



Reforming Prison



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About Reform Scotland

Reform Scotland, a charity registered in Scotland, is a public policy institute which works to promote increased economic prosperity and more effective public services based on the principles of limited government, diversity and personal responsibility.

Reform Scotland is independent of political parties and any other organisations. It is funded by donations from private individuals, charitable trusts and corporate organisations. Its Director is Geoff Mawdsley and Alison Payne is the Research Director. Both work closely with the Advisory Board, chaired by Alan McFarlane, which meets regularly to review the research and policy programme.

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i. Executive summary

Objective

In 2008, Reform Scotland published Power to Protect. That report looked at policing, sentencing and prisons. One of the key recommendations was that there should be no prison sentences of less than three months, or less than six months while automatic early release still exists.¹

Reform Scotland argued that such short sentences did not offer proper chances for rehabilitation. Instead, people should either be given community sentences or longer prison sentences which did offer meaningful rehabilitation opportunities.

Following this, the Scottish Parliament passed the Criminal Justice and Licensing (Scotland) Act 2010 which introduced a presumption against sentences of less than three months. However, this did not stop such sentences being handed out. In 2016, over 4,000 people were handed sentences of up to three months.

Our new report builds on the 2008 report, arguing that there should not just be a presumption against such short sentences, but sentences of less than six months should be prohibited.

Given the importance of close family ties in helping to prevent reoffending, the report also looks at what can be done to improve such links when someone is in prison.

Findings

Short sentences still being handed down despite previous legislation

The Criminal Justice and Licensing (Scotland) Act 2010 introduced a presumption against prison sentences of less than three months and requires a court to only pass a sentence of this length if there is no other appropriate disposal available and to record the reasons for this view.

However, many people are still given such sentences. In 2015/16, 4,066 individuals were given prison sentences of less than three months – equivalent to nearly 30% of all prison sentences.

¹ Automatic early release means that with any short sentence you automatically only spend half of your prison sentence in custody.

Limited rehabilitation for short-term prisoners

There are very limited training and/or rehabilitation programmes available to prisoners serving less than six months in prison. This extract from a Freedom of Information response from the Scottish Prison Service highlighted the issue,² as does the following written answer from Michael Matheson.³

“most of our offending behaviour programmes require individuals to be in custody for longer than 6 months. This is to allow for assessment of suitability for, and then completion of a programme.

“...Vocational qualifications are delivered at the learner’s pace and as such will often require more than 6 months to complete. However, training is available to all convicted prisoners in areas such as Health and Safety, Elementary Food Hygiene and First Aid and can be completed by those serving less than 6 months.”

Scottish Prison Service, FOI response, 5 May 2017

“Short-term custodial sentences, in particular those of less than six months, offer limited opportunity for rehabilitation”.

Michael Matheson, S5W-06095

Policy recommendations

Ban jail sentences of six months and less (or while automatic early release remains, sentences of 12 months and less)

Although there is a presumption against sentences of less than three months, such sentences continue to be handed down by the court. Statistics detailed in chapter two illustrated that 30% of convicted offenders given a prison sentence in 2015/16 were given a sentence of less than three months, despite the presumption being in place. As automatic early release means that only half of a short sentence is actually served, 65% of offenders given a prison sentence in 2015/16 actually served a three month sentence or less.

Yet, information from the Scottish Prison Service has highlighted that there are limited opportunities for rehabilitation and training within such a short sentence.⁴

Prison is supposed to: protect the public; rehabilitate offenders; deter others; and punish.

² SPS FOI response to Reform Scotland dated 5 May 2017

³ S5W-06095

⁴ FOI response from the Scottish Prison Service 5 May 2016

Such short sentences cannot rehabilitate. They offer little protection to the public – if someone is genuinely a danger to the public then they should be in prison for considerably more than the six weeks they would actually serve. It is arguable whether such a short sentence is a deterrent to others. And finally, there is a case that, because of the potential disruption a very short sentence can cause in terms of loss of income and/or employment as well as parenting and/or caring responsibilities, the punishment is disproportionate.

Therefore, Reform Scotland believes that sentences of less than six months (or less than 12 months under automatic early release) should be prohibited)

This would also necessitate removing the ability of JP courts to hand out prison sentences altogether as currently the maximum sentence they can give is less than six months, at 60 days.

End automatic early release for short sentences.

Early release should always be discretionary and earned. Clearly prison overcrowding could make it difficult to introduce such a measure straight away. However, the prohibition on short sentences of less than six months should begin to free up some capacity which in turn would allow this policy to be re-considered. As well as ensuring some level of earned early release, it also creates a more transparent judicial system where victims, criminals and the general public can have a better understanding of the actual sentence being given.

Pilot schemes for increasing contact between prisoners and their families.

Evidence suggests that maintaining close family ties can help prevent reoffending. However, due to distance or circumstance some family members will be unable to see or speak to their loved one as often as they would like, if at all. Even if travel and transport are not a problem, prison rules also place restrictions on the frequency and duration of visits.

If family contact helps reduce reoffending, as well as helping those left outside, then it is something that needs to be encouraged. Reform Scotland believes that there should be some pilots looking at innovative ideas for increasing contact. For example having landline phones in prison cells, this is something that already happens in some prisons in England and Wales, as well as looking at the cost to individuals of keeping in phone contact.

1. Introduction

As much as we might wish it wasn't the case, prisons are an unavoidable part of our society. For many crimes there simply isn't any alternative in order to properly protect the public in Scotland.

However, while prison undoubtedly protects the public from our worst offenders, for others there is a danger that it becomes a revolving door in a life of crime.

Prisons are not just there to punish and protect the public. They also need to rehabilitate and to work with prisoners to help prevent reoffending and offer training to help gain employment once released. People make mistakes and we need to help ensure that such mistakes are not repeated. Not just because of the emotional and financial cost of crime to victims, families and society, but because of the loss of human potential.

Such a view is neither ideological nor controversial, but is human and compassionate. However, it is not a view that is reflected in Scotland's sentencing regime.

What benefit can there be to the public or to an offender when sent to prison for six weeks?⁵ Six weeks is long enough to cause the offender and their family many problems, such as potential loss of employment, income, housing or caring responsibilities. Yet it is not long enough to offer any sort of rehabilitation or training to the individual when they are in prison.

Some will argue that the individual should not have broken the law so they brought the situation on themselves. However, punishment needs to be proportionate. Sending someone to prison while offering them no opportunity for rehabilitation is not proportionate.

In 2008 Reform Scotland published *Power to Protect*, calling for sentences of less than three months (or six months under early release) to be banned. Since then the Criminal Justice and Licensing (Scotland) Act 2010 introduced a presumption against prison sentences of less than three months and requires a court to only pass a sentence of this length if there is no other appropriate disposal available and to record the reasons for this view.

However, many people are still given such sentences. In 2015/16, 4,066 individuals were given prison sentences of less than three months – equivalent

⁵ Although there is a presumption against sentences of less than three months, because of automatic early release a sentence of three months actually results in half of that time, about six weeks, being served.

to nearly 30% of all prison sentences. 65% of sentences were for up to 6 months, which under automatic early release means a period of up to three months in prison.

When he was Home Secretary, Michael Howard (in)famously once said “prison works”. And in one sense he was right – at the most basic level, prisons take criminals off the streets and stops them committing more crime. But short prison sentences do not work. It is not enough to have a presumption against them. They must be scrapped altogether.

2. Background

2.1 Sentencing statistics

The following tables give an indication of the number of people given a custodial sentence each year in Scotland, as well as the length of those sentences. The statistics are taken from the Scottish Government publication, Criminal Proceedings in Scotland 2015-16, which was published in January 2017.⁶

Table 1 highlights that the majority of convicted offenders are not given a custodial sentence. It is only in the most serious of crime categories that a majority of people tend to be sent to prison. Tables 2 and 3 show that while there has been a decrease in the number of custodial sentences, there has been a slight increase in the proportion of convicted criminals being sent to jail. Tables 4 – 7 provide data on the length of sentences handed out.

