

**BRIEFING**

**HOW TO START REDUCING  
THE PRISON POPULATION**

**July 2018**

*Dear Rory,*

Thank you so much for coming to speak to CJA members in May and articulating your determination to address some of the prison service's most pressing operational challenges.

The present level of the prison population in England and Wales is clearly one of the most significant of those challenges.

We are encouraged by the recent small reduction in the prison population. Increasing the Home Detention Curfew caseload has been an effective way to start to reduce some of the pressure on our heavily overcrowded prison system and providing a managed transition for prisoners into the community. But more must be done.

You said at our recent Members Meeting that you'd be happy to receive suggestions on how the prison population might be reduced, without compromising public safety. Possibilities for this in eight areas are enclosed.

None of these proposals is revolutionary. They're almost all both pragmatic and incremental. Many could be effected without legislation. Their implications for a reduction in the prison population of some 12,000 during the lifetime of this parliament are based on conservative assumptions.

Any such reduction in the prison population also offers the possibility - based on similarly cautious estimates - of saving £900m of public money. The attached schedule details these savings.

We hope these suggestions - based on knowledge shared by many of the CJA's member organisations - will be helpful. Thank you for asking us to share them with you. We look forward to continue working with you to support efforts in reducing the prison population.

*Yours sincerely,*

*Nina*

Nina Champion  
**Director, CJA**

## 1. IPP Sentences

The current IPP (Sentences of Imprisonment for Public Protection) population stands at nearly 2,900.<sup>1</sup> Almost 90 per cent of these prisoners have served beyond the tariff deemed necessary as appropriate punishment for their offences.<sup>2</sup> Without further intervention, the Parole Board acknowledges this figure may reduce to 1,500 by 2020. But this number remains unacceptably high, and the Government could be more ambitious in its approach, ensuring the IPP prison population reduces to less than 500 prisoners by 2022. (Net saving allowing for costs of external supervision £202.2m.)

In our view, the Ministry of Justice should consider legislative intervention to convert post-tariff IPP sentences to determinate sentences – a simple solution providing firm release dates. As CJA member Prison Reform Trust highlights, people serving IPP sentences have one of the highest rates of self-harm in the prison system. Providing a clear release date may help reduce this rate.

As a minimum starting point, the 459 IPP prisoners serving tariffs of less than two years could have their sentences converted, expanding to the 1,176 IPP prisoners with tariffs of less than four years,<sup>3</sup> then scaled up appropriately. A 'sunset' provision could also provide a release date for some or all post-tariff IPP prisoners by a particular year or by a number of years post-tariff.

In the meantime, the availability of courses conditional for the release of IPP prisoners must continue to be prioritised.

Once IPP prisoners are released, much more needs to be done to ensure that they do not return to prison. There is growing concern about the number of people serving IPP sentences who are recalled following release – currently over 800 prisoners.<sup>4</sup> Nearly two thirds of those currently recalled are re-released following review by the Parole Board.<sup>5</sup> This may necessitate a review by the Ministry of Justice of the licence conditions in the Prison Instructions. Further, people serving IPP sentences are often deeply institutionalised and require intensive independent advocacy support to facilitate their resettlement in the community. Many CJA members provide this type of support, but further investment is needed.

## 2. Recall

On any given day in 1995, there were fewer than 200 people in prisons for recalls. In March 2018 there were over 6,000.<sup>6</sup> Over half – 58 per cent – of these had not been charged with a further offence, and were instead recalled for other licence breaches, such as failure to keep an appointment on time, or drugs and alcohol issues.<sup>7</sup> And many people 'recalled' to prison did not receive a custodial sentence in the first instance.

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<sup>1</sup> Table 1.9a, Ministry of Justice (2018) Offender Management Statistics quarterly: October to December 2017, Prison population: 31 March 2018, London: Ministry of Justice.

<sup>2</sup> Table 1.9b, Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Table 1.9a, Ibid.

