

INDEPENDENT

SENTENCING

REVIEW

Independent Sentencing Review

History and Trends
in Sentencing



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Chair Foreword

Last October, I was asked to chair an independent review of sentencing policy, leading a panel of members with a deep and broad understanding of the criminal justice system.

The context was that our prisons were full, and that the Government had been forced to take emergency measures to release prisoners earlier in their sentence than would have been expected. Notwithstanding these measures and the announcement of an ambitious – and expensive – prison building programme, it was still the case that the number of prisoners was set to exceed the number of prison places within a few years.

In the spring of this year, our review will set out recommendations to ensure that the demand for prison places does not exceed supply. We will also propose measures that will ensure that the demand for prison places is sustainable in the longer term.

Before then, however, we are publishing this paper which is intended to provide an explanation for why matters have reached such a crisis point. The reality is that our prison population has grown very rapidly over the last 30 years and the principal cause of this increase is that prison sentences have been lengthened substantially by successive governments. It is an approach that has emphasised the importance of punishment understood primarily as incarceration – an important aspect of sentencing policy – but has been insufficiently focused on the most effective ways to reduce crime. The rise in the prison population, for example, has meant that resources have been diverted away from activities that could reduce reoffending.

This paper sets out the details of the increase in prison population, the drivers for longer prison sentences and examples of places where the trend of an ever-growing prison population has been reversed while seeing crime fall.

In the spring, we will set out our proposals for reform but, in the interim, we hope that this paper will help stimulate a much needed and informed debate on sentencing policy.

The Rt Hon David Gauke,
Former Lord Chancellor and
Justice Secretary.

Executive Summary

This review of sentencing is tasked with a comprehensive re-evaluation of the sentencing framework in England and Wales, to ensure we are never again in a position where the country has more prisoners than prison places.

This report – Part 1 of the Independent Sentencing Review’s conclusions – outlines the prison population challenge in figures, provides an explanation of why and how we got here, and advocates for an approach rooted in all statutory principles of sentencing and public service reform.

Chapter one of this report examines trends in custody and the capacity pressures faced by HM Prison and Probation Service (HMPPS), which have brought the system dangerously close to collapse. At the end of 2024, over 85,000 individuals were held in the adult prison estate;¹ these numbers undeniably exceed the population the system is designed to accommodate. The total prison population has grown by over 40,000 people since 1993,² with adults sentenced for indictable offences now serving longer sentences.³ England and Wales also have one of the highest prison population rates in Western Europe.⁴

The Probation Service is similarly stretched: by September 2024, 240,497 individuals were under probation supervision,⁵ over 100,000 more than in 1993.⁶ Prison demand is expected to grow by an average of 3,000 people a year – the equivalent of building two large prisons per year.⁷ Without further government action, the prison population could reach up to 112,300 prisoners by November 2032.⁸

Chapter two summarises the drivers behind the increase in the use and length of custody. It concludes that the increase in the prison and probation population is not the consequence of a considered strategy as the most effective measure to reduce crime. Nor can it be explained by rising crime levels. In fact, latest estimates from the Crime Survey for England and Wales (CSEW) showed there has been an overall general decline in incidents of headline crime since 2017.⁹

The increase has been the result of many decisions made by successive governments and a “tough on crime” narrative that has focused primarily on punishment – understood as incarceration and longer sentences – on occasion responding to embedded misunderstandings about sentencing and high-profile individual cases. In tandem, there has been an underinvestment in probation and other alternatives that can provide rehabilitation and reduce reoffending.

Chapter three outlines the need for change, and advocates for a system rooted in all the current statutory principles of sentencing. The emphasis on longer-term imprisonment has placed significant strain on the system, forcing successive governments to adopt costly and high-risk emergency measures. These have attempted to both increase short-term capacity (often in ways which are expensive and risky) and reduce demand by expediting the release of prisoners, such as the measures we saw in the autumn of 2024 when prisoners were released 40 per cent (as opposed to 50 per cent) of the way through their sentence. This incoherent approach also comes at a fiscal cost: new prison programmes are estimated to cost between £9.4 billion and £10.1 billion.¹⁰

The piecemeal and unstrategic manner in which sentence lengths have increased in recent decades has meant that there has been insufficient consideration of all of the statutory aims of sentencing: punishment, crime reduction, reform and rehabilitation, public protection and reparation. Punishment is an important aim for the criminal justice system and prison plays a vital role in delivering punishment. But too often decision-making has been based on an approach that punishment is all that matters, and that the only form of punishment that counts is imprisonment.

Rather than approach sentencing policy based on the evidence of what is likely to be most effective in reducing crime and reducing reoffending, too often the knee-jerk response has been to increase sentence lengths as a demonstration of government action.

This has left England and Wales with a very high prison population by historic and international standards, which has diverted resources from other parts of the criminal justice system that could contribute more to reducing reoffending. There is evidently opportunity for public service reform where resources could be more effectively deployed to reduce crime and the number of victims.

In spring 2025, the next phase of this review will deliver recommendations to respond to the capacity challenge, both in the short and long-term. As outlined in the Terms of Reference of this review, recommendations will be grounded in the principles that sentencing should: (1) punish offenders and protect the public; (2) encourage offenders to turn their backs on a life of crime, cutting crime by reducing reoffending; (3) expand and make greater use of punishment outside of prison.

1. The challenge: the facts on prison population

Section summary:

- The prison population has sharply increased in recent decades and is expected to continue to grow. The projected increase is partially driven by several important factors, including tough changes to sentencing policy over the last 20 years and several up-stream drivers, including increases in police charging and prosecutorial activity, and increased flows into the courts.
- Highlighted drivers behind the increase in time spent in custody are the increased use of custodial sentences, longer custodial sentences, and growth of the recall and remand population. Rather than changes in case mix, increases appear to be primarily driven by an increase in the custody rate and length of custodial sentences. Simultaneously, there has been a decline in the use of non-custodial sentences.
- The prison estate has been under considerable pressure for some time; while new prison places in the adult estate are expected to rise, supply growth is not expected to keep pace with demand increases in the estate over the medium to long term.

In summer 2024, the capacity pressures on the prison system brought it dangerously close to total collapse. **The crisis was preceded by a sharp increase in prison population in recent decades:** between 1993-2012 it nearly doubled from around 44,000 to almost 87,000¹¹ and grew to a record high of more than 88,000 in recent months.¹² As of 30 December 2024, the prison population in England and Wales was 85,618, the recent

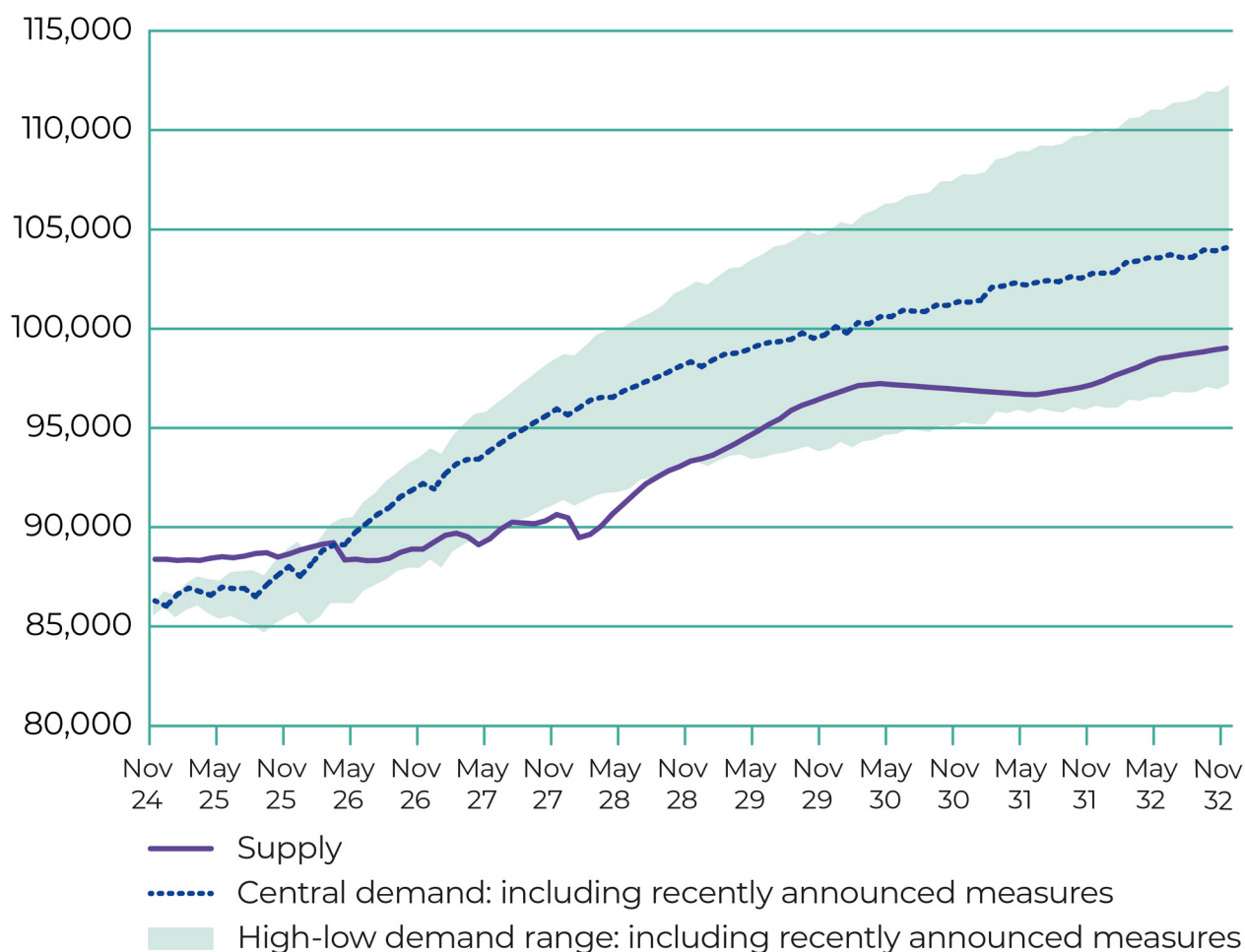
decline mainly due to urgent measures that the Ministry of Justice (MoJ) introduced to address capacity pressures.¹³

Published projections, as shown in Figure 1, show that the population is expected to continue to grow, by an average of 3,000 annually over the coming years, potentially reaching between 97,300 and 112,300 prisoners by November 2032.¹⁴

Supply growth is not expected to keep pace with the demand for prison places.¹⁵ Without serious intervention, the current prison capacity crisis will persist and escalate far beyond manageable levels. It is imperative that this imbalance is addressed to ensure the system remains sustainable long-term.