The figures indicate that in 2015/16 there were 99,950 convictions⁷ of a crime or offence. Of those 13,735, or 14%, received a custodial sentence. (Of which 12,023 were sent to prison). 65% of those receiving a custodial sentence were given a sentence of less than six months. Automatic early release for short-term prisoners (explained in section 2.2) means that these individuals will have been released half way through their sentence, serving a maximum of three months.

⁶ <http://www.gov.scot/Publications/2017/01/6376/downloads#res512934>

⁷ This will not mean 99,950 individuals as some people will be subject to two or more separate proceedings and counted two or more times.

Table 1. People convicted by gender, main crime/offence and main penalty 2015-16

Main crime or offence	Male					Female				
	Total	(percentages)				Total	(percentages)			
		Custody	Community sentence	Monetary	Other		Custody	Community sentence	Monetary	Other
All crimes and offences	83,021	15	19	51	15	16,929	7	18	46	28
All crimes	29,902	28	27	27	19	5,819	14	26	24	36
Non-sexual crimes of violence	1,535	62	30	5	2	230	29	47	7	17
Homicide etc	69	80	16	4	-	15	40	47	7	7
Attempted murder and serious assault	1,030	59	35	6	*	82	33	50	11	6
Robbery	333	80	14	2	4	46	63	28	2	7
Other non-sexual crimes of violence	103	28	52	7	13	87	5	55	7	33
Sexual crimes	1,086	35	53	8	4	70	6	14	20	60
Rape and attempted rape	104	91	9	-	-	-	-	-	-	-
Sexual assault	276	43	50	4	3	3	67	33	-	-
Crimes associated with prostitution	32	3	-	88	9	54	-	7	22	70
Other sexual crimes	674	24	64	7	5	13	15	38	15	31
Crimes of dishonesty	8,969	36	25	20	19	2,611	17	26	23	33
Housebreaking	830	63	29	3	4	23	30	61	4	4
Theft by opening lockfast places	181	38	38	16	8	16	25	25	25	25
Theft from a motor vehicle	99	39	34	10	16	1	-	100	-	-
Theft of a motor vehicle	287	33	38	21	8	11	-	27	55	18
Shoplifting	4,719	33	20	22	25	1,864	17	22	23	38
Other theft	1,702	32	28	24	16	389	16	30	24	30
Fraud	366	36	27	29	8	178	18	41	29	12
Other dishonesty	785	37	33	18	12	129	17	47	19	16
Fire-raising, vandalism, etc.	1,931	18	30	36	16	298	6	28	32	35
Fire-raising	94	41	37	12	10	21	48	38	10	5
Vandalism etc.	1,837	16	30	37	16	277	3	27	33	37
Other crimes	16,381	20	25	33	22	2,610	11	25	25	39
Crimes against public justice	8,584	22	26	23	29	1,611	12	23	18	46
Handling offensive weapons	1,357	36	41	16	8	136	18	50	9	24
Drugs	6,331	15	20	49	16	821	10	23	40	27
Other crime	109	32	27	21	20	42	10	43	14	33
All offences	53,119	8	15	64	13	11,110	3	14	58	25
Miscellaneous offences	25,855	15	27	35	23	5,805	6	24	28	43
Common assault	9,506	18	32	33	17	2,573	7	25	28	40
Breach of the peace etc.	13,918	14	24	35	27	2,380	5	18	27	50
Drunkenness and other disorderly conduct	125	2	4	47	47	23	4	4	35	57
Other miscellaneous, including urinating	2,306	13	24	42	22	829	5	35	30	30
Motor vehicle offences	27,264	2	4	92	3	5,305	*	3	92	5
Dangerous & careless driving	2,972	5	7	86	2	600	*	4	93	3
Driving under the influence	2,870	3	16	80	1	669	1	18	80	1
Speeding	10,588	-	*	99	1	1,777	-	-	100	*
Unlawful use of motor vehicle	5,053	4	5	82	10	1,278	*	1	85	14
Vehicle defect offences	1,403	-	*	93	6	131	-	1	89	11
Other motor vehicle offences ¹	4,378	*	1	97	3	850	-	*	96	4

1. Includes seat belt and mobile phone offences.

Table 2. Number of people convicted by main penalty 2006-07 to 2015-16										
Main penalty	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Total	134,416	133,608	125,893	121,041	115,581	108,424	101,018	105,656	106,622	99,950
Custody	16,764	16,762	16,946	15,802	15,320	15,950	14,789	14,172	14,035	13,735
Prison	13,234	13,378	13,709	12,760	12,810	13,356	12,727	12,402	12,327	12,023
Young offenders institution	3,199	3,089	2,960	2,679	2,082	2,105	1,606	1,244	1,157	1,183
Supervised release order	135	178	206	179	230	267	265	286	324	350
Extended sentence	196	117	70	175	185	212	174	223	207	169
Order for life-long restriction	-	-	1	9	13	10	17	17	20	10
Community sentence	16,074	16,709	17,921	16,349	15,615	16,937	17,263	18,272	18,616	18,943
Community payback order	-	-	-	-	461	10,380	14,940	16,375	16,794	16,742
Restriction of liberty order	1,179	1,155	1,143	931	831	845	919	1,078	1,177	1,646
Drug treatment & testing order	865	822	885	807	806	642	607	589	528	486
Community service order	5,285	5,601	5,784	5,471	5,306	2,642	479	141	68	40
Probation and other community sentences ¹	8,745	9,131	10,109	9,140	8,211	2,428	318	89	49	29
Financial penalty	84,820	83,344	73,991	72,491	67,576	59,320	53,429	57,795	56,792	49,918
Fine	83,445	82,019	72,838	71,452	66,492	58,395	52,661	56,921	55,952	49,147
Compensation order	1,375	1,325	1,153	1,039	1,084	925	768	874	840	771
Other sentence	16,758	16,793	17,035	16,399	17,070	16,217	15,537	15,417	17,179	17,354
Admonition ²	15,967	16,084	16,398	15,687	16,421	15,577	15,011	14,839	16,427	16,496
Absolute discharge, no order made	413	430	412	522	460	476	361	463	660	774
Remit to children's hearing	313	259	209	175	170	140	133	94	67	76
Insanity, hospital, guardianship order	65	20	16	15	19	24	32	21	25	8
Average amount of penalty										
Custody (days)	232	249	263	282	278	290	285	296	289	292
Fine (£) ^{3,4}	150	175	200	180	180	200	200	180	200	200
Compensation order (£) ^{4,5}	150	150	180	180	190	200	200	200	200	200

1. Includes supervised attendance orders, community reparation orders and anti-social behaviour orders. 2. Includes a small number of court cautions and dog-related disposals. 3. Excludes company fines. 4. Excludes a small number of large fines and calculated as the median. 5. As main or secondary penalty.

Table 3. Percentage of people convicted by main penalty, 2005-06 to 2015-16										
Main penalty	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Custody	12	13	13	13	13	15	15	13	13	14
Prison	10	10	11	11	11	12	13	12	12	12
Young offenders institution	2	2	2	2	2	2	2	1	1	1
Supervised release order	*	*	*	*	*	*	*	*	*	*
Extended sentence	*	*	*	*	*	*	*	*	*	*
Order for life-long restriction	-	-	*	*	*	*	*	*	*	*
Community sentence	12	13	14	14	14	16	17	17	17	19
Community payback order	-	-	-	-	*	10	15	15	16	17
Restriction of liberty order	1	1	1	1	1	1	1	1	1	2
Drug treatment & testing order	1	1	1	1	1	1	1	1	*	*
Community service order	4	4	5	5	5	2	*	*	*	*
Probation and other community sentences	7	7	8	8	7	2	*	*	*	*
Financial penalty	63	62	59	60	58	55	53	55	53	50
Fine	62	61	58	59	58	54	52	54	52	49
Compensation order	1	1	1	1	1	1	1	1	1	1
Other sentence	12	13	14	14	15	15	15	15	16	17
Admonition	12	12	13	13	14	14	15	14	15	17
Absolute discharge, no order made	*	*	*	*	*	*	*	*	1	1
Remit to children's hearing	*	*	*	*	*	*	*	*	*	*
Insanity, hospital, guardianship order	*	*	*	*	*	*	*	*	*	*

