

Independent Sentencing Review 2024 to 2025

Call for Evidence

This Call for Evidence begins on 14 November 2024

This Call for Evidence ends on 9 January 2025

This Call for Evidence is also available at:

<https://www.gov.uk/government/calls-for-evidence/independent-sentencing-review-2024-to-2025>

<https://consult.justice.gov.uk/digital-communications/independent-sentencing-review-2024-to-2025-cfe>

Contents

About this Call for Evidence – page 3

Foreword - page 4

Guidance – page 5

Terms of Reference – page 6

Themes – page 8

About you – page 15

Contact details – page 16

Confidentiality – page 17

Personal data – page 18

Impact Assessment – page 21

Welsh Translation – page 22

About this Call for Evidence

To: This Call for Evidence exercise is intended to gather evidence as part of the Independent Sentencing Review. The Review welcomes responses from all who have an interest in this area.

Duration: From 14/11/2024 to 9/01/2025

Enquiries (including requests for the paper in an alternative format) to: Independent Sentencing Review Secretariat
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: SentencingReview2024-25@justice.gov.uk

How to respond: Please respond using the online portal. Link here:
<https://consult.justice.gov.uk/digital-communications/independent-sentencing-review-2024-to-2025-cfe>

If this isn't accessible to you, please submit responses via email or mail. Contact details are provided above.

Foreword – The Rt Hon David Gauke

The prison population in England and Wales has doubled over the last 30 years. We now have the highest incarceration rate of any Western European country and the prison population is projected to continue to rise by four and a half thousand offenders a year. Supply of new prison places has not kept up with the increase in demand and for the eighteen months after February 2023, the male estate was routinely operating at above 99% capacity.

In Summer 2024, these capacity pressures brought this prison system within days of collapse, forcing the Government to introduce measures to release some prisoners early. This acted as a pressure valve, freeing up capacity in the short-term enabling the criminal justice system to continue to function, but it has not provided a long-term solution to the challenges of a rising prison population and high rates of reoffending.

There are many factors that have contributed to this, but the fact that the average custodial sentence length stands at nearly 21 months, up from about 13 months 20 years ago, has undoubtedly had a profound impact.

Building prisons costs vast amounts of taxpayer money, and we cannot build at a fast enough rate to keep up with current levels of demand. We need to fundamentally look again at sentencing policy if we want to get control of the prison population. Prison will always play a key role in our justice system, and for many offences it will always be the only answer, but we must face reality that the vast majority of offenders will be released. We need to make sure that when that happens, we have a probation system fully equipped to manage them, and that they are less likely to reoffend and create more victims of crime. We also need to look at the areas where the current system is failing, like tackling the issue of hyper-prolific offenders.

This review provides an opportunity to look at how we can make the system better and more effective, looking to other jurisdictions who have faced similar challenges, and at how we can harness new technology to manage offenders outside of prison.

The scale of this challenge should not be underestimated, but the review will not shy away from the difficult questions. I encourage all those responding to the call for evidence to be ambitious, and I welcome any ideas which challenge current thinking, are innovative, or which spotlight best practice and how it can be extended, so we can build a justice system which is sustainable now and in the future.

Guidance

This Call for Evidence exercise is intended to gather evidence as part of the Independent Sentencing Review. **This Call for Evidence is open for eight weeks, from 14 November 2024 until 9 January 2025.**

Views are welcomed from all who have an interest in this area. Respondents are asked to consider the issues raised in this document and to provide responses to some or all of the questions asked, providing any documentary or other evidence available to support their position.

All submissions and evidence provided will be considered and used as part of the Independent Sentencing Review to assist the Chair and Panel in developing recommendations. The Review is working to tight timeframes, so respondents are encouraged to submit evidence as soon as convenient. The Chair and Panel will issue the outcome of the review to the Ministry of Justice and this evidence may be referenced in a final report. Given the immediacy of the problems the review addresses, this call encourages evidence that extends existing ideas, or that may be ambitious, innovative, or new.

An Impact Assessment has not been prepared for this paper, as its purpose is to gather evidence, rather than to put forward policy proposals for consultation.

