

## Divert offenders away from short prison sentences?

### Top point:

Selectively diverting to suspended prison sentences, low risk offenders who would otherwise receive short custodial sentences (<12 months), would be likely to reduce the prison population by around 3000 places; and receptions to prison following sentence by around 20,000, making it more likely that reception prisons could be made into better rehabilitative environments.

The value of short custodial sentences has been challenged for a number of years. As ever there are arguments that point to benefits from adopting alternatives to custody, but also it is clear that such diversion policies are not straightforward to adopt nor implement.

Briefly the core of the argument is that short periods of custody are, perhaps, not effective because the high reception rate in local prisons, where such sentences are most likely to be served, does not provide an environment and the opportunities to deliver rehabilitative interventions. For the inexperienced and unsophisticated offender, a short spell in prison can be a time to become a drug addict, acquire criminal skills, and for the vulnerable, damage their mental health and increase the risk of suicide. The transition from community to custody and back again is disruptive, meaning potential loss of employment, accommodation, family support, and more effort will be needed by local probation, social, health and other services to reconnect an individual on release. Avoiding short custodial sentences could also reduce pressure on prison spaces and so relieve a system that is stretched almost to breaking point.

On the other hand, judges and magistrates take account of the circumstances of an individual offender and it is clear that very often those who receive short sentences already have a significant history of offending, with alternatives already having been tried and failed. There is, too, the broader question of retaining confidence in the justice system as a whole and that, all importantly, victims feel that justice has been done. Plainly blanket requirements that all who would otherwise be sentenced, say up to 6 months, should not go to prison but straight to some form of community supervision could fetter judicial discretion in a way that would run counter to the broader interests of confidence in the justice system as well as constraining in individual cases.

This question is therefore very difficult to assess in a general way. However simulation of specific scenarios can provide information that will help elucidate the problem in some quantitative ways that incorporate many of the factors that could influence whether the outcome as a whole would likely be beneficial or not. This would include, for example, any further offending during a period when they would otherwise be imprisoned, and possibly higher breach rates that would undo any potential benefit to freeing up prison capacity (if that were the only reason for implementing such a policy).

## The Scenario

The specific proposal examined here - with some variation in the threshold that frames the eligible group - is this:

1. The custodial sentence threshold is set to three cases: 3 months; 6 months; and, less than 12 months.
2. To be eligible for diversion away from short custody on offender needs also to be low risk. In this simulation previous custodial sentences of over 12 months will exclude an individual from such a scheme. (Other criteria that could be used, for example, might be the number of previous convictions in deciding whether an offender would be eligible; this is not done directly in this example)
3. The exercise of judicial discretion would also mean that not every case that would be eligible under (1) and (2) would result in such a diversion. However, in this example half of the cases would be diverted.
4. On the face of it there is a number of different ways that the "divert to" could be conceived. The diversion could be seen as very early release subject to licence and supervision; or as a suspended custodial sentence; additional conditions could also be imposed, for example [Electronic Monitoring](#). Again, to be specific, in this example those diverted receive a suspended prison sentence. This would of course impact on probation and other community services that would be tasked to deliver these diversions as community supervised cases earlier than would otherwise need be the case.

As already hinted this scenario could be constructed differently. And there would no doubt be nuances that would steer the precise details. Nonetheless, we think it is sufficiently representative to help establish some of the impacts both to numbers in custody and in the community under supervision. Other potential impacts such as to further offences or serious further offences will be presented later. See also other [policy analysis scenarios](#).

## Conclusions

The projections for the three cases shown in the panel quantify the impact on the custodial and community caseloads. The impact on prison places is comparatively small because, despite the large volume of these sentences (50,000 +), the average length in custody is very short (a few weeks) and so they occupy a small proportion of prison capacity. The largest reduction comes from the "less than 12 months" eligible group, ~ 3000 fewer places. The other groups ( $\leq 6$  months &  $\leq 3$  months) 'save' fewer places - 1700 and 650 respectively.

Nonetheless, depending on implementation, such diversion would have the potential to substantially reduce the number of prison receptions of local reception prisons and that would also represent a reduction of the workload on prison staff. At the community end, both the timing and categorisation of those under supervision would change, but the overall number of cases under supervision would not.

**Is it worth doing?** The message from these results is that the case for diversion of short custodial sentences should not be based solely on the grounds of reducing prison capacity. The impact on prison spaces is small and on its own will not make the radical reductions of the prison population that some are seeking, nor perhaps give the head room needed to reshape the prison estate. However reducing the number of receptions to local reception prisons would also be likely to make - if the opportunities are taken - better, rehabilitative environments for those that are in custody.