Table 4. People receiving a custodial sentence by main crime/offence and length of sentence 2015-16

Main crime or offence	(Numbers)									(Percentages)					
	Total	Up to 3 months	3 - 6 months	Over 6 months to 1 year	Over 1 year to 2 years	Over 2 years to less than 4 years	4 years and over	Life	Avg length (days) ^{2,3}	Up to 3 months	3 to 6 months	Over 6 months to 1 year	Over 1 year to 2 years	Over 2 years to less than 4 years	4 years and over inc life
All crimes and offences	13,724	4,066	4,850	2,249	1,481	645	406	27	292	30	35	16	11	5	3
All crimes	9,059	2,749	2,748	1,340	1,219	582	391	27	347	30	30	15	13	6	4
Non-sexual crimes of violence	1,016	8	45	153	379	239	165	27	900	1	4	15	37	24	16
Homicide etc	61	-	1	1	4	4	24	27	1,913	-	2	2	7	7	39
Attempted murder and serious assault	625	1	14	94	254	164	98	-	915	*	2	15	41	26	16
Robbery	297	4	23	55	116	60	39	-	767	1	8	19	39	20	13
Other non-sexual crimes of violence	33	3	7	3	5	11	4	-	756	9	21	9	15	33	12
Sexual crimes	382	13	31	55	77	66	140	-	1,273	3	8	14	20	17	37
Rape and attempted rape	95	-	-	-	1	3	91	-	2,572	-	-	-	1	3	96
Sexual assault	121	2	7	18	34	30	30	-	1,025	2	6	15	28	25	25
Crimes associated with prostitution	1	-	-	-	-	1	-	-	1,096	-	-	-	-	100	-
Other sexual crimes	165	11	24	37	42	32	19	-	708	7	15	22	25	19	12
Crimes of dishonesty	3,699	1,289	1,480	533	294	90	11	-	193	35	40	14	8	2	*
Housebreaking	530	32	109	144	181	62	2	-	425	6	21	27	34	12	*
Theft by opening lockfast places	72	15	28	23	5	-	1	-	215	21	39	32	7	-	1
Theft from a motor vehicle	39	9	18	10	2	-	-	-	177	23	46	26	5	-	-
Theft of a motor vehicle	95	16	45	24	9	1	-	-	214	17	47	25	9	1	-
Shoplifting	1,875	890	847	126	10	1	-	-	115	47	45	7	1	*	-
Other theft	614	181	272	108	40	11	1	-	188	29	44	18	7	2	*
Fraud	165	24	60	46	19	13	3	-	332	15	36	28	12	8	2
Other dishonesty	309	122	101	52	28	2	4	-	199	39	33	17	9	1	1
Fire-raising, vandalism, etc.	359	96	153	58	39	7	5	-	240	27	43	16	11	2	1
Fire-raising	49	-	8	13	22	3	3	-	553	-	16	27	45	6	6
Vandalism etc.	310	96	145	45	17	4	2	-	190	31	47	15	5	1	1
Other crimes	3,603	1,343	1,039	541	430	180	70	-	265	37	29	15	12	5	2
Crimes against public justice	2,045	1,127	686	158	56	14	4	-	128	55	34	8	3	1	*
Handling offensive weapons	509	26	119	189	146	28	1	-	365	5	23	37	29	6	*
Drugs	1,010	184	217	189	224	136	60	-	476	18	21	19	22	13	6
Other crime	39	6	17	5	4	2	5	-	641	15	44	13	10	5	13
All offences	4,670	1,317	2,102	909	262	63	15	-	187	28	45	19	6	1	*
Miscellaneous offences	4,233	1,265	1,908	758	231	55	14	-	183	30	45	18	5	1	*
Common assault	1,880	373	843	471	149	42	2	-	214	20	45	25	8	2	*
Breach of the peace etc.	2,005	786	915	224	71	8	-	-	145	39	46	11	4	*	-
Drunkenness and other disorderly conduct	3	3	-	-	-	-	-	-	60	100	-	-	-	-	-
Other miscellaneous, including urinating	345	103	150	63	11	5	12	-	233	30	43	18	3	1	3
Motor vehicle offences	437	52	194	151	31	8	1	-	229	12	44	35	7	2	*
Dangerous and careless driving	143	12	37	58	28	7	1	-	323	8	26	41	20	5	1
Driving under the influence	97	16	62	18	1	-	-	-	156	16	64	19	1	-	-
Speeding	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unlawful use of motor vehicle	189	17	94	75	2	1	-	-	202	9	50	40	1	1	-
Vehicle defect offences	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other motor vehicle offences	8	7	1	-	-	-	-	-	60	88	13	-	-	-	-

Table 5. People receiving a custodial sentence by gender, main crime/offence and length of sentence 2015-16

Main crime or offence	Male							Female						
	Total	(Percentages)						Total	(Percentages)					
		Up to 3 months	3 to 6 months	Over 6 months to 1 year	Over 1 year to less than 2 years	Over 2 years to less than 4 years	4 years and over inc life etc		Up to 3 months	3 to 6 months	Over 6 months to 1 year	Over 1 year to less than 2 years	Over 2 years to less than 4 years	4 years and over inc life etc
All crimes and offences	12,537	29	35	17	11	5	3	1,187	41	36	12	7	3	1
All crimes	8,218	29	30	15	14	7	5	838	41	34	11	8	4	2
Non-sexual crimes of violence	950	1	4	15	37	24	19	66	3	11	20	35	21	11
Homicide etc	55	*	2	2	7	5	84	6	*	*	*	*	17	83
Attempted murder and serious assault	598	*	2	15	40	26	16	27	*	*	15	56	26	4
Robbery	268	1	6	17	41	21	14	29	7	21	31	24	14	3
Other non-sexual crimes of violence	29	10	21	10	14	31	14	4	*	25	*	25	50	*
Sexual crimes	378	3	8	15	20	17	37	4	25	25	*	*	25	25
Rape and attempted rape	95	*	*	*	1	3	96	-	*	*	*	*	*	*
Sexual assault	119	2	6	15	29	24	24	2	*	*	*	*	50	50
Crimes associated with prostitution	1	*	*	*	*	100	*	-	*	*	*	*	*	*
Other sexual crimes	163	6	14	23	26	20	12	2	50	50	*	*	*	*
Crimes of dishonesty	3,244	33	40	15	8	3	*	453	46	40	9	4	1	*
Housebreaking	523	6	20	27	34	12	*	7	*	43	14	43	*	*
Theft by opening lockfast places	68	22	38	31	7	*	1	4	*	50	50	*	*	*
Theft from a motor vehicle	39	23	46	26	5	*	*	-	*	*	*	*	*	*
Theft of a motor vehicle	95	17	47	25	9	1	*	-	*	*	*	*	*	*
Shoplifting	1,550	46	47	7	1	*	*	324	56	39	5	1	*	*
Other theft	549	30	44	17	7	2	*	64	30	47	19	3	2	*
Fraud	133	15	35	29	11	8	2	32	13	41	22	16	9	*
Other dishonesty	287	41	33	16	7	*	1	22	18	23	23	32	5	*
Fire-raising, vandalism, etc.	339	27	43	16	10	2	1	19	16	37	21	21	5	*
Fire-raising	39	*	15	26	46	5	8	10	*	20	30	40	10	*
Vandalism etc.	300	31	47	15	6	1	1	9	33	56	11	*	*	*
Other crimes	3,307	37	29	15	12	5	2	296	45	31	10	8	4	2
Crimes against public justice	1,856	55	34	8	3	1	*	189	58	34	6	2	*	*
Handling offensive weapons	485	4	22	38	30	6	*	24	21	46	25	8	*	*
Drugs	931	18	22	19	22	13	6	79	23	19	15	23	14	6
Other crime	35	14	43	11	11	6	14	4	25	50	25	*	*	*
All offences	4,319	27	45	20	6	1	*	349	40	41	16	3	*	*
Miscellaneous offences	3,890	29	45	18	6	1	*	341	40	42	16	3	*	*
Common assault	1,699	18	45	26	9	2	*	181	38	40	20	2	1	*
Breach of the peace etc.	1,886	39	46	12	4	*	*	118	46	47	5	2	*	*
Drunkenness and other disorderly conduct	2	100	*	*	*	*	*	1	100	*	*	*	*	*
Other miscellaneous, including urinating	303	30	45	17	3	2	4	41	29	34	29	7	*	*
Motor vehicle offences	429	11	45	34	7	2	*	8	38	25	38	*	*	*
Dangerous and careless driving	142	8	26	40	20	5	1	1	*	*	100	*	*	*
Driving under the influence	93	15	66	18	1	*	*	4	50	25	25	*	*	*
Speeding	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Unlawful use of motor vehicle	186	9	50	40	1	1	*	3	33	33	33	*	*	*
Vehicle defect offences	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other motor vehicle offences	8	88	13	*	*	*	*	-	*	*	*	*	*	*