Figure 1: Future demand and supply projections for the adult prison estate, including recently announced demand measures.¹⁶

Number of prison places



Source: [Ministry of Justice Annual Statement on Prison Capacity: 2024](#).¹⁷

The projected increase in the prison population is driven by several important factors, **including tough changes to sentencing policy over the last 20 years, to keep the most serious offenders in prison for longer.**¹⁸ Notwithstanding long-term trends suggesting overall crime in England and Wales may be decreasing,¹⁹ **up-stream drivers outside the remit of this review continue to contribute to growth in the prison population.**

These include police charging and prosecutorial activity, increased flows into the courts, and rising levels of people on remand in custody.

The analysis below breaks down the key data around how the use of custodial sentences, sentence length, and the case mix have all contributed to the number of individuals in custody.

The use of custodial sentences has increased and is higher than in comparable countries

One driver of the rise in the prison population between 1993 and 2022 is an increased use of custodial sentences. The custody rate²⁰ for indictable offences has grown sharply since 1993: it was up by more than 16 percentage points in 2024 with respect to 1993, when it was only 16%.²¹

Rates of incarceration²² show that England and Wales imprison more people per capita than nearly all other Western European countries.²³ At 139 per 100,000 of the general population in 2024, England and Wales stand out for use of custody compared to other countries.²⁴ The prison population rate in England and Wales stood at 124 per 100,000 in 2000 and has fluctuated over this period, reaching a high of 153 in 2012.²⁵

Germany, on the other hand, has an incarceration rate of 68 per 100,000, which had been in steady decline since 2004.²⁶ This is mainly attributed to an increased rehabilitative focus, restrained sentencing and reserving long-term imprisonment as a last resort.²⁷ Spain's prison population rate peaked at 165 per 100,000 in 2010, declined steadily to 117 by 2020, and remained there through 2023.²⁸ Legal reforms, particularly for minor drug trafficking sentences, have contributed significantly to this decline.²⁹ The Netherlands saw a steep rise in its custody rate in the early 2000s, then a dramatic fall thereafter. It stood at 64 per 100,000 in 2023, far lower than its peak of 125 in 2006.³⁰ The resulting drop of the Dutch prison population has been attributed to a range of factors,³¹ including effective rehabilitation.³² However, the Netherlands is currently facing a prison capacity shortage and operating additional measures to reduce the pressure on prisons, including delaying custodial sentences for some prisoners.³³ **Table 1** also shows incarceration rates across a range of comparator jurisdictions beyond Western Europe.

Table 1: A Comparison of Incarceration Rates across Jurisdictions

Country	Prison population per 100,000 (latest available date)
Poland	193
England and Wales	139
France	117
Spain	117
Italy	105
Ireland	93
Germany	68
Netherlands	64
European Median	115
Selected Other Countries³⁴	
USA	541
New Zealand	185
Australia	162
Canada	90

Source: **World Prison Brief** (latest available data, accessed November 2024, note not all countries have data to 2024 and Canada's base data is 2001).³⁵

The use of some non-custodial sentences has decreased

While the use of custody has been increasing, England and Wales have experienced a decline in the use of certain non-custodial sentences, most notably community orders. The earliest available data suggests that in 1996 about 26% of disposals were a community sentence.³⁶ Though the definition of a community sentence has changed over time, most recently, only 6% of disposals in June 2024 were a community order.³⁷ The use of community sentencing has continued to decline, and the number of community order sentences imposed each year dropped 61% between 2010 and 2024.³⁸

While the use of suspended sentence orders (SSO)³⁹ has increased as a proportion of all sentences given between 1996 and 2023, their use in absolute terms has declined. In 1996 about 1% of disposals were SSOs,⁴⁰ but by 2023 they comprised about 20% of immediate custodial, suspended or community order disposals given.⁴¹ Their use in absolute terms has declined, however, by 10% between June 2014 and 2024, where 46,365 SSO were given out (this compares to just over 51,000 in 2014).⁴²

Custodial sentence lengths have grown

Along with a rise in their use, the length of custodial sentences in England and Wales has also increased. In 1993, the average custodial sentence length for indictable offences was 16 months.⁴³ By June 2024, the average length of a custodial sentence had increased to 22.5 months,⁴⁴ with a brief decrease over 2020 possibly due to the impacts of COVID pandemic.⁴⁵ Custodial sentences of more than 10 years, excluding indeterminate and life sentences, have more than doubled from 487 in the year ending June 2010 to 1,639 in June 2024.⁴⁶ At the same time, shorter custodial sentences (12 months or less) have decreased over the same period, down 64%.⁴⁷ This means the number of people in prison serving sentences of less than 12 months has dropped by 51% (to 3,102) in December 2024 compared to 6,962 in December 2010.⁴⁸ Average sentence length is partially impacted by changes in the rates of life-sentences, which grew from 3,086 prisoners in September 1993 to 7,448 prisoners in December 2024.⁴⁹ Minimum terms for life sentences are also increasing. For example, the average length of the minimum term imposed for murder has risen from 13 years in 2000 to 21 years in 2021.⁵⁰

Figure 2 further illustrates yearly changes to average sentence length. The increase in longer custodial sentences illustrates the pressure sentencing trends place upon the prison system, whilst indicating a shift towards more punitive measures.

Figure 2: Change in Average Custodial Sentence Length 2010 – 2024.

Average custodial sentence length (months)



Source: [Criminal Justice System Statistics Outcomes by Offence Data Tool](#). To note, the decrease in 2020 was likely due to the Covid-19 pandemic.

Change in case mix was only a minor factor in growing custodial sentence length

Custodial sentence length increases appear to be primarily driven by an increase in the custody rate and length of custodial sentences handed out for identical categories of crime, whereas changes in the mix of crime (called case mix) were a comparatively minor contributor.⁵¹

The relevance of **changes in case mix have only been more prominent since 2020**, possibly due to the prioritisation of more serious offences in courts as a result of backlogs created during the COVID pandemic.⁵² By September 2024, about 70% of prisoners serving immediate custodial sentences had committed violent, sexual, or drug offences compared to about 55% in June 2010.⁵³ This has also driven the increase in average custodial length and the number of prisoners given sentences longer than 4 years as these offences carry the longest sentences.⁵⁴

This was according to analysis of change in average custodial sentence length between 2010 and 2023 undertaken for the Sentencing Review, which assessed the effects of custody rate, length of sentences given for identical categories of crime, and case mix flowing through the justice system.⁵⁵

Increases in the use of recall and custodial remand have had a large impact

The recall of those on licence has strikingly contributed to the overall size of the prison population. In 1993 the recall population was estimated to be less than 100.⁵⁶ By 2020, the recall population was over 9,000, and reached 12,920 as of the end of December 2024.⁵⁷

MoJ states that the increase in the recall population is due to both legislative changes increasing the number of recall eligible offenders, such as the introduction of mandatory community supervision for shorter sentences, and heightened probation officer risk aversion, following notable cases covered in the media of serious further offences committed by the licence population.⁵⁸

The recall population⁵⁹ is projected to continue to increase, primarily due to the expected growth in the portion of the prison population on standard determinate sentences who will be on licence after serving the custodial part of their sentence, some of whom will inevitably be recalled to custody.⁶⁰ About 20% of the offenders currently in the recall population have been recalled to prison following release on licence on an indeterminate sentence.⁶¹

This cohort of the recall population is also expected to increase because projections suggest that more offenders will leave prison following an indeterminate sentence. There will therefore similarly be more people eligible to be recalled to custody.⁶²

While out of the scope of this review, an increase in defendants remanded in custody also has a major influence on the growth of the prison population.⁶³ Since 2020, the remand population has increased sharply, partially due to the impact of the COVID-19 pandemic on the court backlog and with the case mix being progressed through court as a priority. The number of people on remand is the highest it has been in at least the last fifty years,⁶⁴ and stood at 17,023 people as of 31 December 2024.⁶⁵ The growing volume and complexity of the Crown Court caseload means the increase in the remand population has been, and will continue to be, a considerable factor in driving the increase in the overall prison population.⁶⁶

Our prison population is becoming older, female offenders are a small part of the population but have specific patterns that require attention, and ethnic minorities remain over-represented within those incarcerated

This review seeks to properly recognise the needs and vulnerabilities of certain offender cohorts, to successfully drive down reoffending and prevent future victims. Annex 1 breaks down the characteristics of those incarcerated and noteworthy cohorts of offences. Primarily, available data highlights how prisoners are becoming older: the age profile of offenders have substantially changed in the prison estate,⁶⁷ and as of 30 December 2024, there were 6,116 prisoners aged 60 or over.⁶⁸

Women make a small share of the total prison population, standing at 3,418 individuals in December 2024 and this has remained relatively stable between 1993-2023, fluctuating between 4 and 6% of the total prison population.⁶⁹ There are variations in terms of the type of crime committed by women compared to men; for example, in September 2024, fraud had the highest female proportion (making up 22% of sentences), compared to sexual offences with the lowest female proportion (2% of sentences).⁷⁰

Many female offenders are victims as well as perpetrators of crime; almost 60% of women supervised in the community or in custody report having experienced domestic violence.⁷¹

Ethnic minorities continue to be over-represented in prison relative to those with a white British ethnicity and are also more likely to be given longer sentences than other groups and serve custodial sentences. As of 30 June 2024, 31,514 ethnic minorities (including White ethnic minorities) were in the prison system, a far higher proportion than their representation in the general population in England and Wales.⁷² They also served longer sentences on average: in 2022, the average custodial sentence length for white offenders was 21.2 months, while it was 30.5 months for Asian offenders, and 27.9 months for Black offenders⁷³ (further detail included in Annex 1). The over-representation of ethnic minorities within the criminal justice system has been explored by various bodies, including the Sentencing Council, third sector and the Government through the Lammy Review.

