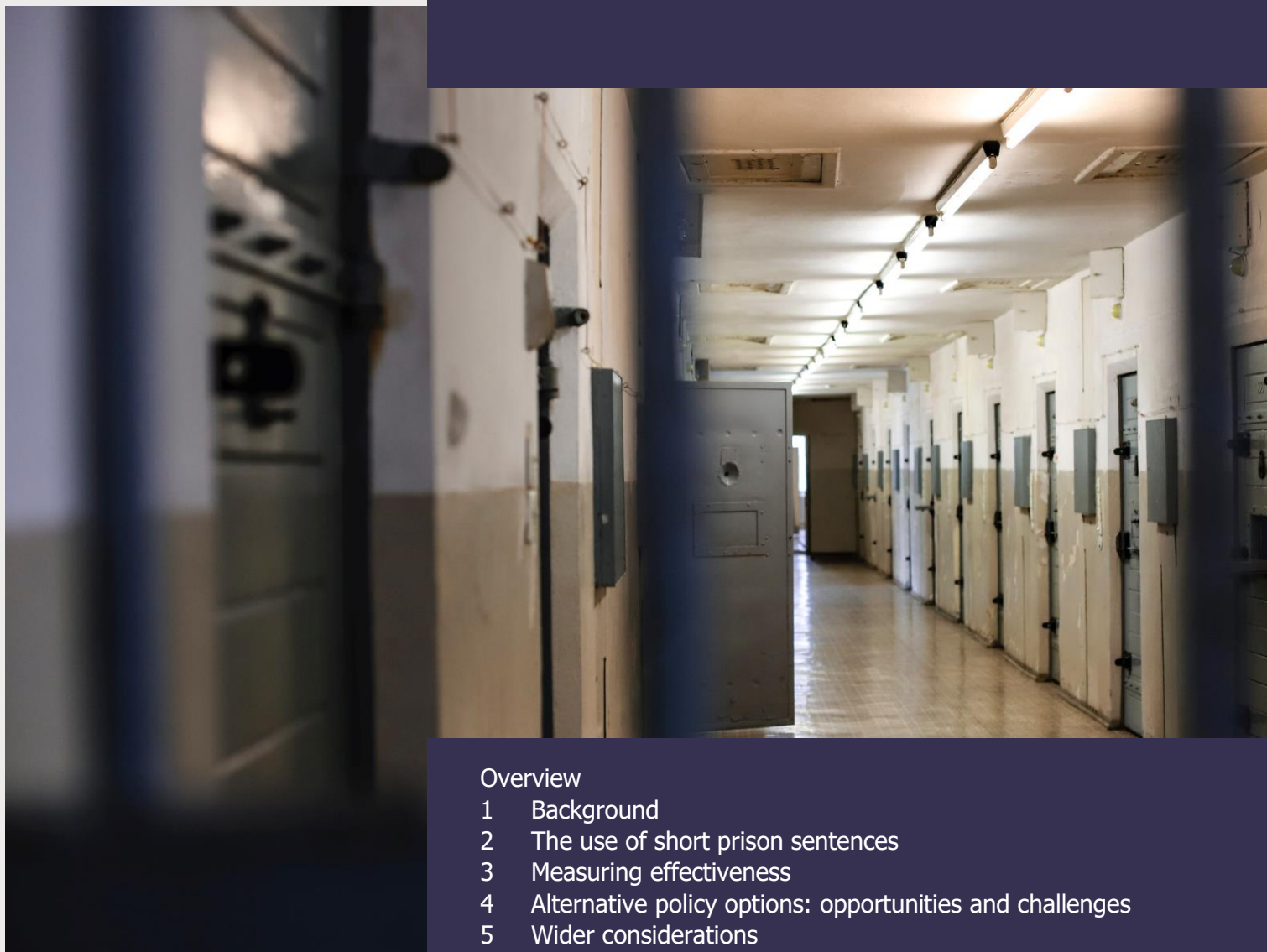


**POSTbrief 52**

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# The use of short prison sentences in England and Wales



## Overview

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## Overview

England and Wales have a range of sentencing options to deal with offending behaviour. These include fines, cautions, community orders (CO), and imprisonment. Prison sentences may be suspended or result in immediate custody. For the purposes of this paper, a short prison sentence is one where a person is sentenced to non-suspended immediate custody for up to 12 months in prison.

The UK has the highest prison population per capita in Western Europe, and stakeholders argue that non-suspended imprisonment is overused. Campaigners have highlighted that imprisonment may disproportionately affect certain groups. Recent prison population projections (central estimate 94,000 by 2024) suggest there is a risk that there could be a crisis in prisons whereby basic operations (such as taking prisoners to and from cells) may be substantially impeded due to capacity issues.

In 2022, 5% of the sentenced prison population in England and Wales was serving a short immediate custodial prison sentence of less than 12-months. There has been a growing consensus that short prison sentences have limited effectiveness in reducing reoffending, or in achieving other goals such as rehabilitation, compared to community orders and suspended sentence orders. They may also have wider undesirable impacts on the prison service and for offenders particularly for women and young offenders.

Given this, stakeholders have questioned the cost-effectiveness of short prison sentences. Imprisonment is expensive and in 2021/2022 resource expenditure on prisons was approximately £47,000 per prisoner (£3.8 billion). Reoffending itself entails costs for victims and the public, with an estimated cost of around £18.1 billion per year (based on 2016 data).

Such concerns have created a drive towards finding sentences that can better achieve key sentencing aims which include punishment, public protection, and reducing reoffending. In recent years there have been various initiatives aimed at diverting low level offenders away from prison in ways that still punish them while reducing the risk of reoffending, such as specifically tailored community orders or out-of-court disposals.

The UK Government's 2020 White Paper 'A smarter approach to sentencing' supported a reduction in short custodial sentences and a move towards probation and stronger community orders. Some stakeholders have suggested that policy interventions and emphasised alternative sentences may be helpful in reducing the use of short prison sentences. These include a presumption against short-term imprisonment, further detailed sentencing guidelines and an increased use of non-custodial sentences.

However, there are some limitations in the current evidence base, which makes it difficult to determine the factors involved in reoffending. Further research could help better understand the reasons for offending and to improve rehabilitative programmes.