1. Excludes a small number of cases which resulted in detention of a child aged under 16, recall sentences and a small number of records we do not have sentence information for. 2. Includes seat belt and mobile phone offences

Table 6. Average length of custodial sentence in days, by main crime/offence, 2006-07 to 2015-16

Main crime or offences	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	% change 14/15 to 15/16
All crimes and offences	232	249	263	282	278	290	285	296	289	292	1
All crimes	277	295	307	328	319	337	334	351	342	347	1
Non-sexual crimes of violence	905	927	907	904	878	950	894	974	983	900	-8
Homicide etc	1,957	2,630	2,329	2,201	2,264	2,206	2,392	2,335	2,022	1,913	-5
Attempted murder and serious assault	898	878	886	917	924	999	880	957	1,009	915	-9
Robbery	818	727	807	761	812	834	804	907	927	767	-17
Other non-sexual crimes of violence	566	658	510	529	271	482	472	726	565	756	34
Sexual crimes	1,218	1,306	1,339	1,312	1,214	1,257	1,278	1,240	1,344	1,273	-5
Rape & attempted rape	2,055	2,713	2,543	2,275	2,105	2,224	2,437	2,456	2,390	2,572	8
Sexual assault	1,123	948	1,090	1,220	1,363	1,222	1,070	871	876	1,025	17
Crimes associated with prostitution	96	244	403	183	185	540	-	1,089	-	1,096	-
Other sexual crimes	710	758	1,069	971	805	832	808	874	848	708	-17
Crimes of dishonesty	133	137	142	151	154	165	166	168	181	193	7
Housebreaking	211	228	223	242	255	267	266	315	382	425	11
Theft by opening lockfast places	127	132	150	171	169	190	214	198	231	215	-7
Theft from a motor vehicle	129	122	146	162	172	156	154	161	169	177	5
Theft of a motor vehicle	135	133	158	159	151	182	174	216	201	214	6
Shoplifting	90	94	98	101	105	116	114	113	116	115	-1
Other theft	119	128	137	156	159	167	162	165	190	188	-1
Fraud	246	206	224	226	236	220	270	262	250	332	33
Other dishonesty	146	167	143	164	133	164	171	176	190	199	5
Fire-raising, vandalism, etc.	168	188	176	198	194	220	213	226	234	240	3
Fire-raising	507	469	447	470	555	702	496	511	641	553	-14
Vandalism etc.	112	142	128	158	144	145	159	184	173	190	10
Other crimes	230	254	268	294	300	285	285	302	263	265	1
Crimes against public justice	78	90	96	102	112	116	113	121	120	128	7
Handling offensive weapons	160	218	260	269	289	312	343	375	369	365	-1
Drugs	547	559	544	575	575	542	578	604	517	476	-8
Other crime	221	215	183	659	155	260	258	343	233	641	175
All offences	133	142	162	168	178	184	178	179	178	187	5
Miscellaneous offences	125	134	159	164	174	181	175	177	175	183	5
Common assault	156	160	181	195	202	212	206	206	216	214	-1
Breach of the peace etc.	83	87	109	115	124	136	135	142	139	145	4
Drunkenness & other disorderly conduct	44	6	38	31	33	73	97	35	40	60	50
Other miscellaneous	232	295	326	285	243	216	210	205	168	233	39
Motor vehicle offences	157	170	176	188	202	207	202	203	218	229	5
Dangerous & careless driving	212	233	230	241	289	283	261	275	315	323	3
Driving under the influence	105	124	142	137	130	145	146	141	151	156	3
Speeding	-	-	-	-	-	-	-	-	-	-	-
Unlawful use of motor vehicle	161	168	174	189	204	207	207	200	199	202	2
Vehicle defect offences	-	-	-	-	-	-	-	-	-	-	-
Other vehicle	95	115	80	123	152	100	93	97	118	60	-49

Table 7: People receiving a custodial sentence by length of sentence 2006-07 to 2015-16

Year	Total ¹	Up to 3 months	Over 3 months to 6 months	Over 6 months to 1 year	Over 1 year to 2 years	Over 2 years to less than 4 years	4 years and over	Life
2006-07	16,741	8,825	4,334	1,407	992	636	489	58
2007-08	16,737	8,414	4,250	1,662	1,188	640	529	54
2008-09	16,924	6,914	5,230	2,158	1,318	721	524	59
2009-10	15,781	5,919	4,957	2,250	1,269	834	504	48
2010-11	15,296	5,332	5,229	2,192	1,264	776	455	48
2011-12	15,926	4,529	6,153	2,437	1,478	755	523	51
2012-13	14,768	4,339	5,471	2,418	1,390	665	436	49
2013-14	14,139	4,140	5,223	2,247	1,301	707	475	46
2014-15	14,012	4,107	5,231	2,170	1,436	621	415	32
2015-16	13,724	4,066	4,850	2,249	1,481	645	406	27

1. Excludes a small number of cases which resulted in detention of a child aged under 16, recall sentences and a small number of records there is not sentence information for.

2.2 Remand

The statistics illustrated in Tables 1 to 7 highlight the number of individuals given a custodial sentence by the courts, but they do not represent the prison population. Most sentences are shorter than one year, but the prison population also includes some prisoners who have been convicted but not yet sentenced, as well as those awaiting trial. These individuals are on remand.

According to the Scottish Prison Service, on 2 June 2017 there were 7,402 people in custody in Scotland.⁸ Of these people, 1,023 (14%) were awaiting trial and 269 (4%) were awaiting sentencing.

The following Table is based on Scottish Government publication ‘Prison statistics and population projections Scotland’. However, it should be noted that the latest figures available were published in 2015 and only cover through 2013/14.⁹ As a result, the data for 2014/15 and 2015/16 come from the respective Scottish Prison Service Annual Reports.

⁸ <http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

⁹ According to the publication’s web page “On-going technical difficulties have led to substantial delays in processing the prisons data. These are being released as the backlog is cleared. The data for 2014-15 have been affected by an unrelated critical incident and release of these will be further delayed pending resolution of the issue.”

Table 8: Average daily population in penal establishments by type of custody 2004-05 to 2015-16

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15 ¹⁰	2015-16 ¹¹
Total	6,776	6,856	7,187	7,376	7,827	7,964	7,854	8,179	8,057	7,894	7,732	7,675
<i>Remand</i>	1,223	1,250	1,572	1,561	1,679	1,522	1,474	1,601	1,469	1,474	1,525	1,494
Untried	1,036	1,032	1,329	1,306	1,415	1,170	1,112	1,238	1,155	1,163		
Convicted awaiting sentence	188	218	243	255	264	352	362	363	314	311		
Young persons	261	285	361	355	334	305	262	258	198	167		
Adults	962	965	1,211	1,206	1,344	1,217	1,212	1,342	1,271	1,307		
<i>Sentenced</i>	<i>5,553</i>	<i>5,606</i>	<i>5,615</i>	<i>5,815</i>	<i>6,148</i>	<i>6,442</i>	<i>6,380</i>	<i>6,578</i>	<i>6,588</i>	<i>6,420</i>	<i>6,205</i>	<i>6,181</i>
Young persons (direct sentence)	545	607	621	658	658	690	576	533	473	383		
Adults (direct sentence)	4,599	4,553	4,433	4,516	4,879	5,120	5,111	5,332	5,392	5,334		
Fine defaulters	51	47	46	28	11	9	9	8	9	9		
Recalls from supervision/licence	351	397	515	611	600	622	682	702	713	693		
Others	5	1	*	*	-	-	-	-	-	-		
<i>Sentenced by court martial</i>	1	-	-	*	1	-	1	1	1	*		
<i>Civil prisoners</i>	1	1	1	1	*	1	*	1	*	1		
<i>Sentenced by court martial</i>	-	-	-	-	-	-	-	-	*	*		

2.3 Automatic early release

It is not easy to follow the automatic early release saga, since many political parties claim to have ended it with none taking responsibility for its continued presence.

