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From Principles to Populism: Sentencing in England and Wales

ABSTRACT

The creation of sentencing councils and the introduction of guidelines have made sentencing in the United Kingdom more transparent, predictable, and democratic. The systems in England and Wales, Scotland, and Northern Ireland share common elements, but important differences exist. Those in England and Wales are the most comprehensive. They are largely descriptive, reproducing rather than changing judicial practice, and have failed to prevent three problems: increases in sentence severity, prison overcrowding, and political interference. Prison sentence lengths have increased significantly and use of community orders has declined. Politics in England and Wales and Scotland continue to shape policy and sentencing practice. The government in England and Wales in 2025 commissioned a review of sentencing and introduced legislation to implement proposed changes, including creation of a statutory presumption against imposition of short prison sentences. If implemented as specified in the legislation, courts will, with some limited exceptions, have to find that “exceptional circumstances” exist before imposing a prison sentence of 12 months or less.

Sentencing in the nations of the United Kingdom has evolved significantly over the past 20 years, unlike in other common law countries such as

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Canada, Australia, and New Zealand where little has changed and sentencing remains highly discretionary. Without statutory or judicial guidelines, trial courts determine sentences guided only by decisions of courts of appeal (Hester 2024; Roberts, Freiberg, and Hester 2025, chap. 1). The most important UK development has been the creation of sentencing councils and the introduction of statutorily-based guidelines that have transformed sentencing in England and Wales and to a lesser degree Scotland. Sentencing is now more transparent, predictable, and democratic. The guidelines are largely descriptive in nature, reproducing rather than changing judicial practice. As a result, they do not address three key problems: sentence inflation; prison overcrowding; and political interference. In this essay, we discuss policy developments over the past decade and review sentencing practices over a 20-year time period.

The principal recent development has been the introduction of sentencing guidelines, first in England and Wales and then in Scotland. It seems likely that Northern Ireland will follow suit. Until 2025, the development and promulgation of guidelines and the work of the sentencing councils in England and Wales and Scotland attracted little attention from legislatures or individual politicians. In 2025, one guideline dealing with presentence reports triggered political criticism and calls for Parliament to assume greater control over the English Council.

Research on the guidelines has demonstrated improvements in consistency and proportionality. Surveys of sentencing judges and magistrates document high levels of support. The primary issue that has recently generated political and public concern relates to the use of imprisonment. The custody rate has risen in recent years, and the average lengths of sentences imposed for the more serious offenses rose very significantly. The size of the prison population rose steadily between 1995 and 2024, more than doubling from around 44,000 to over 88,000. In 2024, the imprisonment rate was 139 per 100,000, one of the highest in western countries. Other Western European countries report much lower imprisonment rates. Germany's, for example, was 68 per 100,000 population in 2024. This unprecedented increase in the use of imprisonment threatened to overwhelm prison capacity, and in response the government and the courts introduced a series of short-term responses, including releasing significant numbers of prisoners earlier than the normal half-way points of their sentences. The current Labour government commissioned a limited review of sentencing to consider and propose more permanent strategies to reduce the volume of admissions to prison. The review published its second report in May

2025, and the government immediately announced its intention to introduce legislation in September 2025 to implement most of the review's recommendations.

Here is how this essay is organized. Section I provides background information on sentencing in England and Wales, noting particularly the key role played by lay magistrates and other ways in which English sentencing departs from other common law systems, and briefly describes guidelines developments in Scotland. Section II summarizes sentencing trends in the two levels of trial court (the Crown Court and magistrates' courts). We focus on the use of custody and the size of the prison population. We then explore "sentence inflation," marked increases in sentence severity that likely result from multiple causes. We attempt to determine how much of the increase results from changes in sentencing policy or judicial practice, rather than from changing offending patterns or offender profiles. Section III describes key policy developments, including emergency measures introduced in 2024 to address prison overcrowding, and changes to sentencing for murder. We also document ethnic disparities in sentencing and remedial steps to diminish them taken by the English Sentencing Council. Political interference in the sentencing guidelines and sentencing more generally has significantly increased. We conclude by reviewing recent legislation that will likely significantly change current sentencing practice in England and Wales.

I. Sentencing Guidance: The Story So Far

Before discussing trends in sentencing practice over the past 20 years and key policy developments, we summarize the origins and current structure of guidance for courts (for fuller accounts, see Ashworth and Roberts 2013*a*, 2013*b*; Roberts 2019). Until 1998, United Kingdom courts enjoyed wide discretion at sentencing, guided only by appellate review. The review threshold was and remains high; the Court of Appeal interfered with a lower court sentence only when it was determined to be "manifestly unfit" or to have resulted from an error in law. Guideline judgments from the court of appeal were rare. This arrangement changed with the creation of the Sentencing Advisory Panel (SAP) in 1998, which provided advice to the court of appeal. A second statutory body, the Sentencing Guidelines Council (SGC) was established in 2003. The two bodies complemented each other, with the SAP providing general guidance and the SGC issuing detailed guidelines. The first formal guidelines appeared in 2004. At

this point there were effectively three sources of guidance for courts: the SAP, the SGC, and the court of appeal. In 2010, the SAP and the SGC were replaced by the Sentencing Council of England and Wales, which we discuss below. Sentencing in England and Wales entered a new era.

The guidelines may be traced to two significant developments. The first was a government-sponsored review of the use of imprisonment in response to a high and rising prison population. Lord Carter (2007, p. 3) recommended that the government “immediately implement a package of measures that could moderate the demand for custody.” The second was the creation of the Sentencing Commission Working Group (2008) charged to examine sentencing guidelines in other jurisdictions. It issued a public consultation document which attracted considerable response from the judiciary and other stakeholders (Jacobson, Roberts, and Hough 2008).