While the examination of these issues falls outside the scope of this review, their complexity highlights the ongoing need for sustained efforts across the system to understand and address disparities.

This review supports the continued work led by criminal justice system agencies, third sector partners, and the Sentencing Council to further this important agenda.

Despite the increased use of custody, the data shows custodial sentences have the highest reoffending rates

The likelihood of reoffending after serving a custodial sentence is substantial, and higher than following a non-custodial sentence.

Overall, proven reoffending rates have fluctuated between a high of 31.8% and a low of 23.1%⁷⁴ with the latest data showing an overall proven reoffending rate of 26.5%.⁷⁵

Importantly, those leaving custody have the highest reoffending rates – 37.2% in the latest data, and the highest rates of reoffending are following short custodial sentences (56.9%).⁷⁶

Reoffending following short custodial sentences (<12 months) seems to drive overall reoffending rates following custody.

For example, reoffending within one year of release, following a custodial spell of 4 years to 10 years is only 12.8% in the latest published data.⁷⁷ MoJ analysis found that a community order or suspended sentence order (regardless of requirements), rather than a short sentence of immediate custody (<12m), seems to be more effective at reducing reoffending risk.⁷⁸

As a result, the prison estate is operating under extreme capacity pressure

The prison estate has been under considerable pressure for some time, with the adult male estate running at over 99% capacity for much of the 18 months from February 2023 until SDS40 was introduced.⁷⁹ While new prison places in the adult estate are expected to increase over the next few years, supply growth is not expected to keep pace with demand increases in the estate over

the medium to long term.⁸⁰ Further, it is unlikely that maintenance targets will be met given the scale of the backlog. There is also a huge problem of old prisons which are no longer fit for purpose. The situation in probation is similarly stretched. At the end of September 2024, there were 240,497 individuals under probation supervision.⁸¹ This is up from around 140,000 in 1995.⁸²

Themes arising from the Call for Evidence analysis

Many responses noted that recall is contributing to the increase of our prison population. Responses gave several contributing factors for the increase in recall for example the introduction/extension of post-sentence supervision, offenders not complying with licence conditions, increased pressure amongst probation staff and a risk averse parole system.

Many responses noted that there has been a decrease in community sentences and there is low confidence in non-custodial sentencing options. HM Inspectorate of Prisons noted that a primary driver in the rise in the prison population is that there has been a significant reduction in the number of community sentences imposed by the courts which has more than halved from 150,000 in 2012 to 71,000 in 2023. Several third sector organisations suggested this is in part due to relationships between courts and probation being damaged by probation reforms, underinvestment and the disruption of court closures. Other responses surmised the decrease could also be due to political causes (one respondent mentioned that community sentences are not mentioned in the Labour manifesto), and the inability of the probation service to provide a robust and reliable alternative to custody.

Many responses noted that the crime mix has changed and highlighted that the criminal justice system has failed to keep pace with the nature of crime and wider societal changes. One police force noted that there has been an increase in the complexity and seriousness of offending. They suggested that this has been driven by technology. They also noted that “there have been changes in crime from being personal and property based, where there is a tangible victim, to being often in an online environment.” One Police and Crime Commissioner described the criminal justice system as “‘broken,’ outdated, and incapable of adapting to modern crime, societal changes, or public demand.”

Many responses acknowledged mental ill-health as a driver of crime. For example, respondents noted that many lower level “violent offending” convictions in women are linked to untreated mental ill-health and substance addiction.

Some prisoners shared the sentiment that age should be considered in sentencing. One prisoner expressed that “nobody should die in prison,” whilst another suggested that older prisoners should be moved to a care home age 75-80 rather than being released on licence.

Many responses noted that women are overrepresented in the criminal justice system and that female offenders are often victims themselves who require support. The National Women’s Justice Coalition noted that “many women in contact with the justice system are victims of crimes more serious than the ones they are accused of themselves. These women often have a deep experience of trauma and multiple unmet needs and face interrelated challenges such as homelessness, mental health issues, substance misuse, and domestic abuse.” Level Up stated that “when it comes to women in the criminal justice system, there is no distinct binary between victims and offenders: one in three women in prison grew up in the care system, the majority of women in prison are victims of domestic abuse and many are coerced into crime by abusive partners”. Furthermore, one respondent explained that “Domestic Abuse causes many women to commit criminal offences - they need to support a partner and/or children in these desperate situations; they become dependent on substances in order to bear their situation, which leads to offending in order to feed that habit; they become homeless as a result of domestic abuse and commit offences to support themselves.”

This section has outlined how the prison system in England and Wales cannot continue to operate under the strain of excessive capacity pressures. England and Wales exhibits one of the highest incarceration rates in Western Europe and beyond. Despite an increased reliance on imprisonment, the data demonstrates that this has not led to a significant reduction in reoffending rates.

Moreover, troubling trends persist among certain key demographics within the offender population, including the over-representation of ethnic minorities and an increasing proportion of older offenders.

2. Why and how did we get here?

Section summary:

- The dominant “tough on crime” political narrative has focused on longer incarceration and led to political parties prioritising punitive measures over other considerations. The lack of a strategic, evidence-based approach has created a complex system where broader policy consequences are overlooked.
- Legislative changes – such as increases to minimum sentences, the introduction of a statutory framework for murder sentencing “Schedule 21”, or the now abolished indeterminate sentence of Imprisonment for Public Protection (IPP) – have undeniably led to longer time spent in custody, and created a complex sentencing framework, generating a perception of confusion over sentencing and punishment for victims and offenders.
- Media narratives, which often focus on high-profile or atypical cases, have embedded misunderstandings about the system. Even though the evidence shows limited public understanding of sentencing, and despite falling crime rates, public attitudes toward crime have shifted towards prioritising punishment.
- Responding to legislative changes, the Sentencing Council has incorporated increased sentence maxima, more severe penalties and new aggravating factors into guidelines which the judiciary must follow unless it would be contrary to the interests of justice to do so, contributing to sentence inflation. There has been a shift in the balance between the various criteria in sentencing practices, with a greater focus on harm caused (and away from culpability), driving sentence inflation more broadly.
- This is compounded by underinvestment in probation and other alternatives that can provide rehabilitation.

“Tough on crime” politics focusing on imprisonment have partially driven custody rates

Over the last 25 years, the **political landscape has been increasingly dominated by a “tough on crime” narrative that has focused on longer imprisonment.** In tandem, politicians have implemented legislative and policy changes which have inflated sentencing.

Many academics have characterised this period as a time of “penal populism,” in which the main political parties compete to become “tough on crime.”⁸³ The Criminal Justice Act 1991 is marked as the emergence of the “punitive impulse,” following criticism from the media that the Act was too “soft” on crime even after a rise in recorded crime and high-profile cases.⁸⁴ From this point onwards, they argue, the acting party in government faced effective challenge from the counter party on crime. In the period 1992 to 2010, key political initiatives were born out of the “tough on crime” agenda (e.g. Schedule 21 to the Criminal Justice Act 2003).⁸⁵

The desire to prevent future serious crimes being committed by high-risk offenders has often driven a narrative focused on punishment and incarceration.⁸⁶ An example of this is the introduction of the indeterminate sentence of IPP in 2005 – where once the punishment element of the sentence was served, release would only be approved by the Parole Board based on manageable risk. The difficulties of this approach have been well documented and IPPs were abolished in 2012 but the concerns about future risk of offending for individuals convicted of serious offences remain, and the focus of Extended Sentences⁸⁷ exemplifies this (detail included in Annex 2).

