

Submission by the Centre for Crime and Justice Studies to the Labour Party Justice and Home Affairs Policy Commission, June 2019

About the Centre for Crime and Justice Studies

The Centre for Crime and Justice Studies is an independent educational charity that advances public understanding of crime, criminal justice and social harm. Through diverse, inclusive and durable collaborations, we work to advance knowledge of criminal justice, encourage just and fair policy and practice, and support good legislation.

Early intervention

The proportion of the population involved in criminal activity tends to peak at adolescence or young adulthood and then declines with age. What do you think are the key drivers of criminality in young people and how can schools, the police, local authorities, and others work together to address these?

Age-Crime Curve

The term 'drivers' tends to imply a deterministic view of crime. A great deal depends on the relationship between young people, their families, their communities and public services. How young people's experiences are managed within families and communities exerts an effect on what is considered 'criminal' and what comes to the attention of public services and the youth justice system. The focus, deployment and level of services also plays a part in distilling what can be labelled 'crime'.

The Age-Crime Curve conceals a great deal of variation among individuals and over time. The imposition of austerity has continued a long-term trend for the number of First Time Entrants (as the Youth Justice Board calls them) to youth justice to decrease, and according to the latest Crime Survey for England and Wales fewer young people are experiencing crime than in 2010. A follow up study of 'debut' offenders has shown that those who later become 'chronic' offenders are decreasing in numbers, suggesting that reductions in First Time Entrants have had an effect on the size of this group.

Influences

A number of key influences on children and young people's behaviour should be acknowledged:

1. Developmental milestones

It is well-established that the behaviour of children and young people, as well as young adults (up to age 24 years) is influenced by their immaturity, which makes it difficult for them to foresee the consequences of their actions, to exercise control over their impulses and to take responsibility. By international standards England and Wales's minimum age of criminal responsibility, at ten years, is very low. Labour should consider proposals for raising the age and instituting alternative procedures, putting child welfare and protection to the fore. The average minimum age of criminal responsibility in the European Union has been calculated to be 14 years of age; this should be the floor for new proposals in England and Wales.

Another implication is that restorative conferencing makes demands for communication skills that are not yet fully developed in many young people. Responses to young people should therefore always take account of maturational progress.

2. Adverse Child Experiences

Adverse Child Experiences (ACEs) are understood to create 'toxic' stress which finds an outlet in harmful behaviours. In a *Lancet* article published in 2017, 'The effect of multiple adverse childhood experiences on health: a systematic review and meta-analysis', Karen Hughes and her colleagues have concluded that there is a strong association between ACEs and violence. Forms of violence among young people are also, according to international evidence collated by the World Health Organization, associated with poverty and deprivation.

The Youth Justice Board (YJB) is developing new responses to trauma, such as Enhanced Case Management (ECM), but such approaches require considerable guidance and input from specialist trauma experts if they are not to be halting or ineffective. This is an example of the potential for public health leadership in designing new patterns of service at primary, secondary and tertiary levels. Responsibility for alleviating hardship and poverty falls on a government committed to implementing social justice.

3. Responses of educational, social service and youth justice agencies

Processing of cases through criminal justice can have deleterious effects. A Campbell Collaboration report in 2018, *Police-initiated diversion for youth to prevent future delinquent behavior: a systematic review*, found that in many cases diversion has positive effects on a young person's future contact with the justice system. Its summary states:

Police-led diversion of low-risk youth who come into contact with the justice system is more effective in reducing a youth's future contact with the justice system compared to traditional processing.

New approaches to prevention have been inspired by public health thinking. Preventive programmes that support parents and influence children's behaviour are recommended by the World Health Organization because they have a sound basis in evidence. They include: Family-Nurse Partnerships; parenting programmes; and school-based interventions that address gender norms.

What should be the core response of each public service when a young person is at risk of offending or has offended?