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# 1 Background

A sentence is the punishment a judge or magistrate decides should be given to someone who has been convicted of a crime at the end of a prosecution. There are several core purposes of sentencing an adult offender (18 years and above) who has committed a crime. The [Sentencing Act \(2020\)](#) (also referred to as the Sentencing code) and, the [Criminal Justice Act \(2003\)](#) set these out as:

- punishment
- crime reduction
- reform and rehabilitation
- reparation
- public protection<sup>1</sup>

The Sentencing Council for England and Wales set specific and overarching guidelines for the courts to follow.<sup>2</sup> This briefing paper will refer to short term custodial sentences with immediate custody as 'short prison sentences', with a time period of up to 12-months.

In 2022, the Sentencing Council reviewed and published a report on the effectiveness of sentencing options on reoffending. The report analysed the evidence base for the effectiveness of sentencing "pertaining to desistance, deterrence, reoffending, cost effectiveness and equality".<sup>3</sup> The evidence suggest that when comparing similar offenders, short prison sentences are associated with increased reoffending rates upon release compared to community orders (CO) or suspended sentence orders (SSO).

This POSTbrief outlines and summarises the most recent, accurate and relevant data on the effectiveness of short prison sentences, including how 'effectiveness' is measured and in comparison, to other court orders primarily SSO and CO. It will also briefly discuss the data showcasing long-term outcomes of short prison sentences compared to non-custodial sentences such as community sentences. As crime and justice are a devolved policy area, this briefing primarily focuses on sentencing legislation and policy in England and Wales, with references to legislation and practice in Scotland and Northern Ireland for context.

## 1.1 Legislation, policy and guidance

There has been active political debate on the use of short prison sentences in recent years.

On 7 March 2019, there was a general debate in Westminster Hall on 'the cost and effectiveness of sentences under 12 months and consequences for the prison population' (see [Commons Library Debate pack 2019-0063](#) and [Hansard Vol 655](#)). During the debate the then Minister of State Rory Stewart acknowledged the evidence of the Ministry of Justice analysis, stating that offenders given short prison sentences can have negative outcomes such as reoffending, mental health problems and illicit drug use compared to those given non-custodial offences.<sup>4</sup>

The former Justice Secretary David Gauke publicly advised the Government against investment and resources allocated to prison sentences, which he called "ineffective" and supported greater investment in non-custodial interventions and programmes such as probation. In July 2019, David Gauke said "I believe moving away from short prison sentences is a balanced, considered and evidence-based approach to sentencing policy.... And I would hope that the next prime minister would continue with this reform agenda."<sup>5</sup>

In July 2019, the UK Government announced plans to launch a public consultation and publish a Green Paper setting out proposals on this issue. However, this was never published.<sup>6</sup>

In June 2020, the House of Lords published an article summarising the political landscape and debate around short custodial sentences.<sup>7</sup>

In September 2020, the UK Government published a White Paper 'A smarter approach to sentencing', there were proposals around strengthening the use of community sentences, and an intention to reduce short custodial sentences and reduce reoffending.<sup>8</sup>

In June 2021, during the passage of the [Police, Crime, Sentencing and Courts Act 2022](#), Shadow Minister for courts and sentencing Alex Cunningham tabled amendments related to short prison sentences for Parliamentary debate (See [Hansard](#) Police, Crime, Sentencing and Courts Bill (Eighteenth sitting)) , however these were not voted on or added to the Act.<sup>4,9</sup>

## **Devolved legislation and policy**

In Scotland, there is a [Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019](#) (See Section 4 Alternative policy options).

In 2015, the Northern Ireland probation board used existing legislation to trial an alternative policy intervention to prison sentences of up to 12-months, known as '[Enhanced Combination Orders](#)' (ECO, See section 4).

## 1.2 Types of Sentencing

There are several sentences a judge or magistrates can give to a convicted offender, for comparison and analysis the following sentences are referred to throughout this POSTbrief.

## Non-custodial sentences

When an offence does not justify a custodial sentence then an individual is given a non-custodial sentence is advised to be used instead (see [PN613](#)). Non-custodial sentences include fines, discharges, cautions, penalty notices and also community orders (also referred to as community sentences, see below).<sup>10</sup>

### Community orders

Individuals can get a community order (CO) if convicted of a crime in a criminal court, but not sent to prison. A community order, as an intermediate sanction, incorporates some form of punishment with activities carried out in the community (for example, up to 300 hours of unpaid work, keeping to a curfew).<sup>10</sup> It can include a Rehabilitation Activity Requirement, which is a requirement that the offender participates in activity to reduce the prospect of reoffending (for example, alcohol and drug misuse treatment).<sup>11</sup> If the offender breaches a community order, they can be sentenced to time in prison.<sup>11</sup>

## Custodial Sentences

An individual can get a custodial sentence if convicted of more serious offences with imprisonment being the most severe form of punishment. The length of the prison sentence and release arrangements depend on the seriousness of the offence.<sup>12</sup> Immediate custodial sentences refer to mandatory custody upon sentencing, where the offender is placed within a secure facility for example a prison or closed therapeutic or education institution.<sup>10,12</sup> Custodial are more complex than some might assume, as custodial sentences can be immediate or suspended and served in the community provided the offender meets certain requirements.

Custodial sentences spent in prison can be either determinate or indeterminate. Determinate sentences have an end date and will be given arrangements on release such as a licence and supervision. Indeterminate sentences do not have a fixed end date although they may have a minimum amount of time that must be served before parole may be considered.<sup>13</sup>

### Suspended sentences

Individuals can get a suspended sentence order (SSO) if they are convicted of a crime by a court and they receive a short-term custodial sentence between 14 days and 2 years (or 6 months to 2 years in the magistrates' court).<sup>14,15</sup> The judge or magistrates can choose to suspend this sentence for up to 2 years. This means that offenders do not have to serve the custodial sentence in prison unless they fail to comply with the requirements of the sentence. There are thirteen requirements that can be set by the court. These can include unpaid work, curfew or another Rehabilitation Activity Requirement, if offenders do not comply with the requirements, they serve the original custodial sentence.<sup>14,15</sup>

## The custody threshold

The 'custody threshold' refers to the conditions that must be met before handing out a custodial sentence.<sup>16</sup> Though there is no formal or general

definition of the threshold, both the Sentencing code (section 230) and the Sentencing Council imposition guideline provide guidance to help the court assess if the custody threshold has been passed.<sup>16</sup> The guidance state that a custodial sentence must not be passed unless the court is convinced that the offence or the combination of offences and one or more offences associated are so serious that neither a fine nor a community sentence can be justified for the offence.