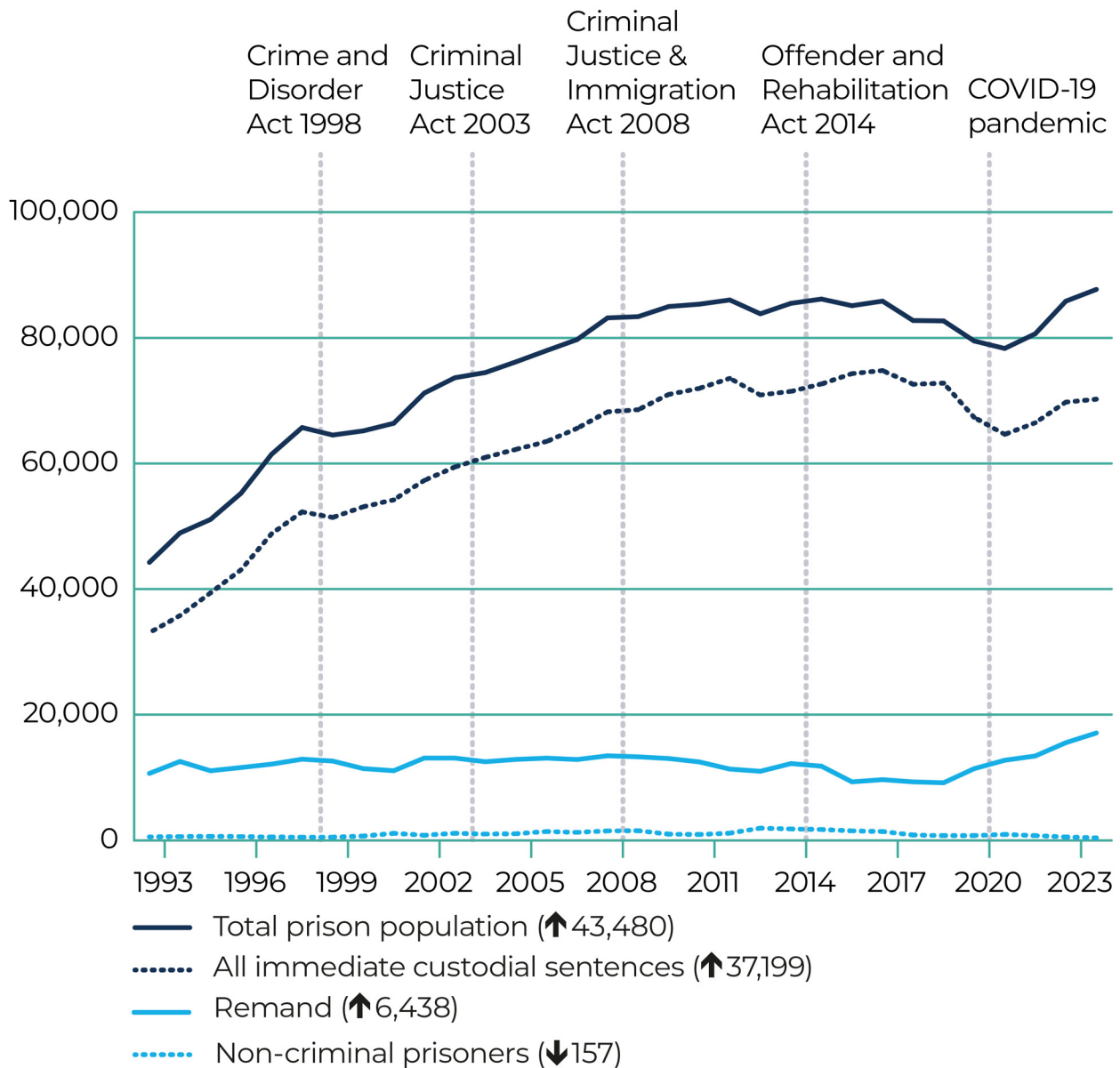
This narrative does not exist in isolation. Rather, political parties have had a significant influence on public opinion, and vice versa.⁸⁸ There is an understandable concern from politicians to respond to events in the public domain and bring about necessary reform. For example, tangible sentencing changes have been the result of public campaigns led by victims of crime who devote their life to advocacy⁸⁹ and similarly, Criminal Justice Acts increasing statutory maxima and introducing mandatory minimum sentences have also resulted from public and media campaigns.⁹⁰ These events highlighted a need for change. **However, without a coherent, and evidence-based approach to sentencing reform that considers system-wide impacts – particularly on victims – the result is a complex and intricate system where policy has responded to public narratives on crime but the full consequences are often overlooked.**

Sentence inflation is in practice driven by legislative and policy changes

Legislative and policy choices made by the Government and Parliament have had a direct impact on the prison population over the past 25 years.

There are well explored links between past legislative or policy changes and sentence inflation, which is the rapid increase in the severity of sentences for a specific offence. Bodies such as the Howard League and the Independent Commission into the Experience of Victims and Long-Term Prisoners⁹¹ have published detailed analyses exploring these linkages. The Howard League, for example, published a report in September 2024,⁹² signed by the four surviving former Lord Chief Justices of England and Wales and Sir Brian Leveson, stating how legislative changes have been “obvious drivers” of sentence inflation, and that the “continuous escalation in the length of sentences imposed for more serious offences” is a leading cause in the rise of prison numbers.⁹³

Figure 3: Prison Population by Custody Type between 1993 and 2024.



Source: Ministry of Justice Offender Management Statistics

The assessment conducted within the context of this short review aligns with the analysis by these bodies. **Major legislative changes include the introduction of numerous mandatory minimum and new maximum sentences, the introduction of the statutory framework for murder sentencing in Schedule 21, to the Criminal**

Justice Act 2003, the introduction of the IPP sentence, and changes to licence periods such as the Release of Prisoners Order 2020 that modified automatic release points so that certain prisoners would not be released on licence until they had served two thirds of their sentence instead of release at the half way point.

These key legislative changes are broken down in detail in Annex 2.

Many of these changes have been made at pace in response to tragic events. For example, it was the Streatham terror attack which led to the rapid implementation of legislation to amend the release provisions for terrorist offences. While real-life cases are appropriate drivers for change, individualised responses impact the cohesion of the sentencing framework.

The numerous changes and interactions in the legislation have led to a complex framework which contributes to a perception of confusion over sentencing and punishment and has led to offenders spending longer in prison and on licence. Understanding sentencing can be an issue for many of those impacted by crime because the sentencing process and the terminology used is not generally well understood. In the latest Victims' Experience Survey in England and Wales, 500 victims were asked to agree or disagree with the statement "when the perpetrator was convicted, the sentence was clearly explained to me." Less than half (42 per cent) agreed, 27 per cent neither agreed or disagreed, and 30 per cent disagreed.⁹⁴ The Sentencing Council has noted that this lack of understanding may be one factor influencing victim confidence in the effectiveness of sentencing.⁹⁵

Similarly, the Sentencing Academy found that research on defendants' understanding of sentencing law in England and Wales is very limited, and there are further studies which suggest gaps in understanding are exacerbated by factors such as the formal language and procedure of a court hearing.⁹⁶

There have been attempts at simplifying the framework in recognition of its complexity – notably the Sentencing Act 2020, which consolidated existing sentencing procedure under one single Act. The Act was intended as a consolidation only and made no significant changes to the law. However, critics have argued that this reform fell short of a solution, as some sentencing provisions remain outside the Act, and it has not gone far enough in simplifying sentencing. This includes release mechanisms, confiscation provisions and measures in the Violent Crime Reduction Act 2006 (such as those relating to alcohol related violence and disorder), not brought into the Act.

The media influences public opinion, understanding on sentencing, and individual decisions

Public opinion is often skewed by press coverage with its focus on “a-typical” cases. The Justice Committee outline in their 2022-23 report “Public Opinion and Understanding of Sentencing” that the media are the main source of information on sentencing for the public, but media stories tend to focus on serious and high-profile cases, or “a-typical” stories, and often include powerful headlines with strong terminology, which have attracted significant attention.

The Justice Committee recognised the difficulties of reporting about the complex sentencing framework in a comprehensive and accessible way, yet also recognised that media reporting has contributed to embedding common misunderstandings.

Case Study: Spain⁹⁷

This trend and media impact has not been observed in every context. As part of this short review, the Chair David Gauke went to Spain to learn about the country's response to increasing prison capacity pressures. Measures were reported to be implemented based on available evidence:

Use of the Open Estate – Social Integration Centres are prisons intended for those serving custodial sentences in an open regime and for weekend arrest sentences, as well as for monitoring the compliance with non-custodial sentences. The centres serve as a stepping stone to full release.

Use of suspended sentences as the most common alternative to prison. This sentence is often applied automatically to offenders without prior convictions.

A decline in prison sentences of two years of more, enabled by a legal reform that brought sentences for minor drug trafficking offences into a suspendable range, which came into effect in 2010.

Diversion programmes for certain crimes and the use of restorative justice.

Electronic monitoring allows individuals to serve the entirety of their sentence in the community, as well as availability for individuals post-release to re-integrate into society. The Spanish prison service can programme the EM to create exclusion zones, such as for victims' home addresses. There are 3,500 prisoners who are electronically monitored daily, and compliance is high.

There has been a **generalised shift in public attitudes towards more punitive responses to crime**. In 2016, research conducted by the Office of National Statistics (ONS) outlined that while the levels of crime in England and Wales had been falling since a peak in 1995, most people perceived that crime across the country had been rising.⁹⁸ Public attitude on crime has significantly shifted towards a focus on punishment, particularly regarding sexual and violent offences.⁹⁹ Alongside punishment, a public polling survey by the Justice Committee found that 64% of respondents ranked protecting the public from harm as one of their top three most important aims of sentencing, of which 26% placed it as their most important factor.¹⁰⁰

However, studies indicate that public opinion and knowledge on sentencing is generally limited. For instance, polling conducted by the Justice Committee found that the public did not have a good understanding of the institutions responsible for sentencing.¹⁰¹ Whilst the majority of respondents knew that the courts were responsible for imposing a sentence on a guilty individual, only 22% knew that Parliament was responsible for setting the maximum sentence for offences in law.¹⁰² **Despite the increases in the average prison sentence, 56% of people surveyed believed sentences were shorter than they were 25 years ago.**¹⁰³

The Sentencing Council note that public perceptions and confidence in sentencing will continue to be hindered until the knowledge gap is bridged.¹⁰⁴ The Independent Commission into the Experience of Victims and Long-term Prisoners noted in their report “Making sense of sentencing” that “sentence lengths and the time prisoners are serving in prison for the most serious of crimes have lengthened, without public knowledge or understanding of what has occurred.”¹⁰⁵

Press coverage and public opinion may have broader links to decisions in the system. In a study conducted on public opinion and Parole Board decisions in different countries, including England and Wales, participants sampled noted that it is the high-profile cases which attract the attention of the media, and the public are often quick to attribute parole failures to the Board.¹⁰⁶ Academics have raised that in some cases there can be risk aversion when considering release in parole decisions given external pressures such as “popular, media and political pressure against release.”¹⁰⁷ Anecdotal evidence shared in the context of this review also highlighted that past press publications of lists of the most “lenient” judges are likely something that judges may attempt to avoid, and that may impact their decisions.