The child comes first

First of all, the response should be guided by a concern for the child's best interests and their rights under the United Nations Convention on the Rights of the Child.

Each public service should be seeking to find the best method of assessing and addressing the needs of young people. This will mean supporting families and staff in direct contact with the young person and then mobilising appropriate services in order to give a proportional response. Referral to a court system should be a last resort, not least because punishment is known to have very limited effects on conduct. A court referral should not be necessary before appropriate services are provided.

Equalities

There should be an increased level of policy awareness, service reorganisation and training to ensure equalities are respected. According to the YJB's *Strategic Plan 2019-2022*, a quarter of First Time Entrants to the youth justice system are currently from Black and Minority Ethnic groups and the Board rightly makes redressing such disproportionality a priority. Underlying the problem is a distrust of criminal justice which requires that all agencies look closely at their practices. According to recent research by the London School of Economics the disproportionality in police stop and search is increasing, though evidence about its tactical effectiveness is very limited indeed.

How can public services work better together to identify those at risk of offending?

1. A partnership structure

In order to deliver the scope of coordination required it is necessary to go beyond the standard youth justice team model and to create an integrated system with high-level agency representation, following the example of the Violence Reduction Unit (VRU) in Scotland.

Management should be organised along the lines of public health systems which seek to organise primary, secondary and tertiary services. Investment plans should be sustaining adequate levels of service based on comprehensive survey and incident data.

Partnerships with the private and voluntary sectors need to be put in place which yield resources without imposing heavy-handed obligations. While the government has consulted about the value of a public health duty to prevent violence, it should be noted that no such duty has applied in Scotland, where the VRU, inspired by a public health model, has operated for some years.

2. Preventive measures

Prevention by means of public health measures has several advantages over criminal justice intervention. Having followed a cohort of children who started secondary school in 1998, *The Edinburgh Study of Youth Transitions and Crime* showed that early criminal justice intervention can be uncertainly focused and risks simply recycling young people through the system. The Study was

influential in changing the youth justice approach in Scotland which became the backdrop for significant decreases in recorded crimes by young people.

Instead of seeking to select out individuals at risk, a primary prevention approach starts by collecting data about the incidence and prevalence of problems in order to identify locations and groups of interest. Its first aim is to ensure that no one is excluded from basic universal services.

Primary prevention operates at the group and universal level by providing information and services, energising and supporting community action. According to the Children's Commissioner, 1.57 million children in need lack any recognised form of support. Labour should restore local services for families and communities, coordinated by health and social service teams. Resources and services based in educational settings should be provided in order to ensure that children can receive all the emotional and other support necessary for them to learn. The decline in school nurses, for example, should be reversed so that they can better identify mental health difficulties.

We have yet to see evidence that school-based police-work pays tangible dividends. There should be clear boundaries between the roles of police and the other services so that young people do not prematurely enter the youth justice system.

Courts

How can courts work more closely with local authorities, health service, probation providers and other public bodies, as well as the third sector, to address underlying behaviour?

As our responses to the section on early intervention make clear, well-resourced and well-evidenced primary public health interventions delivered by local authorities and health service providers are internationally recognised to be the most effective and cost-saving ways of preventing and addressing harmful behaviours long before contact with the criminal justice system might occur.

Nurse visitation schemes, parenting programmes, pre-school enrichment and social development programmes have all been shown to prevent various types of interpersonal violence.

Alongside primary interventions, effective secondary interventions aimed at preventing violence for at-risk groups include identification and brief advice (IBA) programmes delivered in healthcare settings to people drinking alcohol above low-risk levels, and more structured interventions for people who are alcohol-dependent.

It is not in the interest of society or the individual for persistent low-level offenders to serve very short sentences in prison, further exacerbating problems of overcrowding, and reducing their chances of rehabilitation. How can sentencing be rationalised to address these issues?