The Prisoners and Criminal Proceedings (Scotland) Act 1993 introduced automatic early release in Scotland. It meant that short-term prisoners, those sentenced to less than four years, were automatically released after just half their prison sentence had passed. For long-term prisoners, those serving more than four years, they could be released half way through their sentence by the Parole Board. However, if they had not been released they would be automatically released after serving 2/3 of their sentence.

It was John Major's Conservative Government which introduced this legislation. However, it then passed the Crime and Punishment (Scotland) Act 1997, which would have reduced the reduction applied to their sentence to one sixth of the sentence and this would be decided by the parole board – ending the automatic discount. Due to the Labour election victory later in 1997 the legislation was never enacted and was repealed by Part 5 of the Crime and Disorder Act 1998, so automatic release remained in place.¹² As a result, the

¹⁰ Scottish Prison Service Annual Report 2014/15

¹¹ Scottish Prison Service Annual Report 2015/16 file

¹² This Scottish Parliament Official Report from 11 January 2007 includes former Tory MP and MSP Phil Gallie explaining the 1997 act <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4698&i=37973>

Tories claim that although they introduced it, they tried to remove it in government but were then voted out of office.

Since the creation of the Scottish Parliament there have been a number of acts which have allegedly ended this practice, or some part of it. However, automatic early release remains part of our justice system today.

Following the passage of the Prisoners (Control of Release) (Scotland) Act 2015, arrangements were changed for long-term prisoners, as explained by the Scottish Government below:

“Where a long-term prisoner has additional court imposed supervision e.g. an extended sentence, the reforms will mean they will not receive automatic early release at any point in their custodial sentence. Where a long-term prisoner does not have any additional court imposed supervision, they will receive early release if still in custody with 6 months left on their sentence. This ensures a mandatory minimum period of licence condition supervision of six months will apply for all long-term prisoners. The provisions will apply to long-term prisoners sentenced after today (Monday 1 February 2016). All long-term prisoners will continue to be able to be considered for discretionary early release from the halfway point of sentence through consideration by the independent Parole Board.”¹³

However, the automatic element of release remains in place for people given short-term sentences.

2.4 Short sentences

The Criminal Justice and Licensing (Scotland) Act 2010 introduced a presumption against prison sentences of less than three months and requires a court to only pass a sentence of this length if there is no other appropriate disposal available and to record the reasons for this view.

However, as Table 7 illustrates, many people are still given such sentences. In 2015/16, 4,066 prison sentences of less than three months were handed out – equivalent to nearly 30% of all prison sentences.

Although this is a fall from the 5,919 (38% of all sentences) handed out in 2009/10 before the Act came into force, the number of sentences of three months and less was already falling. In 2006/7 there were 8,825 such sentences, equivalent to 53% of all prison sentences.

¹³ Scottish Government <https://news.gov.scot/news/end-to-automatic-prison-release>

So although progress has been made on reducing very short sentences, this had begun before the Act, and the Act itself does not actually stop such sentences being used.

In 2016 the Scottish Government consulted on strengthening the presumption against short sentences. This followed the Holyrood elections that year where most of the parties set out some policy on reducing short prison sentences.

Scottish Parliament election 2016 Manifesto commitments on cutting the use of short prison sentences	
	<i>We will improve community-based alternatives to short-term prison sentences, including restricting liberty through the increased use of electronic monitoring, combined with support in the community. We will support new efforts to deliver effective alternatives to custody – the national roll out of Fiscal Work Orders provides an efficient response to relatively minor offending, while Community Payback Orders provide the court with a robust and flexible community sentencing tool.¹⁴</i>
	<i>Short sentences under six months are particularly ineffective, and we believe in a presumption against sentences of less than six months.¹⁵</i>
	<i>Introduce a new presumption against short prison sentences of less than 12 months.¹⁶</i>
	<i>We will call for short prison sentences of less than twelve months to be abolished.¹⁷</i>

The Scottish Government's consultation highlighted the problems of short prison sentences:

“Imprisonment will always be required for those individuals whose offences are so serious that prison is the only appropriate form of punishment, and for those who pose a risk of serious harm. However, use of short-term imprisonment for individuals who do not fall into those categories is not effective - 60% of offenders imprisoned for 3 months or less are re-convicted within a year. Short-term imprisonment disrupts families and communities, and adversely affects employment opportunities and stable housing - the very things that evidence shows support desistence from offending. That is clearly not a good use of public resources, and it is a waste of human potential.”¹⁸

¹⁴ SNP 2016 Manifesto

¹⁵ Scottish Labour Manifesto 2016

¹⁶ Scottish Lib Dem Manifest 2016

¹⁷ <https://greens.scot/scotland-can/be-a-just-nation>

¹⁸ https://consult.scotland.gov.uk/community-justice/short-periods-of-imprisonment/user_uploads/624951_v3_20150917.pdf

The consultation focused on two particular areas – whether the presumption should be extended beyond three months; and whether a more radical approach was required with certain offences never being able to result in a custodial sentence.

Another element to consider in the debate around short sentences is the type of court handing out the custody sentence, as that can affect the level of sentence that can be handed down.

The High Court hears most serious offences and there are no limits on the length of prison sentence or the fine the High Court can impose. Trials are heard by a judge and jury, though it is the judge that decides the sentence.¹⁹

Most cases are heard in the Sheriff Courts, either by a sheriff and a jury (solemn procedure, used for the more serious cases), or by a sheriff alone (summary procedure). In a solemn case, the court can sentence a convicted person to up to 5 years in prison or impose a fine of any amount. While in a summary case, the court can give a sentence of up to 12 months in prison or a maximum fine of £10,000.²⁰

Justice of the Peace courts, which replaced District Courts, hear about a third of trials in Scotland, covering less serious offences such as motoring offences, breach of the peace and shoplifting.²¹ A Justice of the Peace is a lay magistrate and they have access to advice from lawyers who act as clerks of the court. The maximum sentence a JP can impose is a fine of £2,500 or sending someone to prison for up to 60 days.²²

In Glasgow, there are also Stipendiary Magistrates who are legally qualified solicitors or advocates and sit in the Justice of the Peace Court in Glasgow. However, they hear similar cases to Sheriffs and have the same sentencing powers. They can sentence convicted individuals to up to a year in prison or a fine of up to £10,000.

Table 9 highlights what type of court people sentenced to custody were sentenced from; while Table 10 illustrates the number of people given a custodial sentence by JP courts, and average length of sentence. Figures from both these tables come from Freedom of Information responses by The Scottish Government.²³

¹⁹ <https://www.mygov.scot/criminal-court-case/where-cases-take-place/> The High Court also deals with all criminal appeal cases.

²⁰ Scottish Government <https://www.mygov.scot/criminal-court-case/where-cases-take-place/>

²¹ <http://www.gov.scot/Topics/Justice/law/justice-peace/about/w>

²² <http://www.gov.scot/Topics/Justice/law/justice-peace/about/w>

²³ Scottish Government, FOI response, 12 June 2017

Table 9: Percentage of people receiving a custodial sentence for main charge, by type of court

Type of court	2011-12	2012-13	2013-14	2014-15	2015-16
High Court	4%	4%	4%	4%	4%
Sheriff Court	91%	91%	91%	93%	94%
JP court	1%	1%	1%	1%	1%
Stipendiary Magistrate	4%	4%	3%	3%	1%

Table 10: Number of people receiving a custodial sentences issues by JP court, by average sentence

	2011-12	2012-13	2013-14	2014-15	2015-16
Number of people	156	157	169	126	97
Average sentence in days	24	23	29	32	50

Given the limit to the custodial sentences JP Courts can hand out, any meaningful attempt at reducing short sentences would necessitate the removing the ability to hand out custodial sentences from JP Courts.