A. The Sentencing Council of England and Wales

Kay Knapp (1987) identified three models for a sentencing commission: “representative,” “elite,” and “judicial.” The English Sentencing Council does not fit neatly into Knapp’s three models. Although the judiciary constitute a majority of the council’s 14 members, key stakeholders are also represented. These include representatives of the police, probation, the Director of Public Prosecutions, victims’ groups, and an academic. The council does not have a corrections system member; the earlier SAP included a prison governor. The victim’s perspective is represented by a professional working in a victim-related organization. Some commentators have called for a broader and more diverse membership to include ex-offenders. Judge Marvin Frankel who triggered the guidelines era in the US proposed that a commission include “present or former prisoners” (1973, p. 120). The council does not (Bottoms 2018). Nor are there members drawn from the general public, although scholars have proposed there should be (e.g., Allen 2020). Finally, the English council is apolitical in the sense that it contains no members representing political parties or with “political experience and connections” (Frase 1993, p. 369).

1. *Duties.* The guiding statute in England and Wales is more prescriptive than similar legislation in the US or elsewhere in defining the nature of the guidelines and the role and responsibilities of the council. In addition to specifying its membership, the legislation also provides clear direction about the nature and structure of the guidelines to be issued, the

council's duties, and the courts' duties with respect to compliance. The legislation also identifies a public information function. Section 129(2) of the Coroners and Justice Act 2009 provides that "[t]he Council may promote awareness of matters relating to the sentencing of offenders including: (a) the sentences imposed by courts in England and Wales; (b) the costs of different sentences and their relative effectiveness in preventing re-offending; (c) the operation and effect of guidelines."

The English system provides separate (and individualized) guidelines for all offenses. Despite some structural variation relating to the nature of particular offenses, all the offense-specific guidelines contain a number of common elements. Broadly speaking, they require courts to follow a step-by-step methodology when determining sentence. Applying an offense-based guideline, courts follow up to nine steps, making decisions at each one.

This guideline structure reflects section 63 of the Sentencing Act 2020 which identifies harm and culpability as the principal determinants of crime seriousness (and hence sentence severity): "When a court is considering the seriousness of an offense, it must consider the offender's culpability in committing the offense and any harm which the offense caused, was intended to cause or might foreseeably have caused." In this respect, the guidelines operating in England and Wales, Scotland, and other non-US jurisdictions incorporate retributive proportionality at sentencing. As with most US systems, the English guidelines contain matrices that set out sentence ranges and starting points.

2. *Example: Street Robbery.* Figure 1 contains an extract from a typical guideline showing the categories at step one and the factors which determine which category is appropriate for the case being sentenced. The street robbery guideline lays down nine separate steps for courts to follow.

The first is the most important as it determines the sentence range that the court will work within as it proceeds through the remaining steps. At step 1 the court assigns the offense to one of three levels of harm, and the defendant to one of three levels of culpability. Consistency at this step is promoted by requiring all courts to consider the same set of factors to determine which categories of harm and culpability are appropriate.

Once the applicable categories of harm and culpability have been determined (guided by the factors listed in the guideline and submissions from lawyers for the parties), the court proceeds to step 2, which provides starting points for sentences and sentence ranges for each category. For example, if the court assigns the case to the intermediate harm category

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:	
A – High culpability	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
B – Medium culpability	<ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • Other cases where characteristics for categories A or C are not present
C – Lesser culpability	<ul style="list-style-type: none"> • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Mental disability or learning disability where linked to the commission of the offence

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Serious detrimental effect on the business
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present
Category 3	<ul style="list-style-type: none"> • No/minimal physical or psychological harm caused to the victim • No/minimal detrimental effect on the business

FIG. 1.—Extract from guideline in England and Wales: Street robbery. *Source:* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/robbery-street-and-less-sophisticated-commercial/>.

(2) and the offender to the lowest culpability level (C), the guideline provides a starting point sentence of two years imprisonment and a range of one to four years. The court then moves up and down from the starting point within the category range, considering a non-exhaustive list of mitigating and aggravating factors (and any other factors proposed by counsel).

This exercise results in a provisional sentence. Thereafter, the court works through additional steps, including awarding credit for any assistance provided to the police or prosecution (step 3) or for a guilty plea (step 4). For example, if the defendant had entered a guilty plea at first court

appearance, the court would normally reduce the sentence by a maximum of one-third. Pleading guilty and providing assistance to the police or prosecution are considered at separate steps of the guidelines methodology because they are unrelated to considerations of harm or culpability.

In Minnesota, courts must find “substantial and compelling” reasons before departing from the guidelines. Courts are permitted greater discretion under the English guidelines. The statutory compliance requirement was tightened as a result of legislation in 2009. The language moved from requiring courts to “have regard to” guidelines to the more robust language of having “to follow” any relevant guideline (see discussion in Roberts 2011). Section 59 of the Sentencing Act 2020 states, “(1) Every court . . . (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of that function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

That wording implies a relatively restrictive regime. However, a subsequent provision, section 59(3), makes it clear that the constraint upon courts is to impose a sentence within the total *offense* range rather than the *category* range: “nothing in this section imposes on the court a separate duty . . . to impose a sentence which is within the category range.”

We refer to the offense of assault occasioning actual bodily harm to clarify the offense/category distinction. If a court decides at step 1 that the case falls into the intermediate category of seriousness it employs a *category* range running from a community order to 51 weeks’ custody. The statute, however, authorizes courts to impose any sentence within the total *offense* range which is much wider—from a fine to three years’ imprisonment (see Ashworth 2010 for commentary).

Courts may exercise their discretion in three ways. First, although step 1 requires a court to assign the case to a category of seriousness, courts may “move outside the category range” if they believe it is justified by a significant number of aggravating or mitigating factors. Second, a court is not bound to remain within the category range but only the wider total guideline range of the offense. Third, a court may always depart where it would be contrary to the interests of justice to follow the guideline recommendations. The flexibility of the English guidelines is captured in the description offered by Lord Justice Brian Leveson, the first chair of the council, in testimony before a parliamentary committee: “The guideline

creates an approach and within that approach *judicial discretion is entirely preserved*” (House of Commons Justice Committee, December 14, 2010, p. 12, emphasis added). For better or worse, judges in England have more latitude than their counterparts in US states that operate sentencing guidelines.