At the outset, it is firstly important to acknowledge that the problem of short sentences of imprisonment is not one that can be resolved by sentencing change alone. Sentencing reform – whatever its nature – should only be one element in a wider programme of policy and practice

change. There is no single technical legislative change which *on its own* will coherently and sustainably reduce the use of short-term custody.

The ambition to reduce the overuse of prison is one that we support. But it will require a broader based, cross-departmental strategy founded on addressing wider social inequalities and underlying needs. Its course will require both political leadership and political will from the outset to foster and nurture such a strategy. It should be premised on producing hearts and minds change rather than isolated technical reforms.

There is then the question of what sentencing change would produce the most effective diversion from short sentences in practice. A presumption against short sentences or a ban on short sentences are the most obvious reform contenders. Neither is likely to be the best. We would encourage the Labour party to consult more widely on the range of sentencing options that might best divert people from short-term custody.

On the presumption: the introduction of the presumption against prison sentences of three months or less in Scotland did not have a significant impact on sentencers' use of short-term custody. Sentencers reported they used custody in much the same way as they had before the presumption was introduced. Sentencing trends back this up. The proportion of custodial sentences for three months or less remains relatively unchanged since the presumption's introduction. Whilst there has been a reduction in the number of people sentenced to under three months, this is more likely a reflection of a reduction in the number coming before the court, rather than a change in sentencing practice.

This lack of impact is unsurprising. A presumption amounts to asking sentencers who are minded to give a short term of custody whether they are sure about this. Most likely are. Given that in England and Wales custody is already only to be used as a last resort, in statutory terms at least, it is even less likely to have a meaningful impact in practice here.

On a ban: this carries a higher risk of up-tariffing to longer custodial sentences and introducing a new (potentially higher) custodial sentencing tariff for some coming before the courts.

One option we are interested in exploring is to make imprisonment the exception. This would entail legislative reform to require sentencers to evidence / explain why short-term imprisonment best meets the intended sentencing outcomes for an individual. Unlike a presumption against custody as enacted in Scotland, which requires a sentencer to state why no other (community-based sanction) is appropriate, this puts the onus on short-term imprisonment to demonstrate its relevant effectiveness to other measures.

This is similar to sentencing reform introduced in Germany in 1970 which resulted in rebalancing from short terms of imprisonment to fines and suspended sentences.

Sentencing reform, whatever its nature, if it is to be successful in more than symbolic terms, should engage with the following issues:

1. The use of prison as a last resort for persistent, low level offending.

Most people are given a short sentence of imprisonment not because of the ‘seriousness’ of their offence. Rather most are given a short-term prison sentence because of their persistent low-level law breaking or their non-compliance with community-based criminal justice options. Sentencing reform has to tackle the position of prison as a backstop for the perceived failure of all other criminal justice measures.

2. Cohesive reform across the sentencing framework

Attempting to address the harms of short-term imprisonment should not blind attention to the sentencing framework overall. In particular to the impact of longer prison sentences across the board, particularly the increased use of sentences of four or more years. Whatever the other merits of seeking reforms to address short-term sentences, such reforms – even at their optimum – may address prison churn and free up prison officer time. They will not fundamentally address high prison numbers. The most impactful change will come from looking comprehensively across the sentencing framework, looking at custody lengths overall. In addition, by only reviewing part of the system (such as short sentences), if it is not part of a more comprehensive review of sentences, will risk potentially producing unintended consequences in other parts of the system. For example, up-tariffing to longer custodial sentences.

Some groups of people, for instance women offenders or people from a Black and Minority Ethnic (BAME) background, are much more likely to receive a custodial sentence for a first offence. What can we do to tackle underlying biases within the criminal justice system so sentencing is applied fairly?

1. Early intervention

In a *Lancet* article published in 2017, ‘The effect of multiple adverse childhood experiences on health: a systematic review and meta-analysis’, Karen Hughes and colleagues confirmed a link between Adverse Child Experiences and subsequent violence. Access to preventive services can help to avert the unexpected explosion of violence emanating from past trauma and leading to a serious first offence.