2.4 Community-based sentences

There are a number of non-custodial sentences that can be handed out by the courts. As Table 3 indicated, in 2015/16, only 14% of convicted individuals received a custodial sentence. 50% of convicted people received financial penalties, while others were given other sentences. The following list, taken from the Scottish Sentencing Council's website, explains the different sentences:

- **Absolute Discharge:** The judge decides that a person convicted of a crime shouldn't be given a sentence. This means there is no punishment.
- **Admonition :** A warning to an offender not to commit another crime, but no punishment is given. However, the crime is recorded as a conviction on a criminal record.
- **Community Payback Order (CPO):** This Order can be made up of one or more parts. Those who break the conditions of the Order can be returned to court and may be fined or sent to prison. Different conditions can include:
 - up to 300 hours unpaid work for the community
 - community supervision
 - paying compensation to the victim of the crime

- attending programmes – such as those dealing with domestic abuse or sexual offences
 - receiving treatments – such as mental health, drug or alcohol
- **Compensation Order:** Offenders have to pay money to the victims of their crime. Offenders may be told to pay compensation for an injury or distress they have caused, or for damage they have caused to property. The judge sets the amount which takes account of the crime and the offender's ability to pay. The offender pays the money to the court which then gives it to the victim. Offenders who don't keep up with payments can be taken back to court and could be sent to prison.
- **Fine:** The offender must pay money to the court within a certain amount of time. The highest level of fine that can be given is set by law depending on which court the case is heard in. Offenders who don't keep up with payments can be taken back to court and another sentence can be given instead. The maximum fines set by law are:
 - Justice of the peace court – up to £2,500.
 - Sheriff court summary cases – up to £10,000.
 - Sheriff court indictment cases/ High Court – no maximum level.
- **Deferred sentence:** A judge can postpone a sentence, usually for good behaviour, to a later date. If offenders stay out of trouble during that time, the judge will normally give a lesser sentence than if they get into trouble.
- **Anti-Social Behaviour Order:** This prohibits people from doing anything listed in the order, for example playing loud music on a regular basis, or continually drinking in the street and becoming rowdy.
- **Deportation:** Offenders over the age of 17 who are not British citizens, and who have been convicted of a crime punishable by imprisonment, can be sent out of the country.
- **Disqualification:** Offenders who have committed a crime involving a vehicle, including road traffic offences, or who have failed to pay fines, can in some instances be disqualified from driving. Offenders convicted of treating animals badly or neglecting them can be disqualified from keeping or dealing with them in the future under the animal welfare law.
- **Drug Treatment and Testing Orders:** These aim to help offenders reduce their drug misuse and the crimes they commit because of it. They are given for up to three years to offenders who have a serious drug problem and who might otherwise be given a prison sentence. Offenders must agree to treatments; to testing to ensure the treatments are being followed, and to regular attendance at court for reviews.
- **Exclusion order from licensed premises:** Offenders convicted of a crime involving violence or the threat of violence can be banned from particular pubs or shops selling alcohol for up to two years.

- **Football banning Order:** Offenders convicted of a crime of violence or disorder relating to a football match can be banned from going to future games.
- **Forfeiture and confiscation:** When offenders have been convicted of certain crimes, the prosecutor can ask the court to take property or money from them. Items that might be given up are weapons, illegal drugs, or vehicles involved in some road traffic offences. Money and possessions can be confiscated from offenders who have benefited from a criminal life style.
- **Mental Health Order:** If an adult with a mental disorder is convicted of an offence punishable by imprisonment, the judge can send the person to a psychiatric hospital for treatment.
- **Non-harassment Order:** Offenders who have been convicted of causing a victim alarm or distress can be ordered to stop the behaviour. This can include unwanted texts or shouted abuse.
- **Restriction of Liberty Order:** A RLO can last for up to a year and may be given as an alternative to imprisonment. Offenders must be in a certain place, such as their home, for a set amount of time - this can be up to 12 hours a day. They can also be restricted from going to certain places. They are closely monitored - usually by wearing an electronic tag.
- **Sexual Offences Prevention Order:** This Order can prohibit offenders convicted of a sexual crime from doing anything listed in the Order, and also request they follow certain instructions. For example, an Order might prohibit an offender from using the Internet to contact a child under the age of 16.
- **Sex Offenders' Register:** People convicted of a sexual crime can be ordered to register as sex offenders. Within three days of conviction, they must notify the police of their home address and other personal details including passport number.

3. Reoffending and rehabilitation

3.1 Background

Tables 11 and 12 illustrate the different reconviction rates for offenders, broken down first by the type of sentence given and secondly by the length of prison sentence. The figures are taken from the Scottish Government publication *Reconviction Rates in Scotland: 2014-15 Offender Cohort*, published in May 2017.²⁴

Table 11: Reconviction rates and average number of reconvictions per offender, by index disposal: 1997-98 to 2014-15 cohorts^{1,2}

	Discharged from Custody		Restriction of Liberty Order		Legacy Community Order (CSO, PO) ³		Community Payback Order ⁴		Drug Treatment and Testing Order		Monetary Disposal		Other Disposal ⁵	
	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions
1997-98	48.4	1.04			39.6	0.85					29.5	0.54	23.0	0.42
1998-99	49.1	1.09	60.0	1.56	40.3	0.88					29.4	0.53	21.5	0.38
1999-00	46.3	0.99	68.5	1.78	38.5	0.78			0.0	0.00	28.9	0.52	21.7	0.37
2000-01	47.4	1.00	62.9	1.71	38.9	0.82			58.3	1.31	28.9	0.51	22.2	0.37
2001-02	47.9	1.06	72.4	1.62	40.5	0.86			74.7	2.12	29.0	0.52	22.5	0.40
2002-03	49.9	1.13	53.8	1.21	40.7	0.84			75.5	2.41	29.1	0.52	23.0	0.41
2003-04	50.1	1.11	58.3	1.27	39.0	0.78			79.1	2.21	29.5	0.51	22.1	0.39
2004-05	47.9	1.06	57.7	1.24	39.7	0.79			78.4	2.20	29.2	0.50	22.3	0.39
2005-06	47.4	1.03	54.0	1.22	38.3	0.74			70.1	1.88	29.3	0.50	23.7	0.41
2006-07	48.5	1.06	52.4	1.07	38.1	0.72			75.2	2.03	29.0	0.49	23.7	0.42
2007-08	46.8	1.00	50.9	1.04	36.5	0.68			70.9	1.94	27.6	0.46	23.2	0.41
2008-09	47.0	0.98	47.8	0.98	37.1	0.70			67.5	1.76	26.7	0.47	23.6	0.44
2009-10	45.9	0.94	49.5	0.96	33.6	0.62			66.3	1.68	26.6	0.45	22.1	0.39
2010-11	45.2	0.91	45.0	0.86	33.7	0.61	54.6	1.15	66.8	1.62	25.6	0.44	21.9	0.39
2011-12	44.2	0.92	40.2	0.76	27.7	0.47	36.6	0.68	62.0	1.65	24.1	0.40	22.6	0.40
2012-13	43.6	0.89	36.3	0.68	14.5	0.21	32.5	0.57	65.1	1.59	23.3	0.39	21.2	0.38
2013-14	43.9	0.85	35.5	0.60	5.9	0.07	30.7	0.56	64.3	1.73	23.2	0.39	20.9	0.39
2014-15	43.3	0.85	33.5	0.59	7.3	0.11	32.7	0.58	63.3	1.71	22.2	0.35	21.2	0.36

1. Figures for previous cohorts may differ from previously published figures as updated information is fed into the Scottish Offenders Index.

2. Caution is needed when comparing reconvictions between different disposals. A disposal may affect the reconviction rates, but different disposals are given for different types of offending behaviour, which are themselves also likely to affect reconviction rates.

3. Legacy community order refers to Community Service Orders (CSOs) and Probation Orders (POs) which were replaced by Community Payback Orders for crimes or offences committed after 1 February 2011. Legacy community orders given after 1 February are for crimes or offences committed prior to 1 February 2011.