3. *Impact of the Guidelines.* Empirical research has demonstrated a modest positive impact on consistency across courts.¹ Pina-Sánchez evaluated the impact of several guidelines and concluded that “consistency improved in all the offenses studied after the new guidelines came into force” (2015, p. 87; see also Pina-Sánchez and Linacre 2013; 2014; Irwin-Rogers and Perry 2015). More recently, Isaac, Pina-Sánchez, and Montane’s (2021) pre-post guideline analyses found increases in consistency for the guidelines studied. Sentencers’ perceptions are important to answering questions about the utility and effectiveness of guidelines. In 2021 the council published findings from an anonymous survey of sentencers which was “broadly reflective of the sentencing population” (Cardale, Layne, and Lock 2021, p. 7). Three-quarters of the sample endorsed the view that the guideline had improved fairness, and almost 90 percent responded that consistency had improved.

Research shows that the guidelines have neither constrained nor increased the size of the prison population. Pina-Sánchez and colleagues (2019) have published the most comprehensive analysis to date. They used a time-series analysis to explore the effects of all guidelines issued so far. Their analysis uncovered no evidence that the guidelines triggered the increase. They concluded: “The increase in severity cannot be attributed to the guidelines but to an ongoing trend that preceded the arrival of the guidelines” (p. 17). This finding is unsurprising; the guidelines were not designed to change sentencing practices and so should not affect the custody rate. But there are some exceptions. Three early guidelines had an unanticipated effect of increasing the proportion of admissions to custody (e.g., Carline et al. 2018). Taken as a whole, however, there is no evidence that the guidelines have contributed to the rising prison population.

B. *Scotland*

Scotland is a separate UK jurisdiction with a legal culture that differs from the other nations. This difference is reflected in sentencing guidance

¹ Consistency is a slippery concept to define and measure. For a discussion of approaches to measuring consistency, see Pina-Sánchez and Linacre (2016); for a more general discussion see Harris (2022).

and current practice (Millie, Tombs, and Hough 2007). For 11 years, Scottish judges benefitted from a pioneering system of guidance, a sentencing information system (SIS), devised by Neil Hutton and Cyrus Tata. The SIS provided access to information about previous sentencing patterns for specific offenses in order to facilitate achievement of greater consistency. Although developed primarily for the judiciary, the SIS had the potential to increase public awareness and understanding of sentencing decisions. Regrettably, it was discontinued by the Scottish Court Service (Tata 2020). Despite its demise, the SIS undoubtedly contributed to greater judicial awareness of the value of better sentencing-related information.

1. *Scottish Sentencing Council.* Created in 2015 the Scottish Sentencing Council (SCC) has 12 members, half of whom are members of the judiciary. In addition to representatives of solicitors, barristers, and the prosecution branch, members include a police officer, a victims' representative, and a person "not qualified as a judicial or legal member." The SSC meets less frequently than the English Council, which may explain the slower roll-out of guidelines in Scotland.

The guidelines compliance requirement in Scotland is less restrictive than the "must follow" wording used in England and Wales. Scottish courts need only "have regard to" guidelines issued by the SSC: "A court must have regard to any sentencing guidelines which are applicable to the case under consideration at the time when the court is sentencing the offender." Scotland's guidelines thus provide courts with more discretion.

Another key difference is that section 5(1) of the Criminal Justice and Licensing (Scotland) Act 2010 provides that the guidelines "have no effect" unless approved by the High Court of Justiciary. That provides a novel way for guidelines to be legitimized, particularly within the judiciary. This approval process was urged by the Lord Justice General to ensure sufficient separation of powers (Hutton and Tata 2010). The approval requirement may enhance relations between courts and the SSC in a unique way. The use of guideline judgments reflected a desire not to interfere with principles of judicial discretion and individualized sentencing and may be one reason why the Scottish guidelines do not provide starting points (we discuss this below).

2. *The Scottish Guidelines.* The Scottish guidelines were not intended to control or regulate admissions to prison. Such a function was urged by Scottish academics to avoid having to "look at alternative methods for reducing the supply of prisoners to an overcrowded and increasingly

expensive prison estate” (Hutton and Tata 2010, p. 277).² Unlike the English Council, which first issued offense-specific guidance, the Scottish Council’s first guideline addressed the sentencing process. Called the *Principles and Purposes of Sentencing*, it reaffirms existing sentencing principles.

Courts in Scotland now apply guidelines issued by the SSC (e.g., SCC 2023; Roberts and Gormley 2025). The English and Scottish guidelines share a number of common elements, principally a step-by-step process and offense-specific guidelines. There are also significant differences. Because of higher sentencing ranges and a higher number of specified sentencing factors associated with the most serious offenses in England, outcomes for the most serious offenses are likely to be harsher there. This speculation, however, remains to be confirmed by comparative sentencing statistics.

Another key difference is that the English guidelines specify starting points for sentences. The purpose is to ensure that all courts begin the sentencing exercise by entering the range at a common point, thereby promoting greater consistency of approach. The SSC provided several reasons for not establishing starting points. They were perceived to be inconsistent with the traditions of the Scottish judiciary: the High Court does not normally provide starting points in sentence appeals as Ireland does. Starting points were also perceived as limiting individualized sentencing. The SSC also noted that it is unclear whether starting points improve consistency in sentencing and that there was no evidence of inconsistency when sentencing these offenses in Scotland.

The SSC like the English council has adopted an evidence-based approach to guideline development. The English council has published several research reviews to inform its guidelines, but the SSC has conducted even more. By 2024, the SSC had published a range of research reviews on key sentencing issues such as sentencing firearms offenses (Gormley et al. 2025). These reviews, which can influence policy-making and scholarship, are another benefit of an independent sentencing council. Research reviews in the academic literature do not attract the same degree of confidence. Given that the SSC has issued only one offense-specific guideline (for the statutory offenses of causing death by driving) and a couple of general guidelines, it is unsurprising that no evaluation research has been

² Scotland has not experienced the acute prison overcrowding that forced the English government in 2024 to take extraordinary measures to reduce its prison population.

conducted. The effects of the Scottish guidelines on sentencing practice remain to be determined.

C. Northern Ireland

Northern Ireland has also adopted guidelines, albeit of a more restricted scope. It does not operate a sentencing council per se, but a 13-member Sentencing Group advises the Lord Chief Justice who, in 2009, convened a judicial “sentencing working group” composed of judges from all sentencing tiers to consider Northern Ireland’s system of sentencing guidance. It made a number of recommendations which the Lord Chief Justice adopted.