If respondents are unable to submit evidence through the online portal, evidence can also be shared with the Independent Review via email SentencingReview2024-25@justice.gov.uk or via letter to the Independent Sentencing Review Secretariat, 102 Petty France, London SW1H 9AJ.

Terms of Reference

In Summer 2024, the capacity pressures on the prison system brought it dangerously close to total collapse. On taking office, the new government was forced to announce emergency measures that reduced the custodial term of some standard determinate sentences from 50 percent to 40 percent of a sentence.

This review of sentencing is tasked with a comprehensive re-evaluation of our sentencing framework. Its goal is to ensure we are never again in a position where the country has more prisoners than prison places, and the government is forced to rely on the emergency release of prisoners.

To do so, the review will be guided by 3 principles:

- firstly, sentences must punish offenders and protect the public - there must always be space in prison for the most dangerous offenders
- secondly, sentences must encourage offenders to turn their backs on a life of crime, cutting crime by reducing reoffending
- thirdly, we must expand and make greater use of punishment outside of prison

In developing their recommendations, the independent Chair and panel are encouraged to draw not only on national data but also on international comparisons. This sentencing framework must follow the evidence of what reduces offending.

Sentencing is a matter for the independent judiciary and the review will therefore not look at sentencing in individual cases or the role of the judiciary.

The review will provide long term solutions for our justice system by:

- examining the use and composition of non-custodial sentences, including robust community alternatives to prison and the use of fines
- looking at the role of incentives in sentence management and the powers of the probation service in the administration of sentences in the community
- looking at the use and impact of short custodial sentences
- reviewing the framework around longer custodial sentences, including the use of minimum sentences, and the range of sentences and maximum penalties available for different offences
- looking at the administration of sentences, including the point at which offenders are released from prison, how long they are supervised in the community on licence, recall to prison, and how technology can support this
- considering whether the sentencing framework should be amended to take into account the specific needs or vulnerabilities of specific cohorts, such as young adult offenders, older offenders, and women
- considering the approach to sentencing in cases of prolific offenders

- considering specifically sentencing for offences primarily committed against women and girls

There are some important areas which we consider are best-placed to be progressed outside of the review. The review will not consider:

- the Imprisonment for Public Protection (IPP) sentence or the administration of it
- the use of remand
- the youth sentencing framework
- wholesale reform of the murder sentencing framework: Whilst the review may consider the impact of sentencing for murder on the wider sentencing framework, the department is considering wholesale reform of homicide law and sentencing separately
- out of court resolutions

The review should submit its findings in full to the Lord Chancellor by Spring 2025.

Themes

Theme 1: History and trends in sentencing

Background:

- There are five statutory purposes of sentencing: the punishment of offenders, the reduction of crime (including its reduction by deterrence), the reform and rehabilitation of offenders, the protection of the public, and the making of reparation by offender to persons affected by their offences.
- There have been significant legislative changes to sentencing in recent years, for example the introduction of Schedule 21 to the Criminal Justice Act 2003 for the sentencing of murder, increases in maximum penalties, and the expansion of mandatory sentences. There has also been an increase in the average time spent in custody from 12.7 months in 2003 to 20.9 months in 2023.
- This review will examine to what extent these changes have met the statutory purposes of sentencing and what the impacts have been, including on levels of crime and the views on sentencing of those who have been impacted by crime.
- The review will also examine how these changes have contributed to prison population growth and high probation caseloads.
- It will look to learn from countries who have successfully reversed inflationary trends. For example, the Netherlands has seen its prison population steadily decrease by over 40% between 2006 and 2023, from one of the highest incarceration rates in Western Europe.

What have been the key drivers in changes in sentencing, and how have these changes met the statutory purposes of sentencing?

In answering this question, you might want to consider:

- Key drivers behind rising sentence lengths, including external factors or pressures.
- The impact on sentence lengths of specific legislative changes, such as the impact of the introduction of Schedule 21 on wider sentencing, increases in maximum penalties, and the expansion of mandatory sentences.
- The specific crime types or sentence types that have experienced large or rapid inflation, and why this has happened.
- To what extent current sentencing practice meets the statutory purposes of sentencing.
- The impact of changing sentencing practices, including on levels of crime and reoffending.
- International jurisdictions that have experienced similar trends, as well as those which have experienced the opposite, and what we can learn from them.