Research spotlight: Deterrence and Public Opinion

The Justice Committee conducted research in 2022 on the public's opinion and understanding of sentencing. This found that protection of the public from further harm was the highest priority aim of sentencing, with 64% of respondents to the survey ranking public protection as one of their top three most important aims of sentencing.¹⁰⁸

Opinion poll surveys in England and Wales have consistently found that the public does not believe sentences are long or harsh enough.¹⁰⁹ Indeed, despite the significant increases in average prison sentence over time, 56% of people surveyed believed sentences were shorter than they were 25 years ago.¹¹⁰ This attitude appears to have remained stable, despite multiple research studies which have shown that when members of the public are presented with specific case scenarios and asked to make their own sentencing decisions, many impose punishments less harsh than those given.¹¹¹

Studies suggest that the likelihood of being caught is a more powerful deterrent than the consequences of being punished for their crime. Indeed, evidence suggests that increasing a sentence for the purpose of deterring people from crime could be ineffective.¹¹² The perceived likelihood of punishment appears to be a much more important factor in deterring individuals from crime. For some offenders, increases in the severity of sentences appear to increase their likelihood of reoffending.¹¹³ For example, a small-scale qualitative study of repeat offenders serving a sentence of less than 12 months found that the participants typically viewed their cycling in and out of prison as contrary to the concepts of deterrence or rehabilitation, but instead contributed to their identities as criminal offenders and they were not adequately prepared to navigate the influence of crime in their life outside of prison.¹¹⁴ The Sentencing Council acknowledges that there are many aspects of criminal justice that offenders experience as punitive, even in the absence of sentences with deterrent intentions.¹¹⁵

Changes to Sentencing Council guidelines have reflected legislative changes

The primary role of the Sentencing Council is to issue guidelines on sentencing which the courts must follow unless it is in the interests of justice not to do so. As a result of changes in legislation, the Sentencing Council has regularly amended their guidelines to reflect higher statutory maxima, and more severe penalties and aggravating factors, subsequently inflating sentences.

Following the Police, Crime, Sentencing and Courts (PCSC) Act 2022, the Sentencing Council adjusted six of its existing guidelines to reflect the new increased maxima. These offences include causing death by dangerous driving and causing death by careless driving when under the influence of alcohol or drugs, for which the maximum sentences were increased by the Act from 14 years to life.

The final resource assessment published by the Sentencing Council estimated a need for up to 470 prison places to reflect the increase in statutory maximum penalties.

According to their own research, changes to Sentencing Council guidelines created the need for an additional 900 prison places between 2019 and 2021. In 2021, the Sentencing Council published analysis of the estimated prison places required in relation to the introduction of their guidelines across nine different offences. For offenders sentenced for these nine offences in 2018, an estimated additional 900 prison places overall were associated with the Council's guidelines. This accounted for an estimated additional 500 places for new guidelines for Robbery and 300 places for Causing Grievous Bodily Harm with intent.¹¹⁶

The judiciary has also contributed to sentence inflation

Judges and magistrates imposing sentences are obliged to follow guidelines by the Sentencing Council and statute – meaning the legislative choices outlined above have imposed constraints on judicial discretion by removing the ability to determine the appropriate sentence according to the peculiarities of the case, leading to more severe outcomes than potentially warranted in all the circumstances of the individual case.

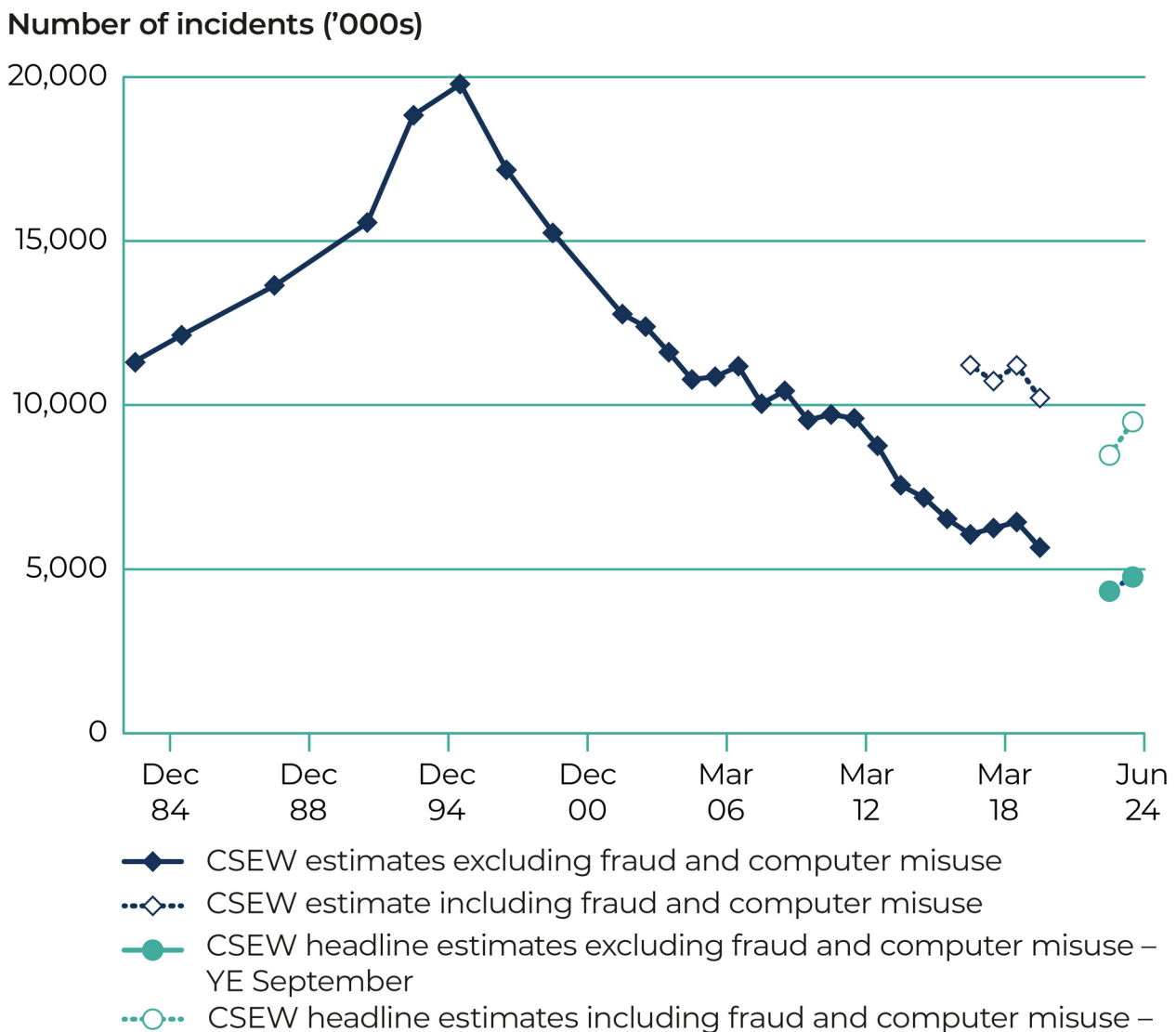
There are concerns that the power of the Court of Appeal to review sentences influences judicial behaviour from the outset. Judges and magistrates have a statutory duty to follow relevant sentencing guidelines unless the court is satisfied it would be contrary to the interests of justice to do so. The 'Unduly Lenient Scheme' allows anyone to ask for certain Crown Court sentences to be reviewed by the Attorney General's Office if they believe the sentence is too lenient. If the sentence appears unduly lenient to the Law Officer, they may make a referral to the Court of Appeal.¹¹⁷ Data of sentences referred under the scheme indicates that the outcome is generally an increased sentence. In the period 2011 to 2022, for all cases where leave was granted by the Court of Appeal, 85% of these have led to an increased sentence (15% were unchanged).¹¹⁸ Related to this, anecdotal evidence provided to the review suggests that if a sentence is within the range laid down by a guideline, there is unlikely to be an appeal or an Attorney General's reference. Often, this leads judges to be cautious about departing from guidelines even when there may be grounds to adjust downwards based on case particularities, potentially increasing sentences generally. There are concerns that the power of the Court of Appeal to uplift sentences influences judicial behaviour from the outset.