One called for creation of a sentencing group comprised of representatives from each tier of the judiciary and chaired by a lord justice of appeal. The lord chief justice established such a group with a range of functions, including providing advice on the utility of sentencing guidelines for the magistrates’ courts in Northern Ireland.

The current guidance takes several forms. First, for most key issues (such as sentence reductions for a guilty plea) the judiciary’s website summarizes key case law. Second, the website provides judgments pertaining to categories of offending.³ Third, more detailed guidelines containing recommended sentences and starting points exist for the magistrates’ courts.⁴

There are guidelines for all common offenses sentenced in the magistrates’ courts. They are based on the model created by the Sentencing Guidelines Council in England and Wales. For each offense the guideline defines levels of seriousness. For example, the assault guideline defines three levels of seriousness. The least serious is “assault resulting in relatively minor injury but amounting to actual bodily harm,” while the highest level is “assault involving gratuitous violence (e.g., kicking or stamping victim when on the ground) or an [a]ssault [which] was motiveless.”⁵ The guidelines are less detailed than those in Scotland or England. The guideline for assault occasioning actual bodily harm, for example, contains only one mitigating factor (provocation by the victim).

³ Sentencing Guidelines—Violent Offenses, <https://www.judiciaryni.uk/judiciary-decision-types/type/violent-offenses-52>.

⁴ Sentencing Guidelines—Magistrates’ Court, <https://www.judiciaryni.uk/sentencing-guidelines-magistrates-court>.

⁵ Sentencing Guidelines—Assault Occasioning Actual Bodily Harm, <https://www.judiciaryni.uk/files/judiciaryni/media-files/Assault%20Occasioning%20Actual%20Bodily%20Harm.pdf>.

The stated purpose is to “enhance both transparency of justice and consistency in decision-making by the courts.”⁶ They reflect current sentencing practice in the magistrates’ courts. Although they lack the force of law, they are deemed relevant when sentencing in the magistrates’ courts. A court may depart when, depending on the circumstances of the offense or the offender, it determines that the interests of justice require a departure and explains why. It remains to be seen whether Northern Ireland will someday create an independent sentencing council with a mandate and resources to issue fuller guidelines. The guidelines are primarily directed at sentencers and legal practitioners. A public consultation regarding the sentencing framework was launched in 2019 (Department of Justice, Northern Ireland 2019).

II. Sentencing Framework and Key Characteristics of English Sentencing

In the rest of this essay, we mostly discuss the sentencing regime in England and Wales (see also Ashworth and Kelly 2021*b*; Padfield and Tata 2023). In this section we discuss the organization of the English sentencing system, the roles of prosecutors, and sentence appeal processes.

A. Court Structures and Powers

There are two levels of trial courts. In the Crown Court, where the more serious offenses are tried, a judge and jury adjudicate. Most cases are sentenced in magistrates’ courts, which rely heavily on participation by lay sentencers. Some other jurisdictions in Europe, for example Germany and Italy, have hybrid tribunals composed of professional and lay judges, but England and Wales alone have lay magistrates determine verdicts and sentence.

The lay magistracy has existed for over six centuries. Requirements for appointment are minimal. There are currently about 16,000 lay magistrates. They receive limited training on appointment and ongoing training from the court’s legal advisor, a qualified lawyer who provides legal advice as requested. Legal advisors sit in court beneath the magistrates

⁶ Magistrates’ Courts Sentencing Guidelines Introduction and General Principles, <https://www.judiciaryni.uk/magistrates-courts-sentencing-guidelines-introduction-and-general-principles-0>.

who usually sit in benches of three. The legal advisors play a critical yet hidden role. Magistrates may consult them on legal or procedural questions or seek advice on the appropriate sentence to impose. Some magistrates' courts, particularly in large cities, also employ a professional judge who sits alone and hears the more complex or controversial cases.

The maximum sentence that may be imposed is 12 months' imprisonment, although the government is considering raising this to two years. All cases begin in the magistrates' courts, and almost all end there. Over 90 percent of all sentences of people convicted of crimes occur in magistrates' courts (Ministry of Justice 2024). If the court believes that its sentencing powers are inadequate, it may decline jurisdiction and refer the case to the Crown Court for sentencing. Appeals against magistrates' sentences result in a *de novo* hearing in the Crown Court. Appeals from the Crown Court are heard by the Court of Appeal (Criminal Division).

B. The Prosecutor

Another distinctive characteristic of English sentencing is the circumscribed role of the prosecutor. Although specific and robust sentencing submissions from both parties are the norm in most common law countries, English prosecutors have historically limited themselves to highlighting important aggravating circumstances and providing information that may be useful to the court at sentencing, including any applicable appellate precedents (Crown Prosecution Service 2023). This traditionally limited role has changed in response to the guidelines. Prosecutors now make submissions on the offense category in the sentencing guidelines they believe to be appropriate, although they seldom recommend specific sentences (as is common in other common law jurisdictions). As a result, sentencing hearings are generally less adversarial in England and Wales than in Canada or the US.

C. Sentence Appeals

Another distinctive feature of English sentencing relates to state sentence appeals. As with other jurisdictions, the state enjoys appeal rights at sentencing, known as "attorney general references." The attorney general may appeal a sentence under the "unduly lenient sentence" scheme (ULS). For many serious offenses, the crime victim, or any member of the public, may request a review of a sentence. The offenses for which this is possible are listed in the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006 (SI 2006/1116). The range has expanded in recent years and

includes most serious sexual offenses, offenses related to producing or supplying controlled drugs, modern slavery, terrorism offenses, and some offenses relating to stalking and domestic violence (Harris 2019).

Defendants may appeal sentences and also, after the statutory appeal period has elapsed, apply to the Criminal Cases Review Commission (CCRC) for review of the sentence as a miscarriage of justice. The CCRC may, after reviewing the application, refer cases to the court of appeal which must conduct a hearing.⁷ Referrals are made in reference only to a small percentage of applicants. The CCRC receives more than 1,000 applications a year.⁸ In 2021, it received 1,142 applications of which 5 percent were referred to the court of appeal. The only analysis of applications for referral of sentence (published in 2008) concluded that the concern “that sentence cases would clog up the commission’s activities has not been realised in practice” (Elks 2008, p. 274). The limited statistics available suggest that this remains true.