According to Ministry of Justice statistics, the current rate of engagement with Liaison and Diversion Services is higher for women than their arrest rate would suggest. There is considerable scope for diversionary services to have long-term effects on criminal justice outcomes, provided that these services are fully rolled out and given sustained funding which is matched by access to prompt and sustained treatment.

2. Disparities in prosecution rates

When compared to their proportions in the population, black females and black males are much more likely to be prosecuted than their white equivalents, according to the government report *Statistics on Women and the Criminal Justice System 2017*. *Dangerous associations: Joint enterprise, gangs and racism*, research published in 2016 by the Centre for Crime and Justice Studies revealed how the dubious reliance on ‘gang’ databases which overwhelmingly focus on black people has led to biased prosecutions.

The Lammy Review, published in 2017, identified distrust of the criminal justice system as a factor in accelerating BAME groups' involvement with criminal justice. One outcome is a reluctance to plead guilty, which can attract a higher sentence. Lammy therefore championed forms of resolution that do not depend on guilty pleas and do not generate a criminal record. The government's *Female Offender Strategy* (2018), also points to examples of diversionary schemes such as Checkpoint, which supports the individual through an agreed programme over a period of time.

Police and prosecutors should set challenging targets for Out of Court Disposals (OCD) that are informed by local data on gender and ethnic representation. Local review panels should be responsible for holding practitioners to account and driving progress forward. Local planning should ensure that services are linked to diversionary schemes in ways that are effective and timely for the people involved.

3. Disparities in custodial sentencing

According to research cited by *The Lammy Review*, BAME groups are more likely to receive custodial sentences than white defendants. In the case of drug offences, the odds of a custodial sentence are much higher for BAME people.

The Lammy Review expressed concern that the reports available to the courts were failing to give sufficient and informed understanding of people's situations and circumstances. In evidence to the Justice Committee in March 2019, Lammy argued that sentencers are socially remote from the people who come before them.

In our view policymakers should therefore consider direct countervailing measures to protect people from unjust sentences, by, for example, immediately restricting the range of sentencing options available in dealing with cases.

Women are more likely than men to be given short prison sentences, up to three months. According to the *Counted Out* research published by the Prison Reform Trust in 2017, black women are more likely than white women to receive a custodial sentence, despite the fact that the proportion of black women heading families as lone parents is much higher than among their white counterparts. In its *Female Offender Strategy* (2018), the government has accepted that short prison sentences are unproductive and committed itself to introduce reforms.

Women's centres with a residential component should be given extensive opportunities to offer alternatives to custody which can command the support of sentencers. It is important that these centres are widely accessible and can effectively promote family links. Analysis by the Justice Data Lab in 2015 indicated that women's centres were associated with improved conviction outcomes. Benefits from the centres, such as improved health and better family connections, should be valued, just as much as reduced convictions.

4. Discrimination and confidence in the criminal justice system

According to research for *The Lammy Review*, BAME people in general show disproportionate levels of distrust in the fairness of the criminal justice system. Treatment by the police is a significant factor in causing distrust, which is associated with disproportionate levels of stop and search on members of black communities. Information from 'gang' databases disproportionately targets black people as suspects; the Information Commissioner has issued a notice to the Metropolitan Police on its misuse of such data. Black women are subject to a much higher arrest rate than white women according to *Counted Out* research by the Prison Reform Trust.

Fair treatment, objective information management, and better communication can help to mitigate the negative effects of measures such as stop and search on confidence in the criminal justice system. Adequate funding should be maintained for organisations that are fully sensitive to the needs and circumstances of communities, such as Southall Black Sisters.

Prison inspection reports reveal significant changes in the pattern of representation among a wide range of faiths and communities. Greater monitoring of minorities is called for at each stage of criminal justice so that the causes of any disproportionate figures for minorities in the prison system can be better identified. According to the *Counted Out* research by the Prison Reform Trust, women from the Gypsy Roma and Traveller communities, for example, are a particularly over-represented group in the prison system.