<sup>5</sup> Jones, M. (2017) IPPs, recalls and the future of parole, available at <http://www.russellwebster.com/martin-jones2/>

<sup>6</sup> Table 1.1, Ministry of Justice (2018) Offender Management Statistics quarterly: October to December 2017, Prison population: 31 March 2018, London: Ministry of Justice.

<sup>7</sup> Page 12, Ministry of Justice (2018) Offender management statistics quarterly: October to December 2017 and annual 2017, London: Ministry of Justice.

There is little doubt that the extension of post-sentence supervision to those sentenced to less than 12 months has contributed to the rise in the recall population.<sup>8</sup> Further, new Sentencing Council guidelines for sentencing breaches (effective from 1 October 2018) will have custody as a starting point for even minor breaches. It is recognised that this 'could have an impact on the prisons, with more offenders being sent to custody than at present'.<sup>9</sup>

Recalls are costly interventions that interrupt the effective reintegration of former prisoners. The Ministry might review both the standard and extra licence conditions that Offender Managers can impose, as well as the mechanism for recalling a person following breach, emphasising that recall should be preserved for those presenting a serious risk to the public or genuinely failing to progress towards reintegration.

But the best way to prevent an unnecessary recall is to ensure there is no breach in the first place, by providing effective rehabilitative support. Unfortunately, as highlighted in the Justice Committee's recent review, probation services are critically underperforming and the effectiveness of Transforming Rehabilitation is in serious doubt.<sup>10</sup> Securing accommodation is particularly problematic, especially for young people leaving custody,<sup>11</sup> and recalls cause critical disruption to an already challenging process.

Recognising that there will be some situations where someone may need to be recalled where there has been no further offence, keeping even 3,000 people out of prison and in the community where productive rehabilitation can take place could save £231.8m net over four years.

### **3. Remand**

Those on remand – 9,200 people – now represent over ten per cent of the prison population.<sup>12</sup> One in seven – nearly 1,400 – go on to receive non-custodial sentences.<sup>13</sup> Ensuring this cohort is not needlessly kept in prison could save £39.9m annually.

The numbers are particularly stark for those remanded in custody and tried in the Magistrates' Courts – of the 22,300 defendants annually, a quarter are acquitted and a third receive a non-custodial sentence.

The Legal Aid Sentencing and Punishment of Offenders Act 2012 properly introduced a test of 'no real prospect' where remand should not be sought for an un-convicted defendant where there is no real prospect of a custodial sentence. CJA Member Transform Justice has noted that the law is largely satisfactory and compliant with international standards. However, in practice its implementation results in many defendants being remanded when other alternatives are or should be available.<sup>14</sup> The Crown Prosecution Service, defence advocates and judges should ensure this test is applied much more rigorously. Greater use of electronic monitoring might also be considered as an alternative to remand.

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<sup>8</sup> Page 14, HM Inspectorate of Probation (2018) Thematic Inspection: Enforcement and Recall, Manchester: HM Inspectorate of Probation.

<sup>9</sup> Page 13, Sentencing Council (2018) Breach Offences: Sentencing Guideline – Final Resource Assessment, London: Sentencing Council.

<sup>10</sup> Justice Committee (2018) Transforming Rehabilitation [HC 482], London: House of Commons.

<sup>11</sup> Page 3, Drummond C. and Gill A. (2018) 'Have you got anybody you can stay with?' - Housing options for young adults leaving custody, London: Nacro and Centrepoint.

<sup>12</sup> Table 1.1, Ministry of Justice (2018) Offender Management Statistics quarterly: October to December 2017, Prison population: 31 March 2018, London: Ministry of Justice.

<sup>13</sup> Table Q4.4, Ministry of Justice (2018) Criminal Justice System statistics quarterly: December 2017, Overview tables, London: Ministry of Justice.

<sup>14</sup> Transform Justice (2018) Presumed innocent but behind bars – is remand overused in England and Wales? London: Transform Justice.

#### 4. 'Sentence Creep'

Average sentence length for prisoners held for indictable offences is 30 per cent higher than ten years ago, up from 15.2 months to 20.<sup>15</sup> There is no firm evidence that this 'sentence creep' has had any deterrent effect.