Cases that sit on or near the custody threshold, where a sentence of immediate imprisonment is a distinct possibility but not necessarily inevitable, can present complex scenarios.<sup>3,16</sup> In these situations, the courts are required to make a decision to give a suspended order, community order or a short prison sentence.<sup>3,17</sup>

Stakeholders suggest greater use of valid risk assessments of offenders when considering the custody threshold and sentencing options (See section 4 below).<sup>6,18,19</sup>



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## 2 The use of short prison sentences

Short prison sentences of up to 12 months can be defined as a type of custodial sentence. They are often given for low level offences, repeat offences or punishment for non-compliance to suspended sentence requirements.

### 2.1 Key trends and demographics

The Ministry of Justice (MoJ) collects and publishes data on criminal justice statistics, including analytical series on identified data trends as well as routine data on prisoner numbers, sentence lengths and reoffending rates in England and Wales.<sup>20</sup>

On 31 December 2022, the total sentenced prison population stood at 67,031 prisoners, a 2% increase compared with December 2021.<sup>21</sup> Between September 2018 to September 2022, the average custodial sentence length rose from 17.3 months to 21.7 months.<sup>22</sup>

During this period, the annual number of short sentences with immediate custody (less than 12 months) fell from 50,699 (63% of all sentences in 2018) to 35,334 (55% of all sentences in 2022).<sup>22</sup> The quarterly data for all sentenced prison admissions, including adults and juveniles, for July to September 2022, show that 56.4% (5,506 admissions) were for sentences of less than 12 months (44.1% for sentences of less than 6 months).<sup>23</sup>

#### Types of offences and prior offences

The data on principal offence\* shows the most common offence committed by those sentenced to short sentences (of less than 12 months). In the year ending June 2022 the data showed the following:

- 'theft from shops' (shoplifting; 13% of short sentences)
- 'common assault and battery' (9%)
- 'assault of an emergency worker' (8%)
- 'breach of a restraining order' (7%)
- 'possession of an article with a blade or point' (knife possession; 6%)<sup>25</sup>

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\* The Principal Offence Category indicates the most serious offence with which the defendant is charged at the time of finalisation.<sup>24</sup>

With the exception of knife possession, the most common sentence length for each of these offences was less than 3 months (knife possession sentences were typically between 6 and 12 months).<sup>25</sup>

In 2019, the MoJ published an ad-hoc statistical analysis on the prior sentences (disposals) of offenders sentenced to 6 months or less and 12 months or less using Police National Computer (PNC) data taken in 2018. It found that:

“Of adults sentenced to 6 months custody or less, approximately 84% had previously received a CO, 53% had previously received a suspended order, and 80% had been previously sentenced to custody.

Approximately 45% of adults sentenced to 6 months custody or less had received all three types of key disposals (COs, SSOs and Custody), with a median of 18 prior COs, 3 prior SSOs and 17 prior custodial sentences. This group also had a high number of prior other disposals.

Of adults sentenced to 12 months custody or less, approximately 81% had previously received a CO, 49% previously received an SSO, and 77% were previously sentenced to custody. Approximately 42% of adults sentenced to 12 months custody or less had received prior COs, SSOs and Custody with a median of 18 prior COs, 3 prior SSOs and 17 prior custodial sentences amongst this group.”<sup>26</sup>

## Reoffending rates

In England and Wales, the MoJ reports statistics on ‘proven reoffending’. The MoJ defines proven reoffending as “any offence committed in a one-year follow-up period that leads to a court conviction, caution, reprimand or warning in the one-year follow-up or within a further six-month waiting period to allow the offence to be proven in court”.<sup>27,28</sup>

The latest annual ‘Proven reoffending statistics’ from the Ministry of Justice (April 2020 to March 2021) show that adults who received custodial sentences of less than 12 months reoffended at a higher rate (56.2%) than those who served sentences of 12 months or more (22.2%).<sup>27</sup> Adults released from a custodial sentence of less than or equal to 6 months had a proven reoffending rate of 58.5%.<sup>27</sup>

It is important to note that the “proven reoffending” dataset is not controlled for compared to the MoJ analytical series (2019) which compares similar cohorts and assesses statistical significance. (See section 3 below)

## Sex and Gender

The MoJ uses the terms male and female when identifying differences between sex. In 2022, the prison population in England and Wales was 96% male and 4% female.<sup>29</sup>

From the MoJ [Reoffences data tool](#), in its proven reoffending statistics the proven reoffending rate for offenders released from a custodial sentence of less than 12 months was 53.2% for males and 60.8% for females (January to March 2021).<sup>30</sup>

As of December 2022, 9% of females were serving custodial sentences of less than 12 months in prison compared to 4% of males.<sup>31</sup> The latest quarterly data for all recently sentenced admissions to prison (July to September 2022) show that the proportion of females sentenced to less than 12 months (72.1% of 739 admissions) was higher than for males (55.2% of 9,017 admissions).<sup>23</sup>

In 2022, the National Audit Office's report on 'Improving outcomes for women in the criminal justice system' found that women were more likely than men to re-offend within a year of being released from a short custodial sentence of less than 12 months (71% of women versus 63% of men). This was based on data from 2016.<sup>32</sup>

His Majesty's Inspectorate of Prisons Annual Report on prisoner experiences, of all sentence lengths, showed that a higher proportion of female prisoners in 2021/2022 self-reported having disabilities (48% vs 35%) and mental health problems (76% vs 51%) compared to male prisoners.<sup>29</sup> In the year ending June 2022, 33% of female prisoners self-harmed, compared to 13% of male prisoners.<sup>33</sup>

## Ethnicity

The MoJ monitor and publish data on the average custodial sentence lengths by ethnicity group. In 2022, offenders from ethnic minority backgrounds made up 19% of those sentenced to 12 months or less, and 16% of those sentenced to 3 months or less. However, they made up 26% of offenders sentenced to *more* than 12 months in custody.<sup>20</sup> (See Table 1.)