Similar applications can be made to the Scottish Criminal Cases Review Commission, (SCCRC) which between 1999 and 2020 received 2,802 applications and made 144 referrals. Almost half (44 percent) were sentence-only referrals (SCCRC 2020). One explanation for the higher volume of sentence applications and referrals in Scotland is that the criteria for referral are more liberal. The English CCRC refers a case only if it concludes, per section 13 of the Criminal Appeal Act 1995, that there is a “real possibility” that the court of appeal will overturn the conviction or reduce the sentence. In contrast, the SCCRC can refer cases to the High Court of Justiciary if it believes a miscarriage of justice may have occurred, and it is in the interest of justice to do so. Through 2018, sentence referrals were more often successful (88 percent of referrals) than conviction referrals (50 percent).

III. Trends in Use of Principal Sanctions

Figure 2 shows the decline in the volume of cases sentenced over the last 20 years. This results from caseload changes following drops in high-volume crimes. There was a recent reversal, partly due to the accumulated

⁷ This is true even if the appellant is long deceased, as in the case of Ruth Ellis, the last woman executed in England and Wales (in 1954).

⁸ The annual report contains a limited amount of statistical information; see <https://ccrc.gov.uk/corporate-information-and-publications/>.

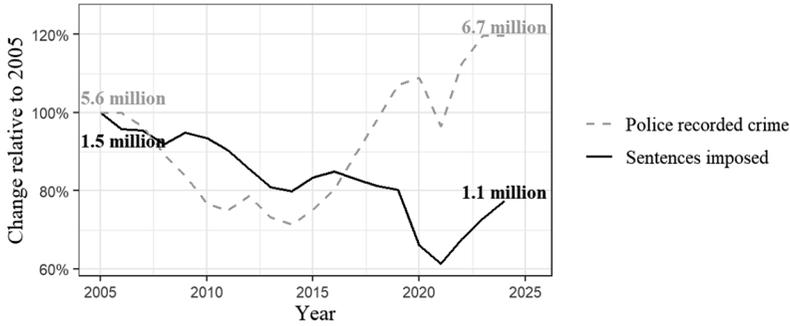


FIG. 2.—Number of sentences imposed (all courts) and police recorded crime, England and Wales, 2005–24. *Source:* <https://www.gov.uk/government/collections/criminal-justice-statistics>.

caseload following the 2020 pandemic and also due to an earlier change in crime trends.

A. Trends in the Use of the Principal Sanctions

Table 1 and figure 3 summarize the use of the principal sanctions across all courts from 2005 to 2024.⁹ Overall, the use of immediate and suspended prison sentences has been relatively stable. Immediate prison sentences accounted for around 7 percent during the entire period. The proportionate use of suspended sentence orders (SSOs) increased steadily following removal of a legislative restriction on their use in 2003 and has since stabilized at about 4 percent of cases. An SSO is considered a sentence of imprisonment; before imposing it, a court must determine that the “custody threshold” has been passed. Use of SSOs is likely further to increase as a result of the legislation introduced in late 2025 that creates a presumption against the use of short prison sentences in favor of a suspended sentence of imprisonment. The presumption will require courts to replace most prison sentences of 12 months or less with a suspended sentence order. We discuss this in section IV.

The volume of prison sentences imposed declined from 101,236 in 2005 to 75,342 in 2024, a drop of 26 percent (table 1). However, the proportionate use of imprisonment (immediate and suspended combined)

⁹ Sentence data in table 1 and all figures are based on the “principal offense rule.” When a defendant has been convicted of multiple offenses, the database captures only the offense resulting in the most severe punishment.

TABLE 1

Volumes and Percentages of Sentences, All Courts, England and Wales, 2005–24

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Custody	101,236 7%	96,013 7%	95,206 7%	99,525 7%	100,231 7%	99,550 7%	103,752 8%	103,768 8%	94,060 8%	92,650 8%
Suspended sentence	9,666 1%	33,508 2%	40,688 3%	41,151 3%	45,157 3%	46,456 3%	48,984 4%	46,877 4%	44,994 4%	51,492 4%
Community order	204,247 14%	190,818 13%	196,424 14%	190,172 14%	195,977 14%	188,854 14%	184,618 14%	166,255 13%	134,073 11%	116,288 10%
Fine	1,025,064 69%	961,473 68%	941,534 67%	890,296 65%	946,146 67%	927,363 67%	874,299 65%	833,895 66%	815,075 68%	812,718 69%
Other ^a	142,240 10%	138,665 10%	140,890 10%	140,920 10%	119,394 9%	125,231 9%	127,824 10%	118,055 9%	110,643 9%	109,906 9%
Total	1,482,453	1,420,477	1,414,742	1,362,064	1,406,905	1,387,454	1,339,477	1,268,850	1,198,845	1,183,054
Custody	90,601 7%	90,826 7%	90,128 7%	86,630 7%	80,256 7%	67,291 7%	63,305 7%	65,227 7%	66,682 6%	75,342 7%
Suspended sentence	55,291 5%	57,260 5%	56,554 5%	50,801 4%	40,897 3%	34,779 4%	43,537 5%	42,324 4%	40,850 4%	46,365 4%
Community order	109,193 9%	106,742 9%	98,362 8%	92,532 8%	91,403 8%	66,259 7%	74,153 8%	70,561 7%	68,402 6%	73,425 6%
Fine	881,045 71%	915,082 73%	913,905 74%	913,364 76%	923,610 78%	769,266 79%	687,025 76%	787,016 79%	866,569 80%	908,243 79%
Other ^a	101,137 8%	89,481 7%	71,821 6%	61,841 5%	54,213 5%	41,490 4%	41,927 5%	37,707 4%	38,983 4%	44,399 4%
Total	1,237,267	1,259,391	1,230,770	1,205,168	1,190,379	979,085	909,947	1,002,835	1,081,486	1,147,774

SOURCE.—<https://www.gov.uk/government/collections/criminal-justice-statistics>.^a Includes absolute discharge, conditional discharge, and otherwise dealt with.