Theme 2: Structures

Background:

- Parliament sets the sentencing framework, including maximum, and in some cases minimum, sentences, and legislates on aspects of sentence delivery.
- The Sentencing Council provides guidelines on the application of the law to promote transparency and consistency.
- The judiciary independently applies the law and passes a sentence that considers the specifics of each individual case. Discounts are available for early guilty pleas.
- The Attorney General may refer sentences passed in the Crown Court for specified offences (all indictable only offences and certain triable-either-way offences), which appear to be unduly lenient, to the Court of Appeal for review. Any reference must be made within 28 days of the sentence being passed. Anyone can ask the Attorney General to consider referring a sentence.
- This review will consider whether changes to structures around how new sentencing legislation is introduced and implemented may be needed to ensure sustainable sentencing into the future. This could, for example, include processes that would ensure supply and demand in the system are balanced.
- This review will also consider the hierarchy of available sentence types, including whether our current understanding of the punitive nature of different sentence types is correct.

How might we reform structures and processes to better meet the purposes of sentencing whilst ensuring a sustainable system?

In answering this question, you might want to consider:

- The role of the Government and Parliament, and how external campaigns influence policy.
- The role of the Sentencing Council.
- The statutory purposes of sentencing.
- The overall hierarchy of sentencing options available, including our understanding of the punitive nature of different sentence types.
- Judicial confidence in available sentencing options.
- How legislative changes can have intended and unintended consequences on sentencing practice.
- The impact of the unduly lenient sentencing scheme on sentencing.
- International examples of bodies responsible for sentencing, and what we can learn from other approaches.

Theme 3: Technology

Background:

- We already use technology to support the management of offenders in some instances, including monitoring location, imposing enforcing curfews and monitoring alcohol consumption.
- Technological advancement might offer new and innovative options for sentencing. This could, for example, mean new ways of tracking offender behaviour to protect the public, curtailing use of technology as a form of punishment, or influencing behaviour to support rehabilitation.
- For example, mobile biometric authentication in Arkansas (USA) enables offenders to confirm their location and to check in with parole/probation officers online from a smartphone.
- This review will consider how we might make new or different sentencing options available to judges by using existing and emerging technology to transform how we deliver justice, rehabilitate offenders, and protect the public.

How can we use technology to be innovative in our sentencing options, including considering how we administer sentences and manage offenders in the community?

In answering this question, you might want to consider:

- Current technology to deliver sentencing options, for example through electronic monitoring to track location, alcohol use, and other aspects of behaviour.
- New solutions or emerging technology, including the use of artificial intelligence; mobile biometric authentication; and using nudge theory to alter behaviour.
- The use of technology to manage offenders in the community, either post-custody or on community or suspended sentences.
- The sentencing options that new or existing technology may make available.
- International examples of how technology is used innovatively to manage offenders and evidence of its effectiveness.

Theme 4: Community sentences

Background:

- Current community sentences consist of probation supervision alongside a menu of requirements such as: tagged curfew; unpaid work; treatment for addiction or mental health; and programmes including counselling, drug testing, or support with reading, writing and job applications. For example, over 1 million hours of unpaid work were sentenced in the quarter to June 2024.
- This review will be ambitious in looking at how we can manage offenders in the community in a way that ensures the public can have confidence that community sentences are robust, combining effective punishment with rehabilitation to

prevent further offending. This could include a different approach to requirements or ancillary orders.

- We also recognise the significant pressures on the probation service, which will be increased by further use of community alternatives to custody. We are therefore seeking evidence on the probation service's powers to manage offenders, and how community sentences and requirements can be best targeted so that they will be most effective.
- Out of court resolutions are out of scope of this review and we are therefore not seeking evidence on their use. However, we recognise their importance in the overall system and would welcome views on whether more offenders should be diverted away from the court system.

How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?

In answering this question, you might want to consider:

- Who should be in prison and who could serve sentences in the community.
- The types of offences for which people should be dealt with outside of the court system.
- The use of fines in the hierarchy of sentences.
- The use of ancillary orders.
- The use and efficacy of different requirements.
- The resources and powers of the probation service.
- Tailored supervision for certain cohorts.
- Innovative approaches to support and supervision, including using technology.
- International examples of community sentences.