<b>Table 1 Breakdown of offenders by broad ethnic group, by custodial sentence length</b>				
<b>Indictable and triable-either-way offences only</b>				
	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>0-3 months</b>				
Asian	4%	4%	4%	4%
Black	7%	8%	7%	7%
Mixed	3%	3%	3%	3%
Other	1%	1%	1%	1%
White	84%	85%	85%	84%
<b>&lt;3 to 6 months</b>				
Asian	6%	5%	5%	5%
Black	11%	9%	10%	9%
Mixed	3%	4%	3%	4%

Other	1%	1%	1%	2%
White	79%	81%	80%	81%
<b>&gt;6 to 12 months</b>				
Asian	7%	6%	7%	7%
Black	11%	9%	9%	10%
Mixed	3%	4%	4%	3%
Other	2%	2%	2%	2%
White	77%	80%	78%	78%
<b>&gt;12 months and less than life</b>				
Asian	8%	7%	8%	8%
Black	13%	11%	12%	12%
Mixed	4%	4%	4%	4%
Other	2%	2%	3%	2%
White	65%	59%	58%	57%
<b>All custodial sentences</b>				
Asian	6%	6%	7%	7%
Black	11%	10%	11%	10%
Mixed	3%	4%	4%	4%
Other	1%	1%	2%	2%
White	78%	79%	77%	78%

Source: MoJ, [Criminal Justice System statistics quarterly: December 2022, 'Outcomes by offence data tool'](#)

In 2022, research by Administrative Data Research UK found that White men (3.26) and White women (4.14) had more previous convictions prior to receiving a short custodial sentence than those in any other ethnic group (See Table.2). The lowest number of previous convictions before a short custodial sentence was given was for men (1.67) and women (1.27) who

reported their ethnicity as 'Other', followed by Asian men (2.62) and Black women (2.71).<sup>34</sup>

**Table 2 Number of convictions before a short sentence of immediate custody**

	White	Asian	Black	Mixed	Other
Male	3.26	2.62	3.11	3.08	1.67
Female	4.14	2.84	2.71	3.69	1.27

Source: The number of convictions before the imposition of a short sentence of immediate custody Angela Sorsby, ADR UK, 2022.

### Young offenders

In the year ending March 2022, there were approximately 11,400 occasions in which children (aged 10 to 17) were sentenced at court, including an estimated 550 custodial sentences (of all lengths).<sup>35</sup>

In the year ending March 2021, children released from short custodial sentences had a higher reoffending rate (70.3%) than those released from a sentence of 12 months to 4 years (56.4%). Though it is important to note due to the volume of offenders being very low, the data is for children serving sentences is more variable. Additionally accurate estimates for unavailable for children released from longer sentences due to small sample sizes.<sup>35</sup>

The latest quarterly data from the MoJ (July to September 2022) show of the sentenced prison admissions for 15-17 year olds (July to Sep 2022), 37.5% were for sentences of less than 12 months, compared to 57.6% of all sentenced adults.<sup>23</sup> For the same period, of the sentenced prison admissions for 18-20 years old, 37.6% were sent to prison for less than 12 months.<sup>23</sup>

Reoffending rates for children are the highest in the criminal justice system and are highest between the age group of 15-years and 25-years.<sup>36,37</sup>

Research has recognised age as a key risk factor in reoffending.<sup>35,38</sup> This association has been identified as the 'age-crime curve'. For example, children and young people are more likely to engage in criminal behaviour and are more likely to reoffend (PN577, Box 1). Age, like other social determinant factors, contributes to the likelihood of engaging with crime and the type of crime. Some academics and experts use the age-crime curve as an illustration in showing the complexities around correlative factors and crime, they highlight the importance in taking these factors into account when setting objectives for effective sentencing outcomes.<sup>35-37,39</sup>

In May 2022, the Home Office published the 'Youth measures in the Police, Crime, Sentencing and Courts Bill: Equalities Impact assessment', which notes that children of Black, Asian and Mixed ethnicities are more likely to be sentenced to custody than their White counterparts (Asian by 86%, Black by 71% and Mixed ethnicity by 35%).<sup>37</sup> Reoffending is highest for those children sentenced to short periods in custody and this is disproportionately high for Black children compared to White children.<sup>37</sup>

## **Box 1 The age-crime curve**

The age-crime curve describes the pattern of young people and children committing crimes at an increased rate as they mature into adolescents, with a peak of crime and risky behaviour between 18 and 20 years old. The trends of these offences then decrease as the adolescents mature into adulthood.<sup>39,40</sup>

Researchers identify contributions to this trend as 'neuromaturation', whereby a younger person's cognitive reasoning and response to emotional events may still be maturing, which can affect their ability to think and act rationally.<sup>3,41,42</sup> The prefrontal cortex is a key part of the brain's logic and decision making, and it is usually the last part of the brain to mature.<sup>43</sup> Brain maturation also affects personality changes and changes in neurotransmitter production, which can have effects on an individual's personality, mood changes and behaviour.<sup>43,44</sup> These changes in brain development can affect an individual's likelihood to commit a crime, and how they respond to deterrents.<sup>3,45,46</sup>

## 3 Measuring effectiveness

There are several core purposes of sentencing an adult offender who has committed a crime. The [Sentencing Act \(2020\)](#) (also referred to as the Sentencing code) and, the [Criminal Justice Act \(2003\)](#) set these out as;

- punishment
- crime reduction
- reform and rehabilitation
- reparation
- and public protection.

The Sentencing Council's review on existing research suggests that there are key objectives that effective sentencing may seek to accomplish to fulfil the purposeful aims of the Sentencing code.<sup>3</sup> Notably, effective sentences may seek to reduce reoffending, rehabilitate, and reintegrate offenders into society.

