

Reducing the prison population

Extending Home Detention Curfew and scrapping short sentences

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Reducing the prison population

The Government faces an immediate and urgent challenge to manage the prison population. As of this month, the useable operational capacity of the prison estate was around 85,409 prison places. As of last Friday, the prison population was 83,917.¹ Prisons expect to lose around 500 places a year to disrepair.²

The prison system is severely overcrowded and has been for 15 years, with 70 per cent of prisons holding more people than they were designed to.³ This exacerbates already poor conditions: in many prisons entire wings go unheated for weeks, toilets and showers are broken, and infestations and electricity failures are common.⁴ As well as impacting on the prison's ability to operate day-to-day, this affects levels of violence and staff retention.

In the context of the present COVID-19 threat, the challenges facing the prison estate pose new and unprecedented problems. COVID-19 is spreading quickly across the UK and could reduce workforces by one fifth at the peak of infection numbers.⁵ A combination of overcrowded and insanitary conditions and poor-quality healthcare in prisons means COVID-19 poses an increased risk to the system.⁶

The Government must look at the steps they can immediately take to reduce the prison population without compromising public safety. Continuing to push the envelope of prison capacity with even more crowded conditions is unsustainable and new prison places cannot be built fast enough. This means using more cost-effective methods of punishing offenders. Community alternatives to custody are significantly cheaper and can be more effective at reducing reoffending.

This briefing note assesses current Government policy to reduce overcrowding; why, while welcome, it is insufficient; and what further changes should be made to immediately reduce the prison population.

Extending Home Detention Curfew

The Government is said to be looking at reintroducing aborted legislation to extend Home Detention Curfews (HDC).⁷ HDCs allow prisoners to be released before their scheduled release date subject to strict monitoring conditions, including electronically monitored curfews. Certain groups are ineligible, such as those convicted of terror offences.

The proposed change, originally put forward last Summer, would extend the maximum time that can be spent on HDC from 135 days to 180 days (6 months). The impact assessment published by the Ministry of Justice in July 2019 argues that this would give people leaving prison more time to prepare for resettlement and reduce the prison

¹ HMPPS, *Population and Capacity Briefings, Friday 3rd January, Friday 13th March* (2020).

² National Audit Office, *Improving the Prison Estate* (2020).

³ Prison Reform Trust, *Bromley Briefings Prison Factfile: Winter 2019*,

⁴ HM Inspectorate of Prisons, *Life in Prison: Living Conditions. A Findings Paper* by HM Inspectorate of Prisons, 13–27; Dame Anne Owers, *IMB National Annual Report 2017/18, 2019, 20, 49–54*.

⁵ Department for Health and Social care et al., *Coronavirus action plan: a guide to what you can expect across the UK* (2020).

⁶ May Bulman, *Coronavirus outbreak would 'spread like wildfire' if outbreak hit UK prisons, experts warn*, *The Independent*, Tuesday 10th March, 2020.

⁷ Richard Ford, *Prisoners to be Freed Early to Ease Overcrowding*, *The Times*, Tuesday 17th March, 2020.

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population. The Government's best estimate is that the change would reduce the population by around 500.⁸

Extending the use of HDC has several benefits. In a publication last March detailing the use of HDC the Ministry of Justice states that while "evidence about the impact on reoffending rates of using [electronic monitoring] curfew with early release is inconclusive", it is "promising".⁹ Their use is also cost effective, due to the reduced cost of imprisonment. It is estimated that if the HDC population increases by 500 people the state will save £1 million a year.¹⁰

Emergency Measures

While welcome, the impact of the proposed changes to HDC on the prison estate are limited. A population reduction of 500 is not nearly enough to relieve the pressure – the prison population has risen by over 1,000 since January alone. The Government must take decisive action, both in view of the immediate and long-term population pressures, and in light of COVID-19.

The Government should consider using emergency legislation to transfer all prisoners currently serving a sentence of less than six months into the HDC population, and to ban sentencers from passing a sentence of six months or less. Exceptions could be made based on current exceptions to HDC and for certain offence types.

Government figures show that just over 80 per cent of <6 month prison sentences in 2018 were not for violent, weapons, or sexual offences.¹¹ Further, they are used frequently for crimes which have the highest reoffending rate after a short prison sentence – the most common offence that led to a short sentence in 2018 was theft, for which the reoffending rate after a six month sentence is 82 per cent.¹²

Certain offence groups, such as violent, weapons, or sexual offences, could be exempt from transfer to HDC. 7,753 short sentences were passed for these crimes in 2018, compared to nearly 37,000 for crimes like theft and drug possession.

The Government could also make violent, weapons, and sexual offences exempt from a ban on sentences of <6 months. However, it should consider that sentences of this length offer little time to do meaningful work with violent and dangerous offenders, especially as only half the sentence may be served in custody.

⁸ Ministry of Justice, *Impact Assessment: Extension of Home Detention Curfew Period* (2019).