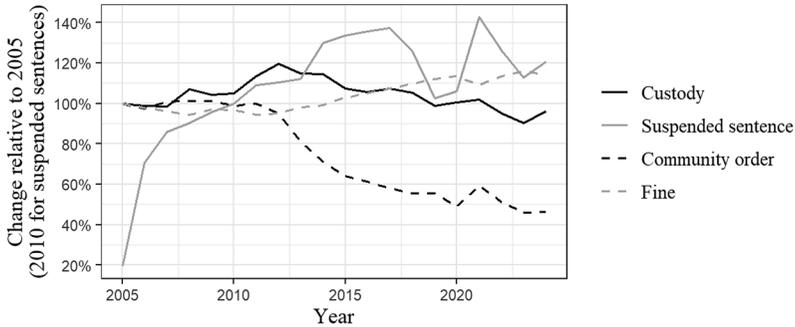


FIG. 3.—Changes in the relative use of sentence types, all offenses, England and Wales, 2005–24. *Source:* <https://www.gov.uk/government/collections/criminal-justice-statistics>.

increased, from 8 percent in 2005 to 11 percent in 2024. Since the rate for immediate imprisonment was stable, the increase is attributable to a rise in the number of suspended sentences, particularly in the early years. The proportionate use of community orders has declined, from a peak of 14 percent in 2005 to 6 percent in 2024. “Other” sentences, which tend to be the least severe (including unconditional discharges), declined significantly from 10 percent in 2005 to 5 percent in 2024. The use of fines increased from 69 percent of all sanctions to 79 percent.

Offenses are classified into three broad groups. Indictable offenses, the most serious, are sentenced exclusively in the Crown Court. Summary offenses, the least serious, are sentenced in magistrates’ courts. The third, middle category, triable either way, can be sentenced in either court.

The sentencing of indictable offenses has changed substantially. The use of immediate custody increased from around 68 percent of all cases in 2005 to 72 percent in 2022–24 (table 2). The proportionate use of community orders halved, falling from 26 percent in 2005 to 12 percent in 2024. The reasons for this are unclear. One possible explanation, which we do not accept for reasons provided below, is that cases appearing for sentence in the Crown Court have become more serious (Pina-Sánchez et al. 2019). The increase in use of SSOs is even more striking. Their use increased from 2 percent of sentences in 2005 to 12 percent in 2024. The SSO has been imposed for an increasing percentage of more serious cases, seemingly significantly replacing use of community orders (fig. 3). Sentencing practices now involve a greater use of imprisonment, whether immediate or suspended.

TABLE 2
Volumes and Rates of Sentences, Indictable Offences, England and Wales, 2005–24

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Custody	10,995	12,032	13,832	14,842	14,365	13,840	14,613	14,563	13,064	11,815
	68%	67%	67%	71%	71%	71%	69%	70%	72%	72%
Suspended sentence	321	1,031	1,541	1,688	1,727	1,662	1,991	1,912	1,946	2,018
	2%	6%	7%	8%	9%	8%	9%	9%	11%	12%
Community order	4,226	4,369	4,655	3,825	3,805	3,630	3,779	3,693	2,718	2,174
	26%	24%	23%	18%	19%	19%	18%	18%	15%	13%
Fine	83	88	101	54	41	43	43	14	39	47
	1%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Other ^a	429	436	470	404	358	405	676	538	302	414
	3%	2%	2%	2%	2%	2%	3%	3%	2%	3%
Total	16,054	17,956	20,599	20,813	20,296	19,580	21,102	20,720	18,069	16,468
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Custody	10,955	10,515	10,431	10,579	9,461	7,497	7,317	8,154	7,847	8,469
	74%	75%	76%	77%	77%	74%	70%	75%	75%	72%
Suspended sentence	1,723	1,642	1,474	1,443	1,191	984	1,190	1,268	1,077	1,363
	12%	12%	11%	11%	10%	10%	11%	12%	10%	12%
Community order	1,622	1,406	1,376	1,427	1,394	1,379	1,753	1,185	1,333	1,566
	11%	10%	10%	10%	11%	14%	17%	11%	13%	13%
Fine	37	43	30	14	20	14	13	20	17	16
	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Other ^a	467	490	430	265	236	198	215	235	240	303
	3%	3%	2%	2%	2%	2%	2%	2%	3%	3%
Total	14,804	14,096	13,741	13,728	12,302	10,072	10,488	10,862	10,514	11,717

SOURCE.—Data for the 2010 to 2024 period was derived from the Ministry of Justice “Criminal Justice Statistics Quarterly: June 2024.” For the 2005 to 2009 period, we use data from “Criminal Justice Statistics Quarterly: December 2014.”

^a Includes absolute discharge, conditional discharge, and otherwise dealt with.

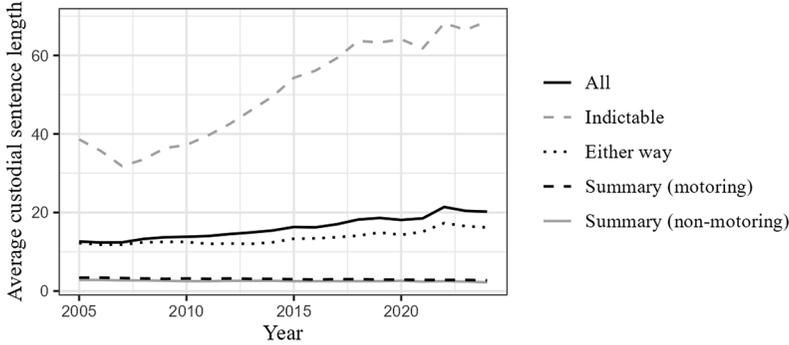


FIG. 4.—Average custodial sentence lengths, 2005–24. *Source:* <https://www.gov.uk/government/collections/criminal-justice-statistics>.

Imprisonment lengths for indictable offenses also increased significantly (fig. 4). The average custodial sentence length (ACSL) in 2005 was 2.8 months for summary (non-motoring) offenses and 38.6 months for indictable offenses. The comparable figures in 2024 are 2.2 months, a modest decline, and 68.7 months, close to doubling. As a result, the prison population rose steadily.