### Reduced reoffending

The Sentencing Council note that reducing reoffending is an important objective and metric in assessing the effectiveness of sentencing.<sup>3</sup> Reoffending measures (and reoffending rates) seek to measure if someone who has received some form of criminal justice sanction (for example a sentence or caution) goes on to commit another offence in a set time period.<sup>27,28</sup>

Although reduced offending is a quantifiable metric, it is more complex and nuanced than the data can show as the rates may vary dependent upon monitoring timeframes, frequency of reoffending and the seriousness of offence. Considerations when monitoring reoffending rates include the number and nature of offences, as well as the characteristics or circumstances of the offender.<sup>47</sup> These are important in accounting for variables or gaining relevant insight into the effectiveness of sentences.<sup>3,48</sup>

Reoffending must also be considered alongside other factors such as reintegration and desistance (see next section) when looking at the effectiveness of a sentence or court order.<sup>3</sup>

### Rehabilitation and reintegration

The terms rehabilitation and reintegration have varied meanings across different academic literature, though they are both processes that act as key objectives of sentencing.<sup>3,49</sup> Rehabilitation can refer to the offenders state upon release from prison (something they achieve such as desistance or a reduction in reoffending) or the processes offenders undergo and their

effects (such as sentences).<sup>3,50</sup> Some research provides a contextual analysis of four identified forms of the rehabilitative process: personal, legal/judicial, moral and social.<sup>46</sup>

Rehabilitation and reintegration are important in reducing the risk of reoffending and they are included in the UN's Kyoto Declaration on advancing crime prevention, criminal justice, and the rule of law (2021).<sup>51</sup>

Experts highlight that effective rehabilitation of offenders may require a multi-pronged strategy involving problem-solving approaches like problem-solving courts ([PN700](#)) and multi-agency collaboration (other Government departments, police and probation services).<sup>3,52,53</sup>

Experts also suggest that reintegration needs to be supported through a coherent strategy to enable interventions to reduce reoffending.<sup>54</sup>

Desistance refers to a gradual process whereby a previous offender stops offending. It can be measured as the number of months or years without further criminal conviction since completing a custodial sentence or community order.<sup>3,54-56</sup>

Due to the complexity around desistance and its relationship with effective rehabilitation and reintegration, it can be hard to measure it in isolation. Desistance is often related to risk of reoffending and proven reoffending is the most routine and relevant quantitative metric. Academics have further defined the process of desistance in three stages, which are:

- primary (an initial break from offending);
- secondary (a fundamental progression from any breaks in offending to an identity as a non-offender);
- and tertiary (a perception of belonging in the community and how the community views their belonging).<sup>3,57,58</sup>

A novel model of a fourth, less studied, model incorporates the wider process looking at wider society values, morals, and behaviour.<sup>54</sup>

## **Deterrence**

Deterrence refers to the extent to which a sentence/punishment might deter people from offending.<sup>3,18</sup> Deterrence theory suggests that the more severe the punishment, the greater the deterrent effect. However, in practice this doesn't consistently apply.

Deterrence can be divided into two categories:

1. general deterrence - when a disposal lowers the likelihood of offending across a group of people due to three elements: certainty of punishment, speed of process, and the severity of punishment<sup>59</sup>
2. specific deterrence – when a disposal lowers the likelihood of a specific offender from reoffending. Though evidence shows that repeat offenders may perceive deterrence differently, subjective to their own prison experiences



One of the aims of sentencing noted is to reduce crime, including reduction by deterrence.<sup>1</sup> This statutory aim of sentencing to reduce crime can present complex issues because, for most offences, there is little evidence to suggest that more severe sentences (such as imprisonment instead of a community sentence) actually deters the person sentenced or others from offending.<sup>3,60,61</sup>

Reasons for offending are complex and the expected sentence upon conviction is unlikely to factor heavily in that decision. Evidence shows that many more offenders appear to be concerned about the swiftness and certainty of conviction upon offending.<sup>60,61</sup>

Some studies show that additional years of imprisonment or perceived certainty in punishment may not profoundly deter a repeat offender from reoffending.<sup>3,62</sup>

Prison is a personal and subjective experience which for some may be perceived as a part of criminal life. Some studies show that offenders may in turn become desensitised to risk of future punishment.<sup>3,63</sup>

## 3.1

# Evidence on the effectiveness of short sentences

There is no one-size fits all and the effectiveness of short sentences will vary across demographics, circumstances, and the type of offence.<sup>3</sup> However, even with this caveat, evidence strongly suggests that short prison sentences of less than 12-months are less effective than other disposals at reducing reoffending.<sup>3,65</sup>

The Ministry of Justice analytical series (2015 and 2019) investigated the impact of short sentences, community orders and suspended sentence orders on reoffending. Both series found that custodial sentences of under 12 months were associated with higher levels of proven reoffending compared to CO and SSO, with the difference in percentage points being statistically significant.<sup>48,65</sup> † It important to note that an association alone is not necessarily evidence of a causal link between sentence length and reoffending behaviour.

There is little evidence for effective or beneficial outcomes pertaining to short prison sentences.<sup>3</sup> Short prison sentences may fail to meet criminogenic needs<sup>5</sup> and have negative outcomes including criminogenic effects such as negative peer association within prison, where prisoners are exposed to other criminal attitudes and behaviours.<sup>62,66</sup> This prison experience may also provide access to criminal networks that can lead to opportunities engage in crime once released from prison.<sup>67</sup>

Imprisonment can have long lasting impacts such as life disruption and issues with mental health, employment, and housing (see section on '[Wider Impacts](#)').<sup>68</sup>

These impacts can be more consequential for some groups with specific criminogenic needs such as young people and women.<sup>66</sup> For example, a mother with a history of alcohol misuse may experience child custody issues if she is the primary carer, consequentially, the child may then also experience negative impact.<sup>66</sup>

Data suggest that non-custodial sentences including CO ([PN613](#)) and SSO can have improved outcomes, such as meeting offender's criminogenic

**Criminogenic needs** refer to the active risk factors strongly associated with criminal behaviour.<sup>64</sup> In the UK, eight criminogenic needs are measured by the Offender Assessment System<sup>†</sup>, these include:

Accommodation, Employability, Relationships, Lifestyle and Associates, Drug Misuse, Alcohol Misuse, Thinking & Behaviour and Attitudes.<sup>62</sup>

† The Offender Assessment System is a risk assessment and management system used by the prison and probation services of England and Wales. It includes information on the characteristics of offenders, such as motivations to change, drug and alcohol usage, and multiple needs.