4. Community Payback Orders (CPOs) were introduced by the Criminal Justice and Licensing (Scotland) Act 2010 and came into effect from 1 February 2011. The CPO replaces provisions for Community Service Orders, Probation Orders, and Supervised Attendance Orders.

5. Includes Supervised Attendance Orders.

²⁴ <http://www.gov.scot/Resource/0051/00517340.xlsx>

Table 12 - Reconviction rates and average number of reconvictions per offender, by custodial sentence length: 1997-98 to 2014-15 cohorts^{1,2}

Custodial sentence length	3 months or less		Over 3 months to 6 months		Over 6 months to 1 year		Over 1 year to 2 years		Over 2 years to less than 4 years		Over 4 years	
	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions	Rate	Average number of reconvictions
1997-98	56.7	1.33	58.0	1.22	35.6	0.65	30.4	0.52	27.5	0.37	23.9	0.35
1998-99	59.3	1.42	57.9	1.31	33.0	0.61	33.1	0.55	25.6	0.41	21.9	0.29
1999-00	55.5	1.28	56.7	1.23	37.4	0.71	29.2	0.48	21.9	0.32	15.3	0.17
2000-01	58.0	1.31	58.0	1.24	34.5	0.64	32.3	0.54	20.8	0.30	14.8	0.16
2001-02	58.2	1.37	57.2	1.33	40.7	0.74	30.0	0.50	27.5	0.44	17.2	0.24
2002-03	61.4	1.49	60.1	1.37	36.1	0.67	30.0	0.53	27.0	0.46	16.7	0.21
2003-04	63.0	1.51	59.8	1.33	36.4	0.72	31.1	0.52	27.7	0.46	18.5	0.24
2004-05	61.5	1.44	57.3	1.31	33.3	0.69	32.9	0.55	22.9	0.41	16.4	0.20
2005-06	59.1	1.37	56.9	1.31	36.0	0.67	28.8	0.48	23.2	0.38	18.8	0.22
2006-07	60.7	1.40	58.0	1.29	37.2	0.70	30.2	0.54	25.9	0.43	13.7	0.16
2007-08	59.0	1.35	57.9	1.34	36.7	0.67	35.1	0.59	22.1	0.35	13.3	0.16
2008-09	59.7	1.38	55.1	1.20	44.3	0.83	34.2	0.53	27.0	0.44	15.0	0.19
2009-10	58.9	1.32	54.1	1.15	42.4	0.82	34.4	0.60	29.3	0.48	16.4	0.17
2010-11	61.7	1.35	53.2	1.11	41.6	0.80	32.0	0.53	27.0	0.43	12.6	0.15
2011-12	59.7	1.36	53.3	1.19	42.7	0.81	32.8	0.59	27.2	0.43	13.0	0.15
2012-13	60.5	1.39	51.8	1.13	42.4	0.80	33.0	0.54	26.4	0.40	10.0	0.11
2013-14	60.8	1.33	54.6	1.09	43.2	0.78	30.6	0.50	25.6	0.39	7.8	0.09
2014-15	60.0	1.25	54.5	1.16	40.8	0.75	29.7	0.47	23.5	0.36	12.3	0.13

1. Figures for previous cohorts may differ from previously published figures as updated information is fed into the Scottish Offenders Index.

2. Caution is needed when comparing reconvictions between different sentence lengths. The length of a sentence may affect the reconviction rates, but different lengths of sentence are given for different types of offending behaviour, which are themselves also likely to affect reconviction rates.

It is worth highlighting the note of caution the Scottish Government gave about comparing conviction rates between sentence length: *“The length of a sentence may affect the reconviction rates, but different lengths of sentence are given for different types of offending behaviour, which are themselves also likely to affect reconviction rates.”*

However, it is clear that people given very short sentences of less than three months have a high likelihood of reoffending. That rate hasn’t changed much over the past ten years despite the introduction of the presumption against short sentences.

It is always worth remembering when looking at statistics such as these that the categories are based on the sentence given, not the sentence actually served. As a result of automatic early release, for all sentences up to four years, only half will actually be served. So the shortest prison sentences category of up to three months is actually only up to a period of about six weeks.

As well as acting as a punishment and deterrent, prison is also supposed to protect the public and rehabilitate offenders. If someone is considered a real risk to public safety, spending a few weeks in prison doesn't really help. However, more importantly, it offers very little time to work with convicts and help rehabilitate them to cut reoffending.

Reform Scotland asked the Scottish Prison Service about the rehabilitation and training programmes that were available to people spending less than six months in prison. The following is the answer we received:²⁵

"In response to question 1, most of our offending behaviour programmes require individuals to be in custody for longer than 6 months. This is to allow for assessment of suitability for, and then completion of, a programme.

"In response to question 2, SPS provides a range of training and learning opportunities to individuals serving less than 6 months. Please note that SPS does not differentiate between those serving less than 6 months and those serving less than 3. These opportunities will vary from prison to prison although the following principles generally apply.

- All prisons offer a range of vocational and employment opportunities for convicted prisoners. Examples include industrial cleaning, waste management, laundry and catering.*
- Vocational qualifications are delivered at the learner's pace and as such will often require more than 6 months to complete. However, training is available to all convicted prisoners in areas such as Health and Safety, Elementary Food Hygiene and First Aid and can be completed by those serving less than 6 months.*
- Learning activities within prisons are available to all convicted prisoners regardless of sentence length. These are provided via a commercial contract and offer learning opportunities designed to meet the needs of the learner, taking account of their needs and abilities, including literacies level and their time in custody."*

The problem of the limited opportunity to help rehabilitate and train offenders serving short sentences was also highlighted by the Scottish Justice Secretary, Michael Matheson, in his written answer S5W-06095:

"The Scottish Prison Service have a range of programmes available to support the rehabilitation of individuals in custody and reduce the likelihood of reoffending. This includes assistance to deal with substance

²⁵ FOI response from the Scottish Prison Service 5 May 2016

misuse issues, planning for reintegration on release and making referrals to appropriate support agencies in the community and offering individual throughcare support to those that wish it.

“Short-term custodial sentences, in particular those of less than six months, offer limited opportunity for rehabilitation. That is why this Government is committed to reducing the use of short-term custodial sentences in favour of robust community sentences, like Community Payback Orders, which are focused on tackling the underlying causes of offending behaviour whilst also requiring individuals to pay back to their communities for the damage caused by their crimes.”

Michael Matheson’s answer to S5W-06600, in response to Liam McArthur’s question about increasing the presumption against short sentences to 12 months, further highlights the Scottish Government’s belief that short sentences do not address reoffending:

“The Scottish Government believes that custodial sentences should be reserved for those individuals whose offences are so serious that prison is the only appropriate form of punishment, and for those who pose a risk of serious harm. We recognise however that for individuals who do not fall into these categories, short-term sentences do not help either to rehabilitate or to reduce the risk of reoffending.

“The proposal to strengthen the presumption against short periods of imprisonment is only one part of our on-going and wide-ranging work designed to move away from a reliance on custody and focus on robust community sentences that promote rehabilitation. Evidence demonstrates that individuals released from a custodial sentence of 6 months or less are reconvicted more than twice as often as those given a Community Payback Order.

So, if short prison sentences are not effective ways to cut reoffending and help rehabilitate criminals, how are these goals achieved?

In May 2015 the Scottish Government published “What works to reduce reoffending: A summary of evidence”.

The report highlighted that a number of studies had found that community sentences were more effective in reducing reoffending than short-term prison sentences. This could be as a result of the increased opportunities for rehabilitation as well as the avoidance of the negative unintended consequences of imprisonment, such as losing employment or housing.

The report added that the motivation of an offender to participate in rehabilitation programmes was key to their success, and that motivation can be encouraged by a respectful and flexible relationship with a supervisor.

Strong social bonds, finding suitable employment and improved emotional well-being were also highlighted as positive ways to prevent reoffending

Ultimately, the report highlighted that desistance was a highly individualised process and one-size-fits-all interventions did not work. Rehabilitation interventions with the strongest evidence base for reducing reconviction rates were cognitive-behavioural programmes which address criminogenic needs. The Freedom of Information response from the Scottish Prison Service highlighted above shows that these sort of behavioural programmes require individuals to be in custody for longer than six months.