B. Sentence Inflation

The rise in the average sentence length has attracted considerable public attention following an unprecedented publication by three former Lord Chief Justices and a senior judge. They decried the rise in sentence severity, describing it as “sentence inflation” and concluding that “there is nothing that justifies this doubling of sentence lengths” (Howard League 2024, p. 2).

Sentence inflation is an increase in average severity stemming from a change in sentencing policy or practice, all else being equal. Importantly, however, if the average seriousness of crimes has grown or a higher proportion of repeat offenders has been convicted, increases in severity can be seen as natural or legitimate.¹⁰ However, apparent increases in offense seriousness might also result from changing detection rates or charging practices.

¹⁰ There is also a question as to whether the existing levels of severity, which increase as crimes get more serious, were themselves too high. We should not simply assume that custody rates and sentence lengths in, say 2005, were appropriate.

We should be wary of describing as sentence inflation changes in severity that reflect changes in the mix of offenses processed across time. This should be of particular concern in light of successive budget cuts in England and Wales imposed since 2008 upon all criminal justice agencies. It is possible that both police and prosecutors have adjusted to their capacity loss by prioritizing more serious crimes, which would be reflected in an increase in sentence severity. For example, from 2010 to 2024 the number of sentences imposed for offenses of “production, supply and possession with intent to supply a controlled drug: class A” (those deemed to be the most dangerous, e.g., heroin or cocaine) increased by 53 percent, while sentences for class C drugs offenses (those deemed to be the least dangerous, e.g., ketamine or anabolic steroids) declined from 2,651 to 87 sentences.¹¹

Other possible drivers of sentence inflation include changes to the sentencing framework, such as increases in maximum sentences, the introduction of mandatory sentences, and legislated increases to the proportion of time that must be served in prison. This might be called “politically-driven” sentence inflation. Or, if sentencers respond to the “climate of opinion” supporting increased sentence severity, this might be termed “judicially-led” sentence inflation, even if the climate of opinion is at least in part politically shaped.

C. Measuring Sentence Severity

In order to determine whether the striking increase in prison sentence lengths reflected natural or other sources of inflation, we compared increases in severity with changes in the seriousness of offenses. We measure sentence severity using an index of imprisonment use that combines two elements: prison admissions and prison durations. Admissions-based inflation occurs when the custody rate for an offense increases without changes in any legally relevant characteristics. Durational inflation arises when average sentence lengths increase without such changes.

Sentence duration increased by 78 percent over the period 2005–24, more than the 6 percent increase for the custody rate. These figures relate only to indictable offenses. For summary offenses, admissions and durations both declined over this period (see fig. 4). Two key conclusions: longer sentences have contributed more to sentence inflation than higher custody

¹¹ The year 2010 is used as a baseline to avoid any confounding effects associated with the reclassification of cannabis from a class C to B drug in 2009.

rates, and the increased punitiveness affected only sentencing of more serious crimes (indictable and triable either way offenses in the Crown Court).

To take both the custody rate and the average custodial sentence length (ACSL) components into account, we employ an “imprisonment index.”¹² This is created by multiplying the probability of an immediate custodial sentence by the ACSL. It provides a more complete measure of sentence severity than relying on either one alone while remaining parsimonious and intuitive.¹³ For example, as shown in figure 5, the imprisonment index clearly distinguishes the diverging patterns of punitiveness associated with different offense groups according to their trial classification.

D. Measuring Offense Seriousness

Our analyses test one key potential explanation of “legitimate” sentence inflation: an increase in seriousness of the cases appearing for sentencing. For example, taking all sexual offenses of any level of seriousness, if the proportion of rape cases had increased over time, this would explain an increase in the severity of sentencing outcomes for sexual offenses. Using 2005 as the base year we examined changes in the mix of crimes appearing for sentencing. This is an independent measure of the seriousness of cases being sentenced.

To estimate changes in the level of crime seriousness we used the Office of National Statistics Crime Severity Score¹⁴ (CSS). The CSS is a weighting system designed to reflect the comparative seriousness of a wide range of types of crime (Bangs 2016). The seriousness scale combines sentence ranges in the sentencing guidelines, actual sentencing outcomes from court data,

¹² The Imprisonment Index can be expressed mathematically as follows: $Y_{i,t} = C_{i,t} \cdot L_{i,t}$. Y refers to sentence severity (the Imprisonment Index), C the proportion of custodial sentences, and L the average sentence length, with subindexes i and t used to distinguish across specific offenses and years. As an example, the custody rate for indictable offenses rose from 6 percent in 2023 to 7 percent in 2024, while the average sentence length rose from 63.5 to 64.7 months in the same period. The imprisonment index for indictable offenses was therefore $0.06 \times 63.5 = 3.8$, in 2023 and, $0.07 \times 64.7 = 4.5$, in 2024.

¹³ More sophisticated scales of sentence severity have been devised (Leclerc and Tremblay 2016; Pina-Sánchez and Gosling 2020, 2022). However, they rely on a set of strong assumptions that make it difficult to assess their validity. “Occam’s razor” favors the index we have employed as it relies on fewer underlying assumptions.

¹⁴ See: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/researchoutputsdevelopingacrimeseverityscoreforenglandandwalesusingdataoncrimesrecordedbythepolice/previousReleases>.

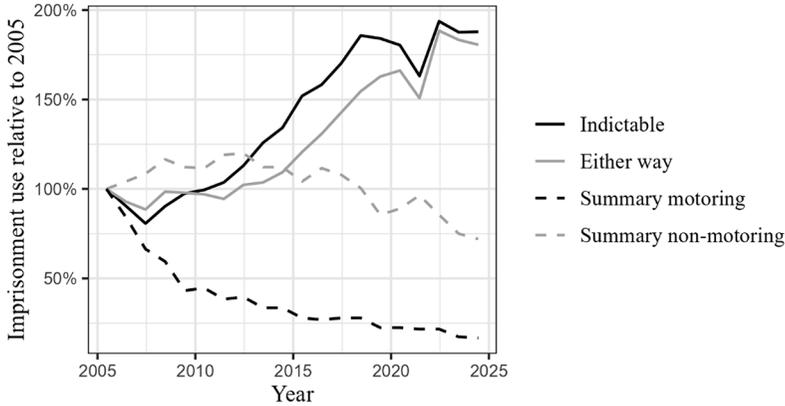


FIG. 5.—Change in the use of imprisonment, relative to 2005, by trial classification. *Source:* <https://www.gov.uk/government/collections/criminal-justice-statistics>.