Further, evidence provided in the context of this review suggests that the last few decades have seen a shifting balance towards consideration of harm caused (and away from culpability) in sentencing practices, driving sentencing inflation more broadly. The sentencing guidelines are designed to be followed using a stepped approach:¹¹⁹ first, the offender's culpability and the harm caused by the offence determines the starting point. In recent decades there has arguably been an increased focus on harm rather than culpability. For example, the Offences Against the Person Act 1861 distinguishes between causing grievous bodily harm with intent (section 18), for which the maximum sentence is life imprisonment, and causing grievous bodily harm where there is only intent to cause some harm (or recklessness as to doing so) (section 20), for which the maximum sentence is five years' imprisonment. More recently, however, there has been an increased focus on harm, which is evident in the increase in penalties for driving offences¹²⁰ and approach of the Court of Appeal to sentencing cases of "one-punch manslaughter."¹²¹

The system has become more punitive, despite crime rates falling since 2017

The focus on “punitive politics” has not been driven by increasing crime levels. Among others, analysis performed by the ONS Centre for Crime and Justice, released in October 2024 shows that over the past decade, crime affecting individuals and households has generally declined, although there has been an increase in criminal convictions for certain offences, such as sexual assault.¹²²

Figure 4: Headline Crime Rates estimates from the CSEW years ending in December 1981 to September 2024 (England and Wales, annual estimates)



Source: **Crime Survey for England and Wales** (CSEW) from the Office for National Statistics.¹²³

According to the latest findings from the Crime Survey for England and Wales (CSEW), an estimated 9.5 million incidents of headline crime – encompassing theft, robbery, criminal damage, fraud, computer misuse, and violence (with or without injury) – occurred in the survey year ending September 2024.¹²⁴ **This was 12% higher compared to September 2023, mainly due to a 19% rise in fraud incidents, but headline crime remains lower than March 2017, the earliest year for which comparable data on headline crime is available.**¹²⁵

CSEW captures a broad range of victim-based crimes experienced by those interviewed, not just those that have been reported to, and recorded by, the police.¹²⁶ Importantly, the levels of **police-recorded crime have increased in recent years and in 2022/23 police-recorded crime was nearly 60% higher than 2013/14 levels.**¹²⁷ An increase in recorded sexual offences and violence against the person offences have both contributed to this increase.¹²⁸

There has not been sufficient investment in alternatives to custody

A significant share of resource has been invested in the prison service, with an underinvestment in probation and alternatives that provide sufficient rehabilitation and can break the cycle of reoffending.

The impact of the lack of resources on probation services has been considerable: significant budget constraints in conjunction with high caseloads results in fewer resources for supervision and support, and the pressure placed on probation officers' limits adequate and individualised attention to offenders. Further, in an offender's experience, access to social welfare and rehabilitation are closely intertwined.

Sentencing decisions may be driven by a lack of focus on alternatives that support the reduction of reoffending. Phil Bowen, Director of the Centre for Justice Innovation, noted that judges and magistrates no longer have faith in community options. Bowen argues that judges and magistrates have lost trust in the delivery of community sentences due to the perceived quality of probation's delivery. To tackle this loss of trust, he believes probation professionals must be allowed to use their skills and judgement in decision-making to provide better outcomes.

In their response to the 2020, “A Smarter Approach to Sentencing” White Paper, the Criminal Justice Alliance argued that increased funding for support services linked to both deferred and community sentences is needed to address the root cause of offending.¹²⁹

A critical factor in successfully reducing reoffending is the integration of preventative measures and support services which address the underlying issues that contribute to criminal behaviour.

For instance, the proven reoffending rate for those who were homeless or rough sleeping was double the rate of those who were in a form of accommodation upon release.¹³⁰ HM Inspectorate of Probation attributes local services as the most important relationship for probation staff, including local authority housing and social service departments. However, local probation leaders report that current structures heavily constrain the engagement with these partnerships.¹³¹

Themes arising from the Call for Evidence and Sector Engagement

Many respondents described specific changes in legislation as key drivers. As cited directly by one organisation, including attendees of the Sentencing Council Academic Conference 2025, “sentence inflation is the cumulative result of decades of piecemeal changes to the law, led by politicians in Westminster”. Many cited changes were made in the Criminal Justice Act 2003.

Many respondents highlighted that issues in sentencing criteria have driven changes in sentencing. Some respondents felt the framework limits scope for judicial discretion and that certain criteria limit the scope for a person-centred approach to sentencing, often leading to harsher sentences. The Criminal Bar Association stated that “in most areas of criminal law, we do not believe that Sentencing Guidelines have (of themselves) inflated the level of sentences for different offences or offence categories. However, they have made it more difficult for a judge to exercise their discretion”.

Some respondents raised concerns about the statutory purposes of sentencing, including how they are used and how they work together.

Some responses noted that there is no clarity on how the five statutory purposes of sentencing fit together and that the different purposes of sentencing may lead to different outcomes. A third sector organisation stated that “when it comes to meeting the statutory purposes of sentencing, despite the increase in custodial sentences, persistent rises in violence against women and girls (VAWG) related offences suggest that the current sentencing model is falling short in its statutory objectives. For example, while punishment and public protection may be addressed through longer custodial terms, the high rates of reoffending indicate limited success in discouraging reoffending and cutting crime”.

Respondents felt that changes in sentencing have been driven by societal views and a lack of public understanding which is influenced by the media and political desire to win votes without aligning changes to the purposes of sentencing.

The Lord Bishop of Gloucester stated that “crime makes up a disproportionate amount of news and social media reporting, usually focus on shocking but relatively rare crimes. This distorts public perception of the incidence of crime and the safety of our streets.” Whilst a former Chief Executive of the HM Prison and Probation Service suggests that “it is easy in government to promise tougher sentences for short term advantage but much harder in the longer term to secure the funding needed to deliver and operate the additional accommodation required to meet the resulting demand.”

Some respondents reflected that as the drivers of crime and reoffending are societal, addressing the drivers of crime lies mostly outside the criminal justice system.

Many respondents noted the impact of the lack of funding and resources as a societal driver of criminality and in the words of one respondent, deprivation “no doubt led some to misbehave.” A third sector organisation noted that “sentences can only ever play a limited part in reducing/increasing reoffending” and a HMPPS staff member stated that a “sustainable system requires looking at social care in the community” and addressing “the root cause.”

In sum, a proliferation of misinformation and external intervention has driven sentencing inflation more broadly. The interplay between political agendas, the media and implementing guidelines has led to sentencing which deviates from the intended balance and purpose and focuses primarily on punishment understood as longer incarceration. This is further intensified by a lack of adequate alternatives, given an under resourced probation service.

3. Why now and the way forward

Section summary:

- Change is needed now. Sentencing policies have not been constrained by the affordability or capacity of prisons and probation, leading successive governments to enact emergency measures to meet prison demand in both the long and short-term. Future prison expansion will be costly and will come at the expense of other public services which can reduce reoffending.
- In recent years, there has been considerable concern over delivery and quality of prison and probation services, safety consequences and systemic failings.
- If prisons are to achieve rehabilitation successfully and to return prisoners safely into the community, there needs to be a fundamental shift in the drivers of sentencing policy. Going forward, sentencing policy needs to be grounded effectively in public service reform drivers of sustainability, accountability, and transparency, as well as the statutory purposes of sentencing.
- Sentencing policy should be grounded in the most effective measures to reduce crime. There is also an opportunity for public service reform to deploy resources more effectively to reduce crime and the number of victims.

These choices have led to a costly capacity crisis with system-wide impacts

Increasing the prison population comes at a fiscal cost. The MoJ's total proposed gross expenditure (excluding annually managed expenditure)¹³² for 2023-24 was £14.8 billion.¹³³ Over half (53%) of this is allocated to the Prison and Probation Services.¹³⁴ Published expenditure on prisons was £4.2 billion in 2022-23.¹³⁵

Sentencing has not been grounded in fiscal discipline and is not constrained by the affordability or capacity of prisons and probation.

Successive governments have implemented inflationary policies and – simultaneously – a range of emergency measures to ensure the prison system can meet demand needs both in the short term and long term, highlighting the evident incoherence and dysfunctionality of the system. Emergency measures aiming to increase short-term capacity include using prison cells for more occupants than originally designed for (“crowding”), the emergency End of Custody Supervised Licence scheme in October 2023 (extended twice subsequently), and Operation Safeguard. Although not an emergency measure, Rapid Deployment Cells have been used to create extra capacity temporarily while long-term expansion is underway.

These measures have resulted in a fragmented system, proving extremely disruptive and in most instances costly. As reported by the National Audit Office, Operation Safeguard, a protocol which allows offenders to be placed in police cells when jails are full, alone costs almost five times the average daily cost for a prison place (£688 vs £142).¹³⁶ Successive governments have also implemented measures that have aimed to ease demand in the long-term by expediting the release of prisoners, such as the measures seen in the autumn of 2024 when some prisoners were released 40 per cent (as opposed to 50 per cent) of the way through their sentence.

Deliberate spending and policy choices have had catastrophic impacts on the delivery and quality of the prisons and probation services, as well as on the individuals working in these services. HM Inspectorate of Prisons reported that recruitment in prisons continues to be a problem in some parts of the country.¹³⁷ Where there are sufficient officers, they were often inexperienced and the number of officers who left within the first two years continued to be worryingly high.¹³⁸ The report provides anecdotal evidence from prison officers, who reported they feared for their safety and had low morale.¹³⁹

Similarly, HM Inspectorate of Probation reported that many operational staff, managers and leaders report concerns that the probation recruitment process did not adequately test candidates' suitability for probation services work.¹⁴⁰ As of September 2024, the overall annual leaving rate for Probation Service staff was 10.3%.¹⁴¹

There have been significant concerns over safety, security and rehabilitation. The National Audit Office (NAO), reported in 2024 that HMPPS and MoJ acknowledge that actions they have taken in response to the crisis expose them to greater risk that could impact public and prisoner safety or effective rehabilitation.¹⁴² HMPPS has raised concerns about the associated disruption experienced by prison staff from managing different regimes, with increasing risks of burnout.¹⁴³

Structural multi agency failings have contributed to loss of public confidence in the system, specifically whether it can maintain and deliver safety for women and for victims. For instance, the July 2023 inquest into Zara Aleena's murder by an offender who was on probation at the time concluded that there was a significant failure to define, understand, and carry out roles and responsibilities across multiple agencies, resulting in ineffective offender management.