Theme 5: Custodial sentences

Background:

- Sentencing for more serious offences has become more severe and custodial sentence lengths have grown.
- Maximum (and some minimum) sentences are set by Parliament and guidelines on application of sentences are developed by the Sentencing Council.
- Parliament has introduced mandatory minimum sentences for a handful of serious crimes. These must be imposed unless there are exceptional circumstances and include: seven years imprisonment for a third Class A drug trafficking offence; three years for a third domestic burglary; five years for certain firearms offences; six months for a second offence of possession a weapon, and six months for threatening with a weapon.
- Judges and magistrates have discretion to sentence individuals within this legal framework and individual sentences are set taking account of the specifics of the case.

- This review will look at the sentencing framework and consider whether new types of custodial sentences are needed, which better meet the purposes of sentencing, are more flexible to meet the needs of an offender and are more transparent at the point of sentencing.
- This could involve, for example, innovative use of the open prison estate or home detention for those offenders where closed custodial conditions may not be the most appropriate place.

How should custodial sentences be reformed to deliver justice and improve outcomes for offenders, victims and communities?

In answering this question, you might want to consider:

- The use of minimum and maximum sentences set by Parliament.
- The use of short custodial sentences and suspended sentences.
- Available sentences for the most dangerous offenders.
- Whether a fundamentally new type of custodial sentence is needed, for example, which builds in staged incentives for rehabilitation, and who should administer it.
- International examples of custodial sentencing.

Theme 6: Progression of custodial sentences

Background:

- The vast majority of prisoners will be released into the community, and the way prisoners can progress through their sentence varies.
- For eligible prisoners, open prisons can form a part of resettlement, and some prisoners are released on temporary licence to work in the community.
- Automatic release points for those on standard determinate sentences vary between 40% and 67% depending on the offence type / sentence-type.
- Home Detention Curfew allows certain eligible risk-assessed prisoners on standard determinate sentences to be released ahead of their automatic release date under an electronically monitored curfew.
- Following release, prisoners are managed on licence in the community by probation for the remainder of their sentence. For those on sentences of less than 2 years, there is also a period of post-sentence supervision.
- Many prisoners are recalled to custody if their risk escalates following release into the community.
- This review will look at new ways of progressing offenders through their custodial sentence and how incentivisation might play a role in sentence progression. For example, in Texas (USA) prisoners can earn a reduction in the length of time before they are eligible for release from prison or their licence period by engaging in rehabilitative activities.
- This review also recognises significant pressures on probation so will gather evidence on the effectiveness of licence periods and post-sentence supervision and how to prioritise probation resource.

How should we reform the way offenders progress through their custodial sentences to ensure we are delivering justice and improving outcomes for offenders, victims, and communities?

In answering this question, you might want to consider:

- Progression through a sentence from custody to community, including use of open conditions, Home Detention Curfew and automatic release points.
- The role of incentivisation in sentence progression.
- The approach to licence periods and the purpose of recall to custody.
- The system for recalling offenders to custody, including the circumstances under which recall occurs and whether there are robust alternatives.
- The use of post-sentence supervision and licence periods, and how probation resource can be most effectively targeted.
- International examples of progression through custodial sentences.

Theme 7: Individual needs of victims and offenders

Background:

- The experience of the criminal justice system varies for those with different backgrounds and characteristics, and we must recognise this within our system.
- This review seeks to understand the views of victims on sentencing, and how this may vary for different offence types, including how transparency in sentencing practice (e.g. when an offender will be released) impacts the victim experience. This review is particularly interested in sentencing for offences which are primarily committed against women and girls.
- In order to drive down reoffending and to prevent future victims, it is important that the system properly recognises the needs and vulnerabilities of certain offender cohorts.
- For example, whilst women comprise 4% of the prison population and 9% of those under community supervision, we know female offenders often have complex needs, with at least 60% of women supervised in the community or in custody reporting experiencing domestic abuse.
- We also know that many prolific offenders have complex needs. Between 2000 and 2021, prolific offenders made up roughly one tenth (0.5 million) of the overall offender cohort (5.89 million). Despite making up a minority of all offenders, prolific offenders were responsible for nearly half of all sentencing occasions (10.5 million) in the same period.