If average sentence lengths had remained the same as in 2007 just for drug offences, fraud and theft, there would be approximately 2,000 fewer people in prison,<sup>16</sup> saving £57m annually. (Research by data analysts Justice Episteme suggests that had sentencing policy for serious offences remained the same since 2003, there would be 16,000 fewer people in prison.<sup>17</sup>)

Change in this area will need to be incremental and the effects are unlikely to be seen immediately (unless changes are applied retrospectively to those already serving inflated sentences, such as an early release to electronic monitoring for low-risk prisoners). But without changes to sentencing practices, there seems little prospect of the vast bulk of the prison population reducing.

More scrutiny could usefully be applied to the creation of sentencing guidelines by the Sentencing Council in the context of stretched prison resources and the effectiveness of custodial sentences. For instance, sentencers might be encouraged to sentence more creatively, restricting the requirements to use the upper limits of guidelines and allowing them to sentence below the lower limit.

In 2017, the Sentencing Council admitted that increased severity of sentences for non-domestic and aggravated burglary offences 'may be attributable' to the introduction of the guideline for these offences.<sup>18</sup> The Council has committed to reviewing this guideline, but as a priority, it should also commit to greater investment in assessing the impact of all guidelines, particularly those for high-volume crimes.

#### 5. Short Sentences

At March 2018, 5,340 prisoners in England and Wales were serving sentences of less than 12 months.<sup>19</sup> Short sentences are demonstrably less effective than community sentences at reducing recidivism (and more costly). Justice Secretary David Gauke has recently recognised this, stating that short sentences should be a last resort. *Short-Sighted*, a campaign by CJA member Revolving Doors, highlights that half of all people sentenced to custody are serving sentences of less than 6 months.

Scotland introduced a presumption against custodial sentences of three months or less in 2010, and last September announced plans to extend this presumption to sentences of less than 12 months. Other countries with similar provisions include Belgium and Germany.<sup>20</sup>

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<sup>15</sup> Page 23, Ministry of Justice (2018) Criminal Justice Statistics quarterly, England and Wales, 2017, London: Ministry of Justice.

<sup>16</sup> Table Q5.2C, Ministry of Justice (2018) Criminal Justice System statistics quarterly: December 2017, London: Ministry of Justice.

<sup>17</sup> Hadjipavlou, S. (2017) The Impact of the Criminal Justice Act 2003 on the Prison Population, London: Justice Episteme, available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/What%20if%20there%20was%20no%20CJA%202003.pdf>

<sup>18</sup> Sentencing Council (2017) Assessing the impact of the Sentencing Council's Burglary offences definitive guideline, London: Sentencing Council.

<sup>19</sup> Table 1.1, Ministry of Justice (2018) Offender Management Statistics quarterly: October to December 2017, Prison population: 31 March 2018, London: Ministry of Justice.

<sup>20</sup> Sanderson, D. (9 February 2016) 'Experts: scrap jail for sentences of up to one year', *The Herald*, available at [http://www.heraldscotland.com/news/14262298.Experts\\_\\_scrap\\_jail\\_for\\_sentences\\_of\\_up\\_to\\_one\\_year/](http://www.heraldscotland.com/news/14262298.Experts__scrap_jail_for_sentences_of_up_to_one_year/)

There may be certain instances for which this presumption against a custodial sentence would not be deemed appropriate given the interests of, and risks to, the victim and wider community. But if reductions occurred at a similar rate as in Scotland, there would be 2,000 fewer people in prison. Introducing a presumption against short sentences of less than 12 months could save £57m annually.