and expert judgments.¹⁵ For crimes resulting in prison sentences, the length of the sentence (in months) determines the weight. For crimes leading to community order and financial penalties, the length of time to complete the order and the size of the fine are converted into an equivalent harm measure. Crimes that rarely result in prosecution or sentencing are assigned weights based on expert judgment or analogous offenses. The resulting weights are standardized, ensuring that crimes of greater harm (e.g., homicide or grievous bodily harm) attract higher values than less serious offenses (e.g., shoplifting or graffiti).¹⁶

E. Tracking Sentence Severity and Offense Seriousness

Offense types were not always consistently categorized across the sources used in this essay. We therefore selected only offenses that were consistent across datasets. We also recoded into broader groups some offenses for

¹⁵ For more information on the methodology, see Crime Severity Score data tool: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeseverityscore/datatool>.

¹⁶ For a more detailed example of how crime seriousness weights are calculated for shoplifting, see: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/researchoutputsdevelopingacrimeseverityscoreforenglandandwalesusingdataoncrimesrecordedbythepolice/2016-11-29#annex-3-example-of-weight-calculation-shoplifting>.

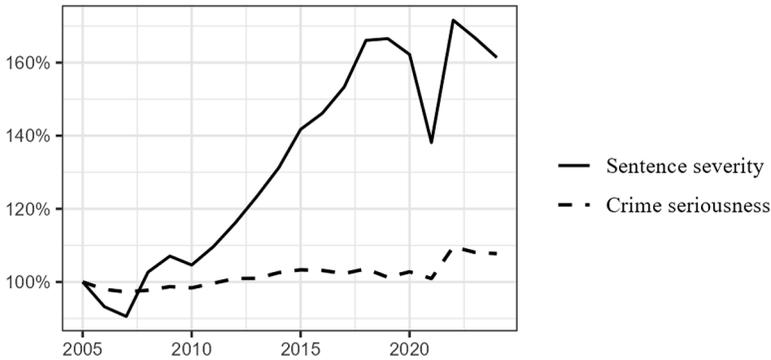


FIG. 6.—Trends in sentence severity and crime seriousness (2005 as baseline). *Source:* <https://www.gov.uk/government/collections/criminal-justice-statistics>.

which the datasets did not provide corresponding weights. For example, murder, attempted murder, and manslaughter were grouped into the same category. The types of offense considered in our analysis and their respective weights are shown in the appendix.¹⁷ To estimate changing levels of crime seriousness across time ($X_{i,t}$) we use an arithmetic mean: $X_{i,t} = \frac{\sum(W_i \cdot n_{i,t})}{N_t}$, where W_i refers to the severity score allocated to a specific offense type (e.g., arson endangering life), $n_{i,t}$ denotes the number of sentences imposed for each offense type within a year, and N_t the number of offenses sentenced in a year.

Comparing trends in sentence severity and crime seriousness for all 137 offenses included in our analysis¹⁸ reveals a pattern of varying divergence (fig. 6). The only exception is during the pandemic period, which was associated with a steep decline in sentence severity, followed by an equally significant rebound the following year. We estimate that sentence severity has increased by 62 percent, while the seriousness of crimes has increased by only 8 percent. Thus, 87 percent of the estimated increased sentence severity is likely to be due to “true” sentence inflation.

¹⁷ The full list of offense types for which the ONS provides a crime severity score is available here: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeseverityscoreexperimentalstatistics>.

¹⁸ These include 35 violence-related offense types, 27 for sex, 1 for robbery, 18 for theft, 4 for criminal damage and arson, 3 for drugs, 6 for possession of weapons, 5 for public order, 8 for fraud, and 30 miscellaneous offenses.

F. Sentence Inflation Varies Across Offenses

Figure 7 illustrates offense-specific trends and reveals that sentence inflation has not been uniform. No substantial inflation can be detected for criminal damage, drug offenses, and public order offenses, at least until 2021. However, significant sentence inflation affects offenses involving fraud, weapons, sex, and violence. We estimate that sentence severity for violence-related offenses has outpaced changes in crime seriousness by a factor of 1.6. Sentence inflation for sexual, weapons, and fraud offenses is greater, increasing by factors of 1.7, 2.3, and 4.2, respectively.

There are likely multiple causes for such varied patterns. Pina-Sánchez et al. (2019) attribute some of the increase for violent offenses to the guidelines introduced in 2011. However, the guidelines for bladed articles and offensive weapons, introduced in 2018, appeared in a period without sentence inflation. It is harder to pinpoint causes for this; increased public and political concern about knife crime might affect sentence inflation. We cannot conclusively determine whether sentence inflation for violent crimes reflects changing public attitudes translated into sentencing practices. Sexual, weapons, and fraud offenses, however, have attracted much media attention since 2005 in the Me Too movement, the knife crime epidemic, and the 2008 financial crisis.

The overall increase in sentence severity observed over the last two decades cannot be attributed to a more serious mix of cases being processed through the courts. Our findings may be affected by other factors reflecting offense seriousness that we are unable to include in our analyses. For example, if the criminal histories of offenders appearing for sentencing became more serious over the past 20 years, this would explain some of the increase in sentence severity. However, this does not appear to be the case. Repeat offenders account for a smaller percentage of all cases. The proportion of first-time convicted offenders increased from 11 percent in 2005 (Hansard 2010) to 22 percent in 2024 (Ministry of Justice 2025*a*). Similarly, if there had been an increase in the proportion of offenders pleading not guilty this would also contribute to an increase in sentence severity, because sentences are normally reduced in guilty-plea cases; yet guilty-plea rates did not increase substantially. Sixty-four percent of convictions in 2024 resulted from guilty pleas (Ministry of Justice 2024). This is only slightly lower than in 2007–8 in magistrates' courts (66.4 percent) and the Crown Court (68.8 percent) (Crown Prosecution Service 2009).