The coroner found that her death was partly attributable to shortcomings by HMPPS and various state agencies, stating that "Zara's death was contributed to by the failure of multiple state agencies to act in accordance to policies and procedures; to share intelligence; accurately assess risk of serious harm; act and plan in response to the risk in a sufficient, timely and coordinated way."¹⁴⁴ Cases like this have provoked questions about whether the system can maintain and deliver safety, particularly for women and victims.

In a "do nothing" scenario, demand will continue to rise, exacerbating pressure points in the system, driving negative justice outcomes, and impacting public finances. The MoJ announced its "10-year Prison Capacity Strategy" in December 2024 with a plan to increase prison supply through a prison build plan. The plan aims to deliver 14,000 prison places by 2031,¹⁴⁵ which still falls short of the gap projected. To reach this goal, new prisons must be built and maintained, and additional prison officers must be employed. Though considering likely spend on prison build, the MoJ estimates that the programmes will cost between £9.4 billion and £10.1 billion.¹⁴⁶

For context, the NAO reports that between 2016-17 and 2022-23, Department for Education spent on average £2.3 billion a year, with 24% of this to carry out major rebuilding and refurbishment projects in schools.¹⁴⁷ The upfront capital cost per prison place is £500,000 per closed place and £400,000 per open or temporary place (2024 to 2025 prices).

Future costs are likely to increase with inflation, and from wider economic and global activities impacting the construction market and supply chain.¹⁴⁸ For these reasons, building our way out is clearly a costly proposition and would come at the cost of investing in other public services which could help reduce reoffending.

If prisons are to successfully achieve rehabilitation and return prisoners safely into the community, there needs to be a fundamental shift in the drivers of sentencing policy

The response of successive governments to date has failed to provide a sustainable solution to the prison capacity challenge. **The inconsistent way sentence lengths have increased in recent decades has meant that there has been insufficient consideration of all of the statutory aims of sentencing.** Punishment is an important aim of sentencing and prison plays a vital role in delivering punishment, but **too often decision-making has been based on an approach that punishment is all that matters**, and that the only form of punishment that counts is imprisonment.

Rather than approach sentencing policy on the basis of the evidence of what is likely to be most effective in reducing crime, too often decisions have been a knee-jerk response,

increasing sentence lengths as a demonstration of government action. Despite the focus on longer sentences, the literature highlights that longer sentences do not necessarily encourage deterrence or better rehabilitation (for some offenders, longer prison terms increase their likelihood of reoffending).¹⁴⁹ In fact, the evidence suggests that interventions and support during and after a sentence are arguably more important in reducing reoffending.¹⁵⁰ In addition, the numbers and confidence in community orders has dropped, despite the evidence suggesting that short term custody is associated with an increase in proven reoffending, compared to community orders and suspended sentence orders.¹⁵¹

There is an opportunity for public service reform in this area whereby resources could be deployed more effectively to reduce crime and the number of victims. In

2023, the Institute for Government called for a bold programme of public service reform, with a key focus on the long-term objective of improving productivity of services.¹⁵²

The Howard League also highlights that if prisons are to achieve rehabilitation successfully, there needs to be a fundamental shift in the drivers of sentencing policy.¹⁵³

Going forward, sentencing policy needs to be effectively grounded in public service reform drivers of sustainability, accountability, and transparency, as well as all of the statutory purposes of sentencing:¹⁵⁴

- Punishment: including going to prison, or limiting liberty in the community such as with unpaid work or electronic monitoring.
- Crime reduction: including by deterrence.
- Reform and rehabilitation: supporting the offender from committing future crime such as by requiring treatment for alcohol abuse when this is relating to criminal behaviour.

- Public protection: ensuring victims and the public are protected from offenders and any future potential crime committed by them, through measures like prison or electronic monitoring.
- Reparation: such as through a payment of compensation or restorative justice for victims and those affected by their offence.

As part of this fundamental shift, this review also provides an opportunity to reconsider the fundamental principles around notions of “punishment”. Academics such as Ben Crewe and David Hayes have explored the range of significant challenges the system generates for offenders as form of punishment, both in custody, the community and on licence, beyond what is traditionally seen as punishment.¹⁵⁵ The Sentencing Council acknowledges that there are many aspects of criminal justice that offenders experience as punitive, even in the absence of sentences with deterrent intentions.¹⁵⁶ For instance, the Sentencing Council notes that there is limited research into offender experiences of fines, and their perceived punitiveness.¹⁵⁷

International comparisons and youth custody provide inspiration on how change can be achieved through consistent, evidence-based approaches

A fundamental shift is possible, and international cases serve as examples. During the length of this short review, the Panel has been offered examples of different ways other countries have been able to successfully curb prison population through strategic responses. We highlight a few:

Case Study: The Netherlands

The Netherlands prison system has achieved decarceration in the past: between 2006 and 2016, the Dutch prison population decreased by 51% from 20,463 to 10,115.¹⁵⁸ While the Netherlands is currently facing prison capacity pressures, their past experience provides an example of evidence-based measures used to curb prison population challenges. Several factors have been cited as contributing to this decrease in prison population:¹⁵⁹

- A significant decline in crimes reported to the police.
- Average sentence lengths imposed by judges have decreased (except for rape and homicide).
- A shift in overall criminal behaviour from traditional violent crime to online and organised crime, which is more challenging to police.
- A significant decline in crimes reported to the police.
- Average sentence lengths imposed by judges have decreased (except for rape and homicide).
- A shift in overall criminal behaviour from traditional violent crime to online and organised crime, which is more challenging to police.
- The Dutch criminal justice system has integrated psychiatric and psychological health care into sentencing successfully.¹⁶⁰
- The Netherlands has institutions for systematic habitual offenders, where, since 2004, adult repeat offenders can be detained minimum one, maximum two years. The objectives are to reduce crime and serve public protection, as well as breaking criminal patterns by providing intensive services, intervening in the criminal lifestyle of the individual.¹⁶¹

Case Study: Texas

Texas prisons were at maximum capacity in 2007 at over 152,000 inmates and projected to continue increasing. Factors cited as contributing to this decrease include:¹⁶²

- Reduced sentences for non-violent offenders and more discretion given to judges when sentencing non-violent offenders to custody alternatives (exact figures uncertain).
- Expansion of the drug and specialty-court system.
- Focus on alternatives to custody, specifically treatment and diversion programmes for low-risk non-violent offenders. This included 800 residential substance misuse treatment prison beds.
- Shortening probation terms, restricting maximum probation terms for drug and property felony offences from 10 to 5 years.¹⁶³ This reform included mandating judges to review all probation terms after two years or half the probation term (whichever is earlier) and consider time credit for attendance at probation drug treatment programmes.
- Funding for local probation and parole teams to provide non-custodial penalties for technical violations of parole terms (e.g. lateness for meetings) as opposed to immediate recall to custody.

After 2007 the prison population stabilised, and between 2007 and 2023 the prison population fell from over 152k to ~129k with the closure of 16 prisons.¹⁶⁴

Likewise, the youth custody system in England and Wales has seen a decline in the rates of proven offending. In the year ending March 2024, the number of children in custody aged 10 to 17 decreased by 65% compared to the year ending March 2014.¹⁶⁵ Despite increases over the past two years, the number of proven offences by children has been on a downward trend.¹⁶⁶ In a 2016 review, the decline in the demand for youth justice services in the decade prior is attributed to an increasing

practice of the police and youth offending services to deal informally with minor offending, diverting children who were never likely to continue offending away from the system.¹⁶⁷ However, it is important to note that the proportion of ethnic minorities within children in custody rose from 26% to 42% in the decade from March 2006 to March 2016.¹⁶⁸ In the year ending March 2024, 51% of children in custody were from ethnic minorities (excluding white minorities).¹⁶⁹

Themes arising from the Call for Evidence analysis

Some respondents made suggestions around how the quality of services in the UK justice system could be improved. One stated that “it is vital to take an evidence-based approach to justice and to throw away the preconceived ideas of what works and what does not. The field of justice should be modelled on the field of medicine, where proven effectiveness of a drug or treatment is the main factor – of course, there are other considerations (e.g. costs of treatment) that must be balanced, but effectiveness is the primary driver – and there is an independent body like NICE which regularly considers the evidence.”

Respondents also reflected on what can be learnt from international examples. This includes cost efficiencies, with one respondent – who is also a member of an Independent Monitoring Board – stating that “reducing the length of sentences – even by just one year – would free up huge sums of money to improve psychology services and skills training in prison as well as probation and other community support on release.” The example of other European and Scandinavian countries which use this approach proves it works. Many respondents noted examples of countries that have successfully reduced their prison population. For example, a third sector organisation provided examples of the policies introduced in New Zealand, such as specialist courts for low-level offending.

Respondents acknowledged that ethnic disproportionality is much more pronounced among young male defendants. Action for Race Equality noted that Black Caribbean young males are far more likely to receive a custodial sentence compared to young males from all other ethnic groups. In addition to receiving harsher sentencing, Black, Asian, and Mixed Heritage people are also more likely to spend a longer time in prison.

In sum, the current approach to sentencing cannot continue without driving immense financial costs and impact services, compromising safety and leading to systemic failings. This review is tasked with a comprehensive re-evaluation of the sentencing framework and is afforded the chance to suggest a fundamental shift in sentencing policy which is better rooted in the five statutory purposes of sentencing.

4. Conclusion

The criminal justice system has been under immense pressure, culminating in 2024 when the system came close to collapse.

This increase in prison population is the result of decisions made by successive governments focusing on longer incarceration and punishment, which has led to an overall increase in sentence lengths. There has not been a considered strategy on the most effective measure to reduce crime. This has resulted in an inefficient and incoherent system, which also causes confusion and frustration to victims and the public.