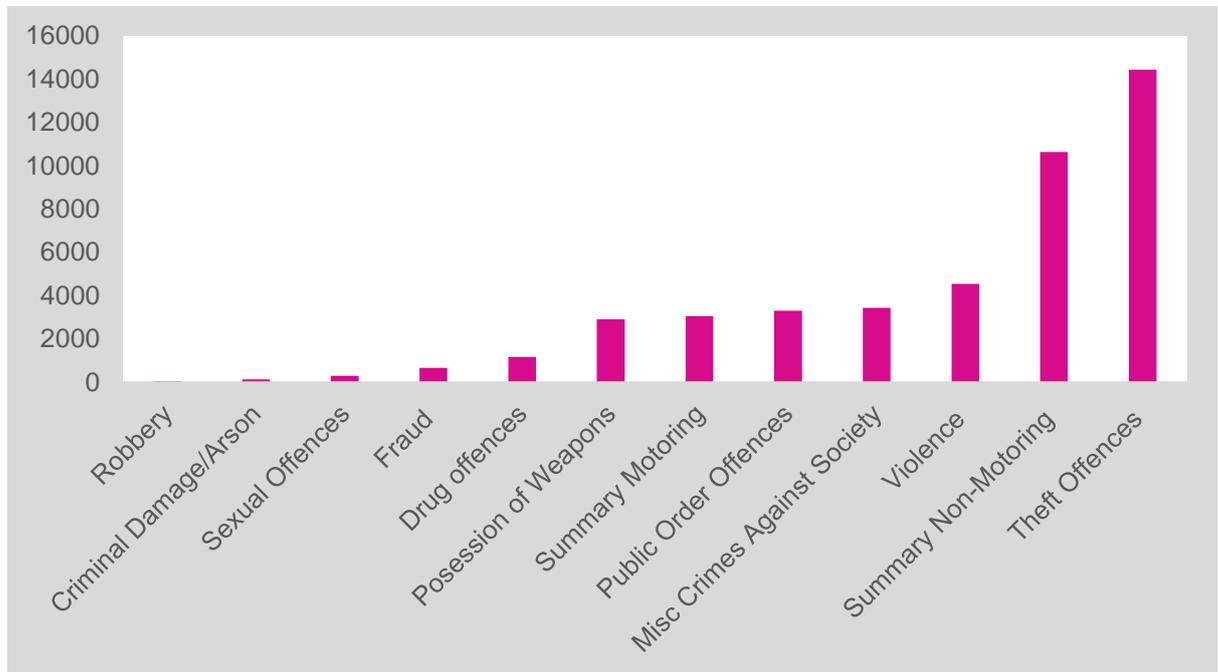
⁹ Ministry of Justice, HM Prison and Probation Service, *Home Detention Curfew (HDC) Policy Framework* (2019).

¹⁰ Ministry of Justice, *Impact Assessment: Extension of Home Detention Curfew Period* (2019).

¹¹ *Reform* analysis, Ministry of Justice, *Outcomes by Offence Data Tool* (2018).

¹² Ministry of Justice, 'Proven Reoffending Reoffence Type Data Tool, January to December 2016, England and Wales', 2019.

Sentences of <6 months by offence type (2018).



Source: *Reform* analysis, Ministry of Justice, Outcomes by Offence Data Tool (2018).

These measures could have a meaningful impact on reducing the prison population and rebalancing spending in favour of community punishments that may reduce reoffending (repeated studies by the Ministry of Justice demonstrate that reoffending rates for community sentences are, on average, lower than for short prison sentences¹³).

As with extending the maximum duration of HDC, reducing the use of prison sentences has significant cost benefits. *Reform* research has shown that annually, a community sentence costs just over a tenth of the cost of imprisonment to deliver.¹⁴

Monthly costs of a prison place, HDC, and community sentences

| Cost per prison place for one month | Cost to probation of providing HDC for one month | Cost of delivering community sentence for one month |
|-------------------------------------|--|---|
| £3,601 | Approx. £166 | Approx. £368 |

Source: *Reform* research. Estimates based on Government estimates of £1 million annual monetised cost to probation services of monitoring an additional 500 people on HDC, used to calculate monthly cost per person; Government figure for annual cost of a prison place, and estimate of annual cost of community sentence.¹⁵

¹³ Ministry of Justice, *The Impact of Short Custodial Sentences, Community Orders and Suspended Sentence Orders on Reoffending*, 2019; Ministry of Justice, *The Impact of Short Custodial Sentences, Community Orders and Suspended Sentence Orders on Re-Offending*, 2015.

¹⁴ Aidan Shilson-Thomas, *The Prison System: Priorities for Investment*, Reform (2020).

¹⁵ Ministry of Justice, *Impact Assessment: Extension of Home Detention Curfew Period* (2019); Ministry of Justice, *Cost per*

Transferring short sentence prisoners to HDC

In any month in the year to December 2019, there were between 2,787 and 3,244 people in custody for six months or less.