3.2 Impact on families

While maintaining family links helps reduce reoffending, it is also important and beneficial to the family members of those in prison. A child, partner or parent of someone sent to prison may not have committed a crime, but find themselves being punished through issues such as loss of earnings, change in care arrangements or placement in local authority care, or the loss of a parent. Indeed, with regard to children it is worth noting Article 9 of the UN Convention on the Rights of the Child, which deals with the right to maintain contact with parents. It notes that “*States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.*”

Families Outside is a charity which works solely to support the families of people affected by imprisonment. They work to “*improve outcomes for children and families affected by imprisonment so they can live healthy, active lives free from stigma and impediment.*”²⁶

The charity highlights that 27,000 children lose a parent to imprisonment each year – that is more than those children who experience a divorce.²⁷

Families Outside notes that imprisonment can be a traumatic experience for families, and its impact is often significant and enduring. This can include:

²⁶ <https://www.familiesoutside.org.uk/who-are-we/>

²⁷ <https://www.familiesoutside.org.uk/> based on 2012 FOI request to Scottish Government.

- Risk to housing;
- Financial pressures;
- Problems in caring for children
- Anxiety, distress and health problems;
- Rejection, stigma, and victimisation by neighbours and the community.

The charity highlights that families affected by imprisonment face a process of grief and readjustment throughout the course of arrest, trial, imprisonment and release and that they often have difficulty getting the information and support they need to make them feel in control during periods of crisis and stress.

Yet, as the research highlighted earlier shows, close family ties are one of the key elements in preventing reoffending.

The following is taken from the Families Outside website and is an example of the impact on a family member of a loved one being sent to prison:

“My Dad is in prison for drug dealing. He got a 12 year prison sentence. I am 17 and I never knew he did this sort of thing. It was a bit like the programme prisoners wife's when the woman had a lovely house and gorgeous clothes and stuff and when my Dad got arrested and convicted, we lost everything. But it was never really ours in the first place because it was dirty money. My Mum won't go out and is on depression tablets and I am keeping the house going by doing housework and shopping and trying to get by as normal as I can. I will never forget when our house was raided by the Police early in the morning and I was so scared. It was awful. I was 15 and had nightmares all the time about it. Trust me it was not nice and it is so frightening. I think that something should be set up for kids who have to go through all this because it is not our fault that our parents choose to commit crime.”

The imprisonment of a household member is also one of the ten Adverse Childhood Experiences (ACEs) known to have long-term impact on health and wellbeing.²⁸

Banning the use of short sentences of less than six months would therefore also have the benefit of reducing the number of children and young people exposed to this situation.

3.3 Keeping in contact

The Scottish Prison Service has recognised the negative impact imprisonment has on family life and “supporting and maintaining family links and promoting positive relationships generally while the family member is in prison is one of the SPS’s key priorities”.²⁹

²⁸ http://www.healthscotland.scot/media/1448/tackling-the-attainment-gap-by-preventing-and-responding-to-adverse-childhood-experiences_english.pdf

²⁹ <http://www.sps.gov.uk/Families/Families.aspx>

One of the issues around prisoners maintaining links with family networks is the ability to have regular contact. While visiting inmates is possible, for some friends and family it can require a difficult journey, incorporating different means of transport.

Family members can email prisoners, though there is a 40p charge for this.³⁰ The emails are then printed out and handed to prisoners with the mail.³¹ Prisoners can also phone friends and family. However, prisoners in Scotland do not currently have access to landline phones in their cells, and therefore there are restrictions on when they can phone.

The phone system works on a credit basis and payment comes from prisoners personal cash account, wages and savings or from money from friends and family. Prisoners are issued with a PIN number to access an outside line and are only allowed to call numbers on their list of numbers of family, friends and legal contacts.³²

Some prisons in England and Wales have landline phones in the cells, allowing prisoners more frequent contact. Berwyn prison in Wales has landline PIN phones in cells.³³ It also operates a prison voicemail service which allows family members to leave messages, and for prisoners to respond through a unique number.³⁴ HMP Dovegate in Staffordshire also has in-cell telephones.³⁵

A National Audit Office report from 2013³⁶, which looked at the prison estate in England and Wales and whether it was likely to improve value for money, highlighted the benefits of allowing in-cell telephones:

“In-cell telephones, as well as allowing prisoners to maintain family contact (important for successful rehabilitation), also contribute to prisoner safety.”

However, the costs of such calls should also be considered. PrisonPhone UK have highlighted that “Sometimes, just one call to a mobile can take up close to a third of the allowance, leaving the prisoner with precious little else to spend on essentials such as toiletries, snacks or stamps to write letters home”³⁷

In other words, not only is it the availability of phones that can restrict access to loved ones, but the expense of contacting them as well.

³⁰ <http://www.emailaprisoner.com/about.cfm>

³¹ <http://www.sps.gov.uk/Families/KeepinginContact/Letters-Phonecalls-Email-a-Prisoner.aspx>

³² <http://www.sps.gov.uk/Families/FrequentlyAskedQuestions/FamilliesFrequentlyAskedQuestions.aspx>

³³ <https://www.justice.gov.uk/contacts/prison-finder/berwyn-prison-information>

³⁴ <https://www.justice.gov.uk/contacts/prison-finder/berwyn-prison-information/berwyn-visiting-information>

³⁵ <http://www.insidetime.org/hmp-dovegate-prison-regime-info/>

³⁶ National Audit Office, Managing the Prisoner Estate, December 2013

³⁷ <https://www.prisonphone.co.uk/about-us/>

4. Policy recommendations

Ban jail sentences of six months and less (or while automatic early release remains, sentences of 12 months and less)

Although there is a presumption against sentences of less than three months, such sentences continue to be handed down by the court. Statistics detailed in chapter two illustrated that 30% of convicted offenders given a prison sentence in 2015/16 were given a sentence of less than three months, despite the presumption being in place. As automatic early release means that only half of a short sentence is actually served, 65% of offenders given a prison sentence in 2015/16 actually served a three month sentence or less.

Yet, information from the Scottish Prison Service has highlighted that there are limited opportunities for rehabilitation and training within such a short sentence.³⁸

Prison is supposed to: protect the public; rehabilitate offenders; deter others; and punish.

Such short sentences cannot rehabilitate. They offer little protection to the public – if someone is genuinely a danger to the public then they should be in prison for considerably more than the six weeks they would actually serve. It is arguable whether such a short sentence is a deterrent to others. And finally, there is a case that, because of the potential disruption a very short sentence can cause in terms of loss of income and/or employment as well as parenting and/or caring responsibilities, the punishment is disproportionate.

Therefore, Reform Scotland believes that sentences of less than six months (or less than 12 months under automatic early release should be prohibited)

This would also necessitate removing the ability of JP courts to hand out prison sentences altogether as currently the maximum sentence they can give is less than six months, at 60 days.

End automatic early release for short sentences.

Early release should always be discretionary and earned. Clearly prison overcrowding could make it difficult to introduce such a measure straight away. However, the prohibition on short sentences of less than six months should begin to free up some capacity which in turn would allow this policy to be re-considered. As well as ensuring some level of earned early release, it also creates a more transparent judicial system where victims, criminals and the

³⁸ FOI response from the Scottish Prison Service 5 May 2016

general public can have a better understanding of the actual sentence being given.

Pilot schemes for increasing contact between prisoners and their families.

Evidence suggests that maintaining close family ties can help prevent reoffending. However, due to distance or circumstance some family members will be unable to see or speak to their loved one as often as they, if at all. Even if travel and transport are not a problem, prison rules also place restrictions on the frequency and duration of visits.

If family contact helps reduce reoffending, as well as helping those left outside, then it is something that needs to be encouraged. Reform Scotland believes that there should be some pilots looking at innovative ideas for increasing contact. For example having landline phones in prison cells, this is something that already happens in some prisons in England and Wales, as well as looking at the cost to individuals of keeping in phone contact.

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