## **6. Mental Health**

There is currently insufficient data to accurately measure the number of people in prison suffering from poor mental health. But as recently as 2016, the Centre for Mental Health estimated that 90 per cent of the prison population have mental health problems, personality disorders, or substance misuse problems.<sup>21</sup>

The 2009 Bradley Review found an estimated 2,000 prison places per year could properly be saved if individuals who receive short custodial sentences and who may be experiencing mental health problems were instead given a community sentence. This would save £57m. For many people with mental health issues, a community order with a Mental Health Treatment Requirement (MHTR) would be transformative and the prison estate, in any case, is all too often entirely inadequately equipped either to treat them or address their offending behaviour.

In order to effect any such change, sentencing guidelines on MHTR would need to be strengthened. CJA member JUSTICE has also called for a Sentencing Guideline on mental health and vulnerability to be created. Despite revised guidance issued by the Ministry of Justice four years ago, there has not yet been a significant increase in the use of MHTRs, so there is still significant scope for further uptake. As identified by the Offender Health Research Network, the purpose, process and eligibility for MHTRs should be described by the Ministry of Justice and Department of Health in collaboration.<sup>22</sup>

Magistrates and judges might also require additional training to raise awareness of the use of MHTRs attached to community sentences, though emphasis should be on their availability and inclusion in pre-sentence reports.

## **7. Women**

At the end of March 2018, 1,250 women were in prison for non-violent offences - either theft, fraud or drug offences.<sup>23</sup> Serious concerns have properly been raised about the necessity of custodial sentences for such women, when the vast majority could serve a sentence in the community without posing a threat to public safety. It is alarming that *any* woman is imprisoned in 2018 for TV licence non-payment.

Of the 852 women sentenced to prison for drug offences since 2016, 240 were sentenced to three years or more.<sup>24</sup> This small group aside, there remain 1,000 women imprisoned for non-violent offences whose sentence could better be served in the community, saving £28.5m.

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<sup>21</sup> Durcan, G. (2016) Mental health and criminal justice: Views from consultations across England & Wales, London: Centre for Mental Health.

<sup>22</sup> Offender Health Research Network (2011) Alternatives to Custody for People with Mental Health Problems, Offender Health Research Network, Manchester: OHRN.

<sup>23</sup> Table 1.2b, Ministry of Justice (2018) Offender Management Statistics quarterly: October to December 2017, Prison population: 31 March 2018, London: Ministry of Justice.

<sup>24</sup> Offence Outcomes data tool, Ministry of Justice (2018) Criminal Justice System statistics quarterly: December 2017, London: Ministry of Justice.

CJA member Women in Prison's 2020 campaign – to halve the women's prison population to 2,020 (or fewer) by 2020 – highlights how alternatives to custody such as Women's Centres and community support services result in lower reoffending rates than prison. Further, sending a woman to prison for a short period of time can have a significant impact not only on the woman herself, but also on any dependent children, which in turn can lead to additional costs needing to be funded by the state, such as foster care.

In order to effect this change, sentencing guidelines would need to be amended and steps taken to address funding of women's services, particularly Women's Centres. We welcome the pledge in the Female Offender Strategy to commit £5 million to community provision for women to address offending behaviour.<sup>25</sup>

However, there are serious concerns that this is an insufficient amount to achieve the strategy's aims. Moreover, it is a pittance in comparison to the £50 million originally earmarked for the now scrapped plan to build five community prisons.

As of March 2018, there were 500 women serving sentences of less than 12 months.<sup>26</sup> These women would almost certainly be better rehabilitated in the community with access to appropriate treatment and without disrupting existing housing or childcare arrangements. This would save £14.3m.

## **8. BAME people**

If the demographic of the prison population reflected that of England and Wales, there would – as noted recently in David Lammy's review of black, Asian and minority ethnic (BAME) representation in the Criminal Justice System – be 9,000 fewer BAME people imprisoned, the equivalent of 12 average-sized prisons. If just ten per cent of these were diverted, this would save 900 prison places with (net) savings of £25.7m.