Some of these prisoners would be ineligible for transfer to HDC based on exemptions for certain offence types. Further, accommodation is a prerequisite of HDC, and as many as one in four prisoners on these sentences are released homeless.¹⁶ The Bail, Accommodation and Support Service seeks to secure accommodation for people eligible for HDC but with no fixed abode.

A sizeable increase in the HDC population could overwhelm this service, so some prisoners may be unable to enter the HDC population. It is not possible to say how many would be ineligible for HDC for these reasons. However, securing accommodation for ex-offenders should be a priority for this Government, increasing their chances of leading more stable lives in the community.

Banning sentences of six months or less

Transferring prisoners currently serving short sentences to HDC would have an immediate impact, but Government must also act to reduce the flow of new prisoners.

There are several ways that the Government could restrict the future use of sentences of six months or less. Parliament could vote for a presumption against the use of short sentences, making them a last resort – this is the case in Scotland.¹⁷ However, a ban could have a more significant effect on the population. Violent and sexual offenders could be exempt from this ban – but the Government should consider that such a short period in custody leaves little time to do meaningful work with prisoners to address their behaviour.

Clearly, one unintended consequence could be that sentencers pass harsher sentences to circumvent the ban – this would need to be monitored and action taken if evidence shows this to be the case.

As *Reform* has previously argued, if sentencers were more informed about community alternatives to custody – with better training and the increased use of pre-sentence reporting – they might be more likely to use them (see footnote).¹⁸

Any estimate for the impact of a ban on the size of the prison population has to be based on a set of assumptions, such as sentencer behaviour and the types of offenders that will be received by the courts in the future. However, with around 2,800-3,200 prisoners serving short sentences at any one time, a ban could lead to a much needed longer-term

Place and Cost per Prisoner by Individual Person (2019); New Economics Foundation, *Technical Guidance: The Cost to the State of Short Custodial Sentences* (nd.), available on request from the Revolving Doors Agency.

¹⁶ Revolving Doors Agency, *Channel 4 News Covers Our New FOI Data*, Revolving Doors Agency (Website), 11th October 2018, Accessed 18th March 2020.

¹⁷ Scottish Government, *Presumption Against Short Sentences Extended*, Scottish Government (website), 26th June 2019, accessed 18th March 2020.

¹⁸ The impact of training for sentencers on community alternatives, and the decline of pre-sentence reporting, is discussed in *Reform's The Prison System: Priorities for Investment* (2020), pages 8-9.

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reduction in the prison population. The Centre for Crime and Justice Studies has estimated that a ban would reduce the prison population by 1,300 people within 12 months.¹⁹

Between 2008 and 2018, despite an overall decline in the number of short custodial sentences, the proportion of short sentences passed for violent, sexual, or weapons offences has grown: from 5.5 per cent in 2008 to 17.3 per cent in 2018. It is concerning that short sentences are being handed down for these more serious crimes, given that the reoffending rate is, on average, 65 per cent.²⁰

Nonetheless, for the most recent data available, 82.7 per cent of people sentenced to short prison sentences each year have not committed one of these more serious offences and so would be covered by the proposed ban.

Proportion of short sentences for violent, sexual, and weapons offences by year



Source: *Reform* analysis, Ministry of Justice, Outcomes by Offence Data Tool (2018).

It is important to note that the proportion of people *servicing* a short sentence for violent, sexual, and weapons offences at any one time will not be the same as the proportion of the total number of short sentences given for violent, sexual and weapons offences. This is because these crimes often carry longer sentences, closer to 3-6 months, than less serious offences, so they may make up a greater proportion of the short-sentenced prison population at a given time.²¹

However, in terms of the number of people serving a short prison sentence across the year, an estimated 2,305 offenders at the most recent count were for non-violent, non-

¹⁹ Helen Mills, 'Stopping Short?' *Sentencing reform and short prison sentences*, Centre for Crime and Justice Studies (2019), 9.

²⁰ Ministry of Justice, *Proven reoffending statistics quarterly bulletin*, England and Wales, January 2018 to March 2018 (2020).

²¹ *Reform* analysis, Ministry of Justice, Outcomes by Offence Data Tool (2018).

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sexual, and non-weapons offences, who, if a ban were implemented, would not be in prison. This reduction assumes that sentencers would not simply increase the length of sentences to circumvent the ban.

Implementing the increased use of HDC and community sentences

All of these measures, including the Government's proposed extension of HDC, have implications for the probation service, which is already struggling with high caseloads. A full ban on short sentences would mean a significant increase in the use of community sentences, thereby increasing the caseloads for probation and associated services.

Increasing the use of HDC would also increase spending on private electronic monitoring services. Probation would need to be resourced to manage this increase – the Budget committed an additional £68.5 million for probation, including funding to extend electronic monitoring. However, this would increase the number of people under probation supervision far beyond what the Government is currently planning for.

Conclusion

These measures constitute a significant re-balancing of the justice system towards the probation service. Over time they would divert many thousands of low-risk offenders away from custody and towards more effective, more cost-effective alternatives. The prison service is in a critical and barely stable condition, and COVID-19 could exacerbate the problems it is facing. The Government must act now.

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