The increasing prison population has come at a great fiscal cost. Maintaining existing prisons and building new ones is expensive. Sentencing has not been grounded in fiscal discipline and has not been constrained by the affordability or the capacity of prisons and probation. This has led successive governments to respond to record demand highs by implementing a range of costly emergency measures. This response has had catastrophic impacts on both the prisons and probation services, diverting resources from parts of the system that could contribute to reducing reoffending and has impacted the overall safety of the system.

Sentencing policy needs to be grounded in all the statutory purposes of sentencing. Punishment is an important aim for the criminal justice system but not the only one; and imprisonment is not the only form of punishment.

In spring 2025, this review will deliver recommendations for the Government to respond to the capacity challenge. This will include immediate short-term measures, as well as a vision for the future rooted in the statutory principles of sentencing and public service reform.

Annex 1: Key Offender and Offence Characteristics

As the use of custody has increased, analysis has identified several key characteristics of those incarcerated.

- **Age:** The age profile of offenders has changed in the prison estate between 1993 and 2020¹⁷⁰ – largely becoming older. The increase in the prison population between 1993 and 2012 was not equally divided amongst age groups – most of the increase was among 30-39 and 40-49 year-olds (c.11,000 more aged 30-39 and c.9,000 more aged 40-49).¹⁷¹ Between 2012 and 2020, growth in the overall number of older prisoners continued while the younger prisoner population tended to decline.¹⁷² As of 30 December, there were 15,254 prisoners aged 50 or over, of whom 6,116 were aged 60 or over.¹⁷³
- **Female offenders:** Women make a small share of the total prison population, standing at 3,418 individuals in December 2024¹⁷⁴ and this has remained relatively stable between 1993-2023, fluctuating between 4 and 6% of the total prison population.¹⁷⁵ Women can become trapped in a cycle of victimisation and criminal activity. The Corston study into women in the criminal justice system noted that coercion by male partners can be a route into criminality for some women.¹⁷⁶ Many female offenders are victims as well as perpetrators of crime, almost 60% of women supervised in the community or in custody, who have an assessment, report having experienced domestic violence.¹⁷⁷ There were 215 pregnant women in prison over the 12-month period of April 2023 to March 2024. This compares with 194 for the 2022/23 year.¹⁷⁸
- **Race and ethnicity:** Ethnic minorities are over-represented in prison relative to those with a white British ethnicity. As of 30 June 2024, 31,514 ethnic minorities (including White ethnic minorities) were in the prison system, a far higher proportion than their representation in the general population in England and Wales.¹⁷⁹ Additionally, Asian and Black prisoners, as well as prisoners from a Mixed-ethnic background of both sexes tend to have higher average custodial sentence lengths compared to white prisoners. Ethnic minorities

have also been shown to have longer prison sentences, and higher odds of receiving a prison sentence. Since 2018, white defendants have consistently received shorter average custodial sentence lengths (ACSL) for indictable offenses compared to all other ethnic groups combined. In 2022, the ACSL for white offenders was 21.2 months, while it was 30.5 months for Asian offenders, 27.9 months for Black offenders, 25.2 months for those of mixed ethnicity, and

22.9 months for offenders from other ethnic groups.¹⁸⁰ The 2017 Lammy Review concluded that individuals from ethnic minorities still face bias throughout the justice system – particularly with regards to levels of incarceration – which is of significant concern.¹⁸¹ MoJ statistics also show a statistically significant association between offenders of Black and mixed ethnicity and a higher likelihood of receiving a custodial sentence compared to those from the white ethnic group.¹⁸²

Alongside offender characteristics, two key offence cohorts have been identified:

- **Prolific offenders:** Between 2000 and 2021, prolific offenders¹⁸³ made up roughly 10% of the overall offender cohort, but they received twice as many custodial sentences as other offenders. MoJ defines prolific offenders based on both the age at which cautions or convictions were received and their number within set age ranges by the date of their most recent appearance in the criminal justice system. For example, an offender is defined as an adult prolific offender if on their last appearance in the criminal justice system, they were aged 21 or older, had a total of 16 or more previous convictions or cautions, and had 8 or more previous convictions or cautions when aged 21 or older.

Nearly half of all sentencing hearings involved prolific offenders and they received twice as many custodial sentences compared to the remaining offending population.¹⁸⁴

- **Life sentences:** Offenders serving life sentences are also a notable cohort within the prison estate. As of 31 December 2024, 8,493 people were serving indeterminate sentences, including 7,448 life sentences.¹⁸⁵

Annex 2: Summary of Key Legislative and Policy Changes

- **Mandatory minimums** were introduced in 1997 and have been amended on numerous occasions, leading to increased average custodial sentence lengths for all offences falling under these provisions. The Crime (Sentencing) Act 1997 introduced a mandatory minimum sentence of 7 years for third Class A drug trafficking offence, and 3 years for a third domestic burglary. The Criminal Justice Act 2003 introduced a mandatory minimum sentence of five years for firearm offences. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced mandatory minimums for certain knives/offensive weapons offences. The Criminal Justice and Courts Act 2015 introduced minimums for repeat offences involving weapons (s. 28). These provisions were consolidated in the Sentencing Code and appear at ss. 311 to 315 of the Code. In the period from 1997 to 2015, therefore, there was an increase in the number of offences subject to mandatory minimums, leading to longer sentences.¹⁸⁶ These changes have resulted in increased average custodial sentence lengths (ACSL) for all offences falling under these sentencing provisions, particularly for firearms offences and drug trafficking.¹⁸⁷ Despite numbers sentenced to immediate custody declining in some categories (e.g. domestic burglary and some knife offences), this increase in ACSL is partially eroding the gain of diverting people from custody.¹⁸⁸
- **Schedule 21 to the Criminal Justice Act 2003** (now Schedule 21 to the Sentencing Act 2020) introduced statutory starting points for the minimum terms for murder. The measure had an impact on wider sentencing and the prison population more broadly, subsequently inflating sentence lengths for other serious offences.¹⁸⁹ The Independent Commission into the Experience of Victims and Long-Term Prisoners highlighted in their 2022 report that the increase in sentence severity for murder has also had a knock-on effect on sentence severity for other closely associated offences.¹⁹⁰ Further, as the Howard League indicates, this is made more evident through a comparison with sentences from equivalent crimes in Scotland and Northern Ireland. Both these countries have seen an increase in custodial

sentences for serious offences over the past decade, but not to the rate and length as is observed in England and Wales.¹⁹¹

- **Imprisonment for Public**

Protection (IPP): the IPP sentence – now abolished – was introduced by the Criminal Justice Act 2003 for offenders posing “a significant risk to members of the public of serious harm occasioned by the commission... of further specified offences”¹⁹² but did not meet the requirements for a life sentence.¹⁹³ From when it was brought into force in 2005 until 2008, it required courts to impose an indeterminate sentence with no automatic release date, on certain offenders whose offence was relatively minor.¹⁹⁴ IPP sentences are an example of the dangers of “poor” sentencing policy as described by the Howard League, because of the long-lasting impacts (of the offenders who have never been released, 64% are more than 10 years over tariff) and devastating psychological impacts caused on offenders.¹⁹⁵ Despite their abolition, the system is still dealing with the ramifications of this policy, and the concern about future risk of offending for individuals convicted of serious offences has remained, resulting in increasing numbers serving longer in custody and protracted periods on licence through the introduction of extended sentences.

- **Extended sentences and life**

sentences: Extended sentences have become more prominent since abolishing IPP; more extended sentences have increased the scope of recall and the rise of prisoners whose release is subject to decision by the Parole Board. Likewise, the increase of life sentences has also impacted overall capacity. For example, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 brought back automatic life sentences (in a modified form) that continue to apply today.

- **New offences and increased maximum penalties**

have also had a significant impact. One example is the Sexual Offences Act 2003 which introduced many new and amended offences and increased maximum sentences for various offences.¹⁹⁶ The Protection of Freedoms Act 2012 added two offences of stalking to the Protection from Harassment Act 1997. The Violent Crime Reduction Act 2006 increased the maximum penalty for possessing a knife in public from two years to four years.¹⁹⁷

- **Changes to licence periods,** including the Offender Rehabilitation Act 2014 that imposed a licence period on sentences under 12 months, which had never occurred previously. It also provided for a “top-up” post-sentence supervision, so all sentences under 2 years had at least 12 months supervision.¹⁹⁸ The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 modified automatic release points so that prisoners serving a fixed-term sentence of seven years or more for a relevant violent or sexual offence would not be released on licence until they had served two thirds of their sentence instead of release at the half way point. The Police, Crime, Sentencing and Courts Act (PCSC) 2022 further extended this to those serving relevant violent/sexual sentences of four years or more, and increased the maximum penalty for causing death by dangerous driving from 14 years to life imprisonment.¹⁹⁹
- **Changes to recall:** An increase in recall can be attributed to several legislative changes. The Crime and Disorder Act 1998 created a system of executive recall for prisoners serving determinate sentences of 12 months to 4 years, allowing offenders to be recalled without needing to return to court.²⁰⁰ The act also introduced a range of orders in

which a breach could result in imprisonment.²⁰¹ The Criminal Justice and Immigration Act 2008 introduced Fixed Term Recall where an offender on licence is recalled for a 28-day period before being automatically re-released.²⁰² These provisions only applied to offenders serving a sentence of more than 12 months and those who were not assessed as presenting a high risk to the public.²⁰³ The Offender Rehabilitation Act 2014 expanded the cohort of prisoners who would receive at least 12 months of community supervision to include those given sentences of less than 12 months, with a distinction of a 14-day Fixed Term Recall for this cohort.²⁰⁴ These measures have increased both the likelihood and the duration of time that offenders can be recalled to prison, which has been a driver in the increasing prison population.

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