‡ The Ministry of Justice Analytical Series 2019 Report - 'The impact of short custodial sentences, community orders and suspended sentence orders on reoffending' measured reoffending upon release with provision for up-to 1 year, whereas data in the 2015 report offenders were without supervision. Factors controlled for include similar offenders, similar types of offences, prior offences, and size of comparison groups.

needs, decreasing the criminogenic effects of being imprisoned and reducing the likelihood of reoffending.<sup>48,62,69,70</sup>

## Reduced reoffending and deterrence

The MoJ analysis (2019) shows that reoffending rates for short term custodial sentences of less than 12 months was higher than if a court order of either a community order or suspended sentence had been given (Table.3). The one-year average number of reoffences per sentencing occasion was also higher following short term custodial sentences than if a court order had instead been given (by around 65 reoffences more per 100 sentencing occasions). Additional analysis showed that the one year reoffending impact of short-term custodial sentences compared to if community orders had instead been given was of similar magnitude (around 4 percentage points) regardless of whether the short term custodial sentence length was less than 3, 6 or 12 months.<sup>48</sup>

**Table 3 Percentage point difference in reoffending by type of sentence (overall statistically significant)**

Custody in prison < 12 months	Vs	Community orders	+3.7
Custody in prison < 12 months	Vs	Suspended sentence orders	+4.1

Source: [The impact of short custodial sentences, community orders and suspended sentence orders on reoffending](#), Eaton and Mews, Ministry of Justice (2019) \*

The analysis of MoJ data (2019) has shown that offenders sentenced to a suspended sentence order are less likely to reoffend compared to both those sentenced to immediate custody or community orders. The Sentencing Academy, a research and charitable organisation in England and Wales report (2021) also highlights these findings and points out that it remains unclear exactly why SSO result in better reoffending outcomes than short prison sentences.<sup>69</sup> Though researchers suspect that deterrent effects, such as fear of immediate imprisonment, may play a role in lowering re-offending rates from suspended orders as the follow-up period begins after sentencing. Further research is needed to identify specific reasons.<sup>3,69,71</sup> The effect of deterrence may be greater with suspended orders; specific deterrent effects may be achieved by a judge's use of less severe and conditional sentences for specific circumstances and cases.

There are limitations in the evidence base in identifying related factors, direct causalities of reoffending and other outcomes for offenders sentenced to short-term imprisonment. The Ministry of Justice statistics on proven reoffending rates is the routine and available data set provided to assess the outcomes of offenders, it is also measured within a year of release.<sup>28</sup> The data may not reflect the impacts of criminogenic needs and effects nor the wider factors such as prison or probation staff training or support.

## Rehabilitation and reintegration

Short custodial sentences appear less effective for reintegration and rehabilitation outcomes compared with other disposals.<sup>48</sup> Though this can vary across different individuals and circumstances.

A qualitative study of eight repeat offenders (adult white males) in England (2018) explored their experiences of short prison sentences, regarding support and interventions. Participants perceived the cycle of going in and out of prison, contrary to deterrence or rehabilitation, as a part of their identities.<sup>72</sup> The offenders expressed that multiple sentences appeared to blend together, with participants feeling they lacked reintegrative support services or resources to overcome criminogenic conditions both within and outside of prison.<sup>72</sup> Participants felt that once they had multiple convictions, if taken to court again, they were not offered an alternative to immediate custody, no matter the severity of offence.<sup>72</sup>

Another qualitative study (2017) examining the impact of short custodial sentences on seventeen mothers convicted to less than 12-months in prison. These mothers felt 'punishment' would have been more effective if it were community-based.<sup>73</sup> Many felt a short prison sentence could have been avoided if they had opportunities for early interventions and support, for example attending a women's centre before conviction.<sup>73</sup> Though, a few mothers described some positive aspects of bring prison such as regular meals and reduced anxiety.<sup>73</sup>

Short prison sentences may not facilitate a problem-solving approach which limits opportunities to address individual complex needs such as mental ill-health or substance misuse. (See section 4).

## Cost

The costs for supervising offenders in prison is significantly higher than those on probation or serving requirements of CO or SSO.<sup>69,74</sup> In 2021/2022, the MoJ reported that the overall resource expenditure on prisons was equivalent to around £47,434 per prisoner for the year.<sup>74</sup>

Recent data are unavailable for the average costs of community sentences. However, in 2014 the National Audit Office reported that the average annual unit cost of community orders and suspended sentence orders was £4,305.<sup>75</sup> According to Her late Majesty's Inspectorate of Probation, Annual Report: inspections of probation services (2019/20), there has been a decrease in spending on probation and post-sentencing supervision. Between 2018/19 to supervise an individual on probation costs £3550 per person.<sup>76</sup>

The reoffending rates of people released from short custodial sentences have significant economic implications given the cost of reoffending. In 2019, the MoJ reported that, based on 2016 reoffending data for England Wales, the total estimated economic and social cost of all reoffending over a 12-month follow-up period was £18.1 billion, taking into account costs in anticipation of crime (including individual and business spending on crime prevention and insurance), consequences of crime (including direct costs to individuals and services), and costs in response to crime (including police, courts, and prison costs).<sup>77</sup>

The MoJ reported that the cost of reoffences committed by adults who had previously received a custodial sentence of less than 12 months was £5.0 billion whilst those who had served a sentence of 12 months or more cost £1.0 billion.<sup>77</sup> The cost difference is primarily driven by the greater number of offenders receiving shorter sentences compared to those receiving a longer sentence. The equivalent costs for reoffending by children and young people were £52 million and £22 million respectively.<sup>77</sup>

## 4

# Alternative policy options: opportunities and challenges

Stakeholders have argued for the reduction of custodial sentences of less than 12 months in circumstances, where the court may have reason to grant an alternative disposal. This is due to ineffectiveness in reduced reoffending and increased risk of negative impacts on criminogenic needs.<sup>6,68,73,78</sup> Other policy interventions suggested include sentencing reform, policies to improve prison culture and environments, alternative disposals, introducing a presumption against short sentences and/or further sentencing guidelines.

### 4.1

## Alternative disposals and early interventions

Initiatives aimed at diverting low level offenders away from imprisonment through early interventions include alternatives to imprisonment (specifically suspended sentence orders and community orders), out-of-court disposals (OOC) or deferred prosecution.

There have been growing calls for a greater use of CO and SSO. In addition to improved individual outcomes, stakeholders suggest these sentences provide cost-effective alternatives to short prison sentences due to the deterrent effects.<sup>67,69,79</sup> They argue that these sentences achieve the aim of reducing crime without placing the individual in a prison.<sup>69</sup> Both suspended orders entail requirements if granted by the judge, this then fulfils the aims of punishment in the Sentencing code.