It is not an accident that disproportionalities in the criminal justice system tend to affect groups already suffering the effects of other inequalities. Policymakers should be aware that social inequalities in effect underpin and licence biased treatment, and they must seek to strengthen their broad strategic challenge to inequality so that it addresses the consequences that appear in a mediated form within criminal justice.

Offender management

How should the criminal justice system work with other public bodies to ensure people convicted of low-level offences are not dragged into a cycle of reoffending?

The involvement of the criminal justice system in the first place can be the factor which perpetuates a cycle of offending, particularly when first contact occurs in childhood or adolescence. Universal preventive services which aim to address needs, regardless of contact with the criminal justice system, as well as diversionary schemes into these services at first point of contact with the criminal justice system, should be prioritised.

If there is a presumption against short sentences, how can we ensure community-based alternatives, command the confidence of the public and the criminal justice system, as well as provide a chance for effective rehabilitation?

Getting the reorganisation of probation right this time will be critical.

A presumption against short-term custody encourages thinking about reducing short-term custody alongside an increase in the use of community sentences. We would instead propose that any sentencing reform should be seen as one part of a comprehensive change agenda. This should be both across criminal justice interventions from discharges upwards, as well as taking seriously the need for a cross-departmental strategy to address fundamental needs such as poverty, mental health and trauma, substance misuse.

In addition, it is important to consider:

1. Proper resourcing for community alternatives

The introduction of a restriction to short-term custody, should it successfully divert people from prison to community alternatives, which, as described in our response on courts and sentencing, is by no means certain, will not necessarily enable a similar transfer of money from prison to community alternatives. It is likely that the nature of cost savings, produced by a presumption against short sentences, would be to prison officer time but not to the costs of running prison establishments, nor would it significantly reduce prison places.

As an illustration of this, in Scotland it was estimated that if the presumption against short sentences of less than three months led to a 50 per cent reduction in the 14,686 sentenced to a short term of imprisonment, this might 'save' 300 prison places. But it would also 'create' 7,300 additional people requiring support and supervision in the community.

This should be impetus to do more rather than less. Introducing a stronger restriction on the use of prison rather than a presumption against short sentences, would enable prison wings and units to be closed. This would create an opportunity to shift money from prison to community alternatives.

2. Adoption of a public health approach to drug misuse

Treat problematic drug use as a public health problem to be dealt with through a network of local health boards rather than a criminal justice issue, as is the case in Portugal.

Which public services beyond the criminal justice system should be included in offender management?

For some years the process of offender management has been organised around criminogenic risks and needs. These are meant to be individualised so that a formula for addressing all of them can be arrived at. However this model of offender management depends on the quality of assessment and ongoing communication and therefore on establishing a positive relationship between the supervisor and supervisee. High caseloads make the process highly challenging. In many cases we believe that a positive relationship can only be formed if the work is trauma-informed, so that the emotional needs of the supervisee are acknowledged.

The assumption has been that any extensive need can be met by providing assistance through partner organisations. Thus drug and alcohol services, housing support, and mental health services would be necessarily and frequently engaged. If personal support requires strengthening then a mentoring service can be considered. However there are various ways in which such partnerships can be coordinated and delivered.

The challenge for effective partnerships is to make sure that assessment and service provision are reliable and timely. Should services be contracted and delivered as a condition of an agreement? Should integrated, multi-service teams be organised? What underlies these different options is a fundamental question about funding and resources. The major constraint on delivery is the availability of services that can be delivered flexibly in terms that the individual can engage with. Local services have been affected by funding cuts at a time when needs of various kinds have risen. Mental health services are known to be under strain, as are drug and alcohol services. According to the House of Commons Public Accounts Committee, in their 2019 report *Mental health services for children and young people*,

Most young people with a mental health condition do not get the treatment they need, and under current NHS plans this will still be true for years to come...