As highlighted in the Review, one of the reasons for this disproportionality may be the association between ethnic group and likelihood of receiving a custodial sentence. Black people are 53 per cent more likely than white people to be sent to prison for an indictable offence at the Crown Court.<sup>27</sup>

Lammy also highlighted the need for increased trust in the criminal justice system amongst BAME defendants, who were found to be more likely to opt for trial in Crown Court due to their higher confidence in the fairness of juries than in the fairness of the Magistrates' Court. It recommended sensibly that all sentencing remarks in the Crown Court be published, to make justice more transparent and comprehensible, thereby building trust. Similarly, CJA member Centre for Justice Innovation advised that to improve the criminal court experience for BAME defendants, judges, magistrates and court staff should be trained in better courtroom engagement.

Other recommendations in the Lammy Review include the CPS considering its approach to both gang prosecutions and to how Modern Slavery legislation could be used to prevent the exploitation of vulnerable young people and for identifying information to be redacted from case information passed to the CPS by the police to allow for 'race-blind' decisions. The 35 recommendations of the Review, if implemented, could significantly reduce the numbers of BAME people in prison.

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<sup>25</sup> Ministry of Justice (2018) Female Offender Strategy [Cm 9624], London: Ministry of Justice.

<sup>26</sup> Table 1.1, Ministry of Justice (2018) Offender Management Statistics quarterly: October to December 2017, Prison population: 31 March 2018, London: Ministry of Justice.

<sup>27</sup> Hopkins, K. et al (2016) Associations between ethnic background and being sentenced to prison in the Crown Court in England and Wales in 2015, London: Ministry of Justice.

### Year-on-year savings for a reduced prison population across eight key cohorts

Cohort	2018/19	2019/20	2020/21	2021/22	Savings (cum.)
IPP	459	1635	2500	2500	£202.2m
Recall	750	1500	2250	3000	£231.8m
Remand	400	800	1100	1400	£105.5m
Sentence lengths	0	0	2000	2000	£114m
Short sentences*	750	1500	2000	2000	£178.1m
Mental health*	500	1000	1500	2000	£142.5m
Women*	250	500	750	1000	£71.3m
BAME*	300	500	700	900	£68.4m
<b>Total*</b>	<b>2709</b>	<b>6060</b>	<b>10750</b>	<b>12075</b>	
Savings <b>(Cumulative)</b>	£77.2m <b>(£77.2m)</b>	£172.7m <b>(£249.9m)</b>	£306.4m <b>(£556.3m)</b>	£344.1m <b>(£900.4m)</b>	

\* All adjusted to account for overlap – recommendations for mental health and for around half of women identified would be encompassed by a presumption against sentences of less than 12 months. To allow for overlap for BAME people across the other cohorts listed here [such figures are not available from HMPPS or the Ministry of Justice] the figure reduced by one quarter.

**ends**

## Workings

1. The cost per prison place for 2016/17 was £38,042.
2. The costs per probation place over the course of a year can be estimated at £3,240 – the MoJ spent £850m on probation services in 2016/17 and there were 262,000 people on probation in June 2017.
3. This cost will naturally fluctuate depending on any requirements attached to a community-based sentence. The National Audit Office assessed the costs of eight different requirements across five probation areas, finding costs varied from £561 to £5,064 depending on location and requirement (stand-alone supervision being the cheapest, mental health treatment being the most expensive).
4. If we take the high end of this range - £5,000 – and provide leeway for inflation, additional investment in community-based alternatives, differences in length of community sentences against custodial sentences and costs relating to supervising some people through the use of electronic tags\* it is reasonable to expect that, on average, community supervision would be no more than a quarter of the current cost of imprisonment - £9,510.
5. The savings figures in the table are therefore calculated by multiplying the number of prison places by 38,000 and multiplying again by 0.75.

\*A note on Home Detention Curfew

The cost of HDC is significantly lower than a prison sentence: for example, research from Scotland in 2011 has found that it costs £6,552 per year for an individual to be on HDC (compared with the cost of a prison sentence in Scotland of £31,720), and NAO in 2006 found it costs £5,272. Accounting for inflation and additional costs relating to investment in community based systems, the cost of HDC would reasonably fall within the estimate we have given of a quarter of the current cost of imprisonment.