Evidence also suggests that community sentences may entail more onerous requirements that offenders may find more constructively punishing than imprisonment (regardless of whether the sentence is intended to be punitive or to promote rehabilitation).<sup>80-82</sup>

OOC can vary across police forces but are widely used to avoid court hearings. OOC can include cautions, warnings, fines, and community resolutions\*\*.<sup>84</sup> A new OOC framework has been set out in the Police, Crime, Sentencing and Court Act 2022.<sup>85</sup>

Opportunities to address underlying personal circumstances for offenders with demanding needs such as mental ill-health or substance misuse can be through specifically tailored community orders implementing problem-solving approaches. For example, problem solving courts or Northern Ireland's ECO

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\*\* Community resolution is an informal non-statutory disposal used for dealing with less serious crime and anti-social behaviour where the offender accepts responsibility. The views of the victim (where there is one) are taken into account in reaching an informal agreement between the parties which can involve restorative justice techniques.<sup>83</sup>

(Box 2) offer courts a community-based sentencing option in a more targeted and intensive structure including rehabilitative programmes and community service.<sup>86,87</sup>

## **Box 2 Case studies of Northern Ireland's Enhanced Combination Orders (ECO)**

To address the increased use of short prison sentences in Northern Ireland, the Probation Board developed a demanding community sentence as an alternative to short prison sentences, ECO.<sup>86,87</sup>

ECO use a multiagency approach incorporating different stakeholders including Community Restorative Justice Ireland, Northern Ireland Alternatives, probation services, community service officers and psychologists. ECO focus on targeted interventions, including restorative practice, community service, psychological assessment, family support work and accredited programmes.

The Probation Board for Northern Ireland state that the initiative, which has been welcomed by the judiciary, has resulted in a decrease in short custodial sentences where ECOs are available by approximately 20% (2019).<sup>87</sup>

An example of deferred prosecution is a 2018 study on the UK's Durham Constabulary 'Checkpoint' Programme, which was a randomised control trial and adult deferred prosecution scheme involving 521 offenders entering the criminal justice system.<sup>88</sup>

Instead of a criminal prosecution, offenders in the treatment group were offered an alternative intervention. The intervention was an offender programme focused on aspects of accountability, in which the offenders are encouraged to confront the consequences of their offending behaviour. Offenders work with an 'offender manager or navigator' on a one-to-one basis, they receive the support they need to address their reasons for offending and acknowledge the impact of their actions. The programme uses restorative justice approaches by urging offenders to make reparations for any harm they have caused and support them in taking the steps to move forward with their lives.<sup>††</sup>

Those who received the intervention achieved a lower reoffending rate (10.3% reduction) and lower risk of offending (30% reduction), compared to those that did not take part (though the difference between the two cohorts was not statistically significant).<sup>88</sup>

The United Nations 'Handbook on the principles and practices of alternatives to imprisonment' (2007) highlights the promising outcomes that alternative measures have on rehabilitation and reintegration.<sup>90</sup> The report discusses alternatives at pre-sentencing, pre-trial and sentencing stages with

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<sup>††</sup> Restorative justice can be defined as a process through which parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future. It aims to; satisfy and support victims, engage the perpetrator and create community capital and public confidence in the criminal justice system.<sup>89</sup>

international case studies. The list of alternatives to replace imprisonment include warnings, sanctions, fines, community service orders, house arrest, suspended or deferred sentences, probation, and judicial supervision. All of these are also existing options within legislation for England and Wales.<sup>1</sup>

## 4.2 Presumption against short prison sentences

A presumption against short prison sentences would require judges to consider alternative sentences when available.

There are international examples of this approach. Germany has implemented a presumption against sentences of less than 6-months since 1969, which has contributed to its longstanding low rates of incarceration in comparison to the UK.<sup>91</sup> The German presumption is more clearly defined for the courts. It mandates that sentencers make two assessments before passing the sentence. Firstly that a community-based sentence is not appropriate and secondly explaining how a short prison sentence would better achieve the intended sentencing outcome.<sup>6,91</sup>

Data analysis of current trends shows that a carefully curated presumption against short prison sentences has the potential to reduce prison occupation in England and Wales.<sup>6</sup> Scotland implemented a presumption against short prison sentences in 2019 (Box 3).

### **Box 3 Scotland's Presumption Against Short Periods of Imprisonment Order (2019)**

In Scotland, the Criminal Justice and Licensing Act 2010 introduced a presumption against short sentences of 3 months or less.<sup>92</sup> The extension of the presumption was approved by the Scottish Parliament in 2019 such that criminal courts are "under an obligation not to pass a sentence of imprisonment for a term of twelve months or less, unless the court considers that no other method of dealing with the person is appropriate".<sup>93</sup>

Following the extension, the proportion of custodial sentences less than or equal to 12 months fell by 4 percentage points between 2018/2019 to 2019/20 and was seven percentage points lower in 2020/21 compared to 2011/12.<sup>94</sup> Nonetheless, custodial sentences of less than 12 months made up 75% of custodial sentences handed down in Scotland in 2020/21, compared with 58% of custodial sentences in England and Wales in the same year. The proportion in England and Wales also fell by approximately six percentage points between 2011/12 and 2020/21.<sup>95</sup>

The overall number of custodial sentences administered in Scotland decreased by 35% from 11,122 in 2019/20 to 7,224 in 2020/21.<sup>94</sup> However, the impact of the Coronavirus (COVID-19) pandemic on the Scottish Justice



System makes it difficult to separate effects of the pandemic from the effects of the extended presumption against short custodial sentences.<sup>96</sup>

Academics and practitioners have raised concerns around the potential challenges of implementing a presumption against short sentences when taking into account the weight of a sentencer's discretion when considering the custody threshold and existing imposition sentencing guidelines.<sup>6,17,97</sup>

The Scottish Government and the Australian Law Reform Commission have raised concerns that a presumption against short sentences may lead to offenders receiving longer prison sentences because of a perceived lack of alternative options from sentencers.<sup>19,98,99</sup>

Considering that anecdotal evidence suggests that confidence in CO has declined, judges and magistrates may tend to prefer SSO and short custodial sentences rather than CO.<sup>100,101</sup>

In addition to this, the Sentencing Academy's analysis of MoJ data shows that some demographics are given SSO more than others, for example middle-class first time offenders.<sup>69</sup> This disproportionate skew of different disposals given may be exacerbated if a presumption is not set clearly and effectively.