Four out of five adults with alcohol dependency were not in treatment according to Public Health England's *Public Health Dashboard, National Comparisons*, accessed 2019. Such shortages can be identified through rigorous auditing. Yet the abiding impression is that money spent on offenders' needs is being constrained not only by pressures on services but also by marketisation and lack of investment in offender management. In 2019 The National Audit Office report on *Transforming Rehabilitation* criticised the failure of reforms, citing ineffective Through the Gate (TTG) services to support transition from prison and 'patchy third-sector involvement'.

A much broader assessment of the needs of all vulnerable populations, using a public health model, would enable managers to develop a more adequate understanding of the range of offender needs and with the support of additional investment begin to plan for a better funded and organised system.

What changes need to be made to the management of women offenders in order to create a presumption against custodial sentences for non-violent offending?

Tackling the unnecessary and harmful imprisonment of women for non-violent offences has been the subject of more than one government strategy. In these strategies the underlying social needs of women who are currently imprisoned are well recognised. The potential for a network of women sensitive services to better address these needs in the community are equally well rehearsed (for example, by Liz Hogarth in *Trapped in the Justice Loop*, which we published in May 2017).

Yet in spite of this apparent progress, the use of prison for women seems to be relatively unchanged, and some have argued has worsened, since Corston's landmark review of women in contact with criminal justice in 2007 (for example, see Inquest's *Still Dying on the Inside*). Women continue to be imprisoned overwhelmingly on short sentences for non-violent, low-level law breaking.

We share the desire, well-articulated by many others, to end the imprisonment of most women. However, legislative change such as a presumption against custody, no matter how well-intentioned, would be set up to fail if it is expected to be the lynchpin that reverses the current overuse of prison for women.

It is noteworthy that the Scottish presumption against short sentences did not reduce the number of women imprisoned for a sentence of 0-3 months. Indeed, women are imprisoned for a period of up to three months at roughly the same rate that they were before the presumption was introduced, and for a very similar profile of low-level, non-violent lawbreaking (the majority for shoplifting and public disorder).

One explanation of this is that women are mainly imprisoned on a short sentence for persistence, or non-compliance, rather than for the seriousness of their offending. A presumption such as that imposed in Scotland does not address this fundamental use of prison as a backstop for the perceived failure of other criminal justice measures. Thus there may well be more effective ways than a presumption against custody to reduce the use of prison for women.

Whatever the nature of legislative change introduced, its contribution will likely only be felt if it is embedded in a wider strategy guided by:

1. Preventative public services

Prevention and broad-based, accessible public services for women and their families tackling underlying issues of trauma, violence, insecurity, lack of economic independence, and addictions. Such a network would ensure there is appropriate support for troubled women without criminalising them, as well as a network of services to refer women to who do come into contact with the criminal justice system. The principles of a coherent network of women centre projects was well set out in *The Corston Report*.

However, in practice their establishment have been one of the many victims of the Transforming Rehabilitation disaster. This network should be rebuilt, expanded and nurtured so that it is embedded in local communities.

2. A centre of gravity outside criminal justice responses

Given that addressing the fundamental issues affecting women in trouble with the law are outside the criminal justice system, responsibility for women lawbreakers should lie with a department other than the Ministry of Justice. The Department for Community and Local Government could take ownership of the local commissioning arrangements for a network of women's services. Women will always be the poor relation if left to the Ministry of Justice or if left to an agenda where departmental cost savings are allowed to dominate.

3. Appropriate resources

We don't need another holistic, women-centred vision for women. The aspiration for change has been repeatedly well expressed. We need an appropriately resourced systems change.

4. Reconfigured women's prison estate

This includes a timetable for closing the current women's estate. For the 125 or so women whose lawbreaking is a danger to society, a network of small therapeutic secure units should be created.

More information

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