What, if any, changes are needed in sentencing to meet the individual needs of different victims and offenders and to drive better outcomes?

In answering this question, you might want to consider:

- The views of victims on sentencing.
- Transparency in sentencing.
- Sentencing for offences that are primarily committed against women and girls.
- Whether sentencing should be tailored to specific groups, including women, older offenders, or young adults.
- Sentencing and management of prolific offenders.
- International examples related to this theme.

About you

Please use this section to tell us about yourself.

Are you submitting a response for this call for evidence on behalf of an organisation or as an individual?

If you're submitting this call for evidence on behalf of an organisation, please provide the company name/organisation below.

Contact details

Please use the online portal to provide your response. Alternatively, please send your response by email or mail by 9/01/2025 to:

Sentencing Review Secretariat Team

Ministry of Justice

102 Petty France
London SW1H 9AJ

Email: SentencingReview2024-25@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the Call for Evidence process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this Call for Evidence can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/digital-communications/independent-sentencing-review-2024-to-2025-cfe>.

Alternative format versions of this publication can be requested.

Publication of response

A summary of findings from this Call for Evidence will be published.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this Call for Evidence, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Personal data

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name, email address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Justice (MoJ) is the data controller.

The Data Protection Officer can be contacted at DPO@justice.gov.uk or by writing to the following address:

The Data Protection Officer
Ministry of Justice
5th Floor, Post Point 5.18
102 Petty France
London SW1H 9AJ

2. Why we are collecting your personal data

Your personal data is being collected as necessary for a task carried out in the public interest as part of this call for evidence.

We will collect your IP address if you complete a call for evidence online. We may use this to ensure that each person only completes a survey once. We will not use this data for any other purpose.

Sensitive types of personal data

Please do not share [special category](#) personal data or criminal offence data. By 'special category personal data,' we mean information about a living individual's:

- race
- ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership
- genetics
- biometrics
- health (including disability-related information)
- sex life; or
- sexual orientation.

By 'criminal offence data,' we mean information relating to a living individual's criminal convictions or offences or related security measures.

3. Our legal basis for processing your personal data

The collection of your personal data is lawful under article 6(1)(e) of the UK General Data Protection Regulation as it is necessary for the performance by MoJ of a task in the public interest/in the exercise of official authority vested in the data controller. Section 8(d) of the Data Protection Act 2018 states that this will include processing of personal data that is necessary for the exercise of a function of the Crown, a Minister of the Crown or a government department i.e. in this case a consultation.

4. With whom we will be sharing your personal data

MoJ may appoint a 'data processor', acting on behalf of the Department and under our instruction, to help analyse the responses to this consultation. Where we do, we will ensure that the processing of your personal data remains in strict accordance with the requirements of the data protection legislation.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the call for evidence, unless we identify that its continued retention is unnecessary before that point.

6. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have your data corrected if it is incorrect or incomplete
- d. to object to our use of your personal data in certain circumstances
- e. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

Please contact us at the following address if you wish to exercise the rights listed above, except the right to lodge a complaint with the ICO: DPO@justice.gov.uk or by writing to the following address:

The Data Protection Officer
Ministry of Justice
5th Floor, Post Point 5.18
102 Petty France
London SW1H 9AJ

7. Your personal data will not be sent overseas.

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system

We use a third-party system, Citizen Space, to collect call for evidence responses. In the first instance your personal data will be stored on their secure UK-based server. Your personal data will remain on the Citizen Space server and/or be transferred to our secure government IT system for two years of retention before it is deleted.

Impact Assessment

An Impact Assessment has not been prepared for this Call for Evidence paper as the focus at this stage of the process is to gather evidence, rather than consulting on a set of proposals. Responses received to the Call for Evidence will help to inform the production of an Impact Assessment in the future.

Welsh Language

A Welsh language version of the executive summary and question set included in this Call for Evidence is also available on <https://www.gov.uk/government/calls-for-evidence/independent-sentencing-review-2024-to-2025>.