Experts in criminal justice suggest this risk may be heightened given the reforms of probation in England and Wales. Some stakeholders argue that this has fragmented and weakened the system, which they attribute to successive failed attempts at privatisation, an ongoing staffing shortage, and uncertainty about future resources.<sup>102</sup> If there are no additional resources for alternative sentencing measures that increase the demands or the complexity of workload for probation and other community work, these measures risk creating further resource and management problems for the probation service.<sup>75,76,103</sup> Stakeholders suggest key opportunities to avoid this include scenario planning and the additional resources required to do so, must underpin reform.<sup>76</sup>

These stakeholders have suggested potential solutions to overcome these challenges to introducing a presumption. Academics have suggested an amended Sentencing code asking for a justification why a CO cannot be given, similar to Germany.<sup>19</sup>

Others suggest creating further detailed imposition guidelines and definitions on exceptional circumstances for borderline complex cases in regards to the custodial threshold.<sup>6,52,97</sup> For example, defining and clarifying how repeat low level offences such as theft should be treated. These guidelines could be written by the Sentencing Council to facilitate its implementation in the courts, in addition to programmes and surveys engaging the judiciary to gain their support and increase an understanding of alternative sanctions.<sup>19</sup>

## 5 Wider considerations

### Impact on prisons

In 2018, former Secretary of State for Justice David Gauke stated that, “short sentences generate churn which is a major driver of instability in our prisons and they do not provide sufficient time for rehabilitative activity”.<sup>101</sup> Stakeholders calling for sentencing reform in England and Wales have pointed to concerns over the disruptive effect of short sentences on prison staff and the prison estate, and have questioned the value for money and effectiveness of short sentences in reducing reoffending.<sup>29,78,104</sup>

### Public opinion

A representative YouGov poll in 2022 found that 65% of British adults think that current sentencing of offenders is “not harsh enough”. The report also found that those with these views were less likely to have a knowledge base of sentencing practice.<sup>105</sup>

Empirical research data has shown that the public’s knowledge, perception and understanding of criminal justice and sentencing can be limited and skewed, and these views often change once they are informed of case details.<sup>106,107</sup>

The House of Commons Justice Committee started an inquiry on public opinion and understanding of sentencing (2023). A [survey conducted by the committee](#) of 2057 respondents showed that around 70% respondents felt sentences handed in court were too lenient, though 20% reported not knowing if a judge is under the legal obligation to follow sentencing guideline when deciding sentence length.<sup>108</sup>

### Impact on offenders

#### Employment, accommodation, and future income

Evidence suggests that reintegrating into society is more difficult for those who have served a short prison sentence compared to other CO or SSO.<sup>19</sup>

MoJ data on ‘Probation Performance’ from April 2021 to March 2022 show that rates of employment and settled accommodation are lower for those released from short sentences of less than 12 months than those given longer sentences.<sup>109</sup> Rates of employment continue to be lower six months after release from a short sentence (12.5%) compared to a community sentence (38.8%). Similarly, the percentage of those in settled accommodation is lower for those who serve short sentences (61.6%) three months after release compared to those given community sentences (84.8%).<sup>109</sup>

According to the Inspectorate of Probation Annual Report on inspections of probation services (2020), around 11,000 prisoners are released to homelessness every year.<sup>76</sup> The qualitative study with mothers who had been sentenced to short prison sentences (2017) reported post-release issues such as debt and rent-arrears, resulting in being vulnerable to homelessness and employment issues.<sup>73</sup>

A 2014 Danish study of over 6,000 male offenders found that those serving short custodial sentences of less than 12 months had lower long-term income levels than those given community service for a similar offence.<sup>79</sup>

There have been some calls for initiatives using more holistic and wider approaches across other sectors to support offenders and prison staff, including programmes to assist offenders with reintegration and rehabilitation upon release.<sup>110</sup> This may also facilitate desistance and deterrence from reoffending.

The UK Government's Prisons Strategy White Paper committed to the employability innovation fund and future skills programme with accompanying guidance for employers on employing prisoners and ex-offenders.<sup>111,112</sup>

### **Women and children**

Women are more likely to be primary carers of children though not exclusively, as both male and female offenders can be primary carers of their children.

The MoJ Female Offender Strategy reported that short custodial sentences for female offenders can lead to a "disproportionate impact on children and families and a failure to halt the intergenerational cycle of offending".<sup>101</sup> The strategy states that it will support a greater proportion of women serving community sentences and a reduction in short custodial sentence.<sup>101</sup> Stakeholders, including charities, academic experts, and government watchdogs have argued that offending amongst women is commonly associated with mental health issues and histories of domestic abuse, and warned that short sentences can break up families and leave women vulnerable to further abuse.<sup>29,32,113,114</sup>

A 2017 qualitative study of the impact of short custodial sentences on mothers in England and Wales highlighted the negative impact that short sentences can have on the children of sentenced offenders, including bullying and anxiety. The report calls for non-custodial options to be the "go to" sentence in all but the most serious offences committed by women.<sup>73</sup>

### **Mental health**

There is a shortage of data on the extent of mental ill health in prisons, making it difficult to assess the direct impact of short sentences on mental health in England and Wales.<sup>115</sup>

In 2019, the HM Chief Inspector of Probation stated that people receiving short custodial sentences are often prolific offenders with lives that are, "all too frequently blighted by addiction, broken relationships and mental health problems".<sup>102</sup> A 2018 MoJ study into the impact of short custodial sentences

reported that, among those with no previous offences, the odds of reoffending for people assessed to have 'significant' psychiatric problems were 11% higher after serving a short custodial sentence compared to a community order.<sup>116</sup>

The Centre for Mental Health's 2021 report on prison mental health care in England stated that offenders serving short sentences are consistently found to have the most acute needs, and greatest risk to self.<sup>117</sup> The report highlighted the difficulty of providing mental health support to vulnerable prisoners due in part to the "rapid churn" of those serving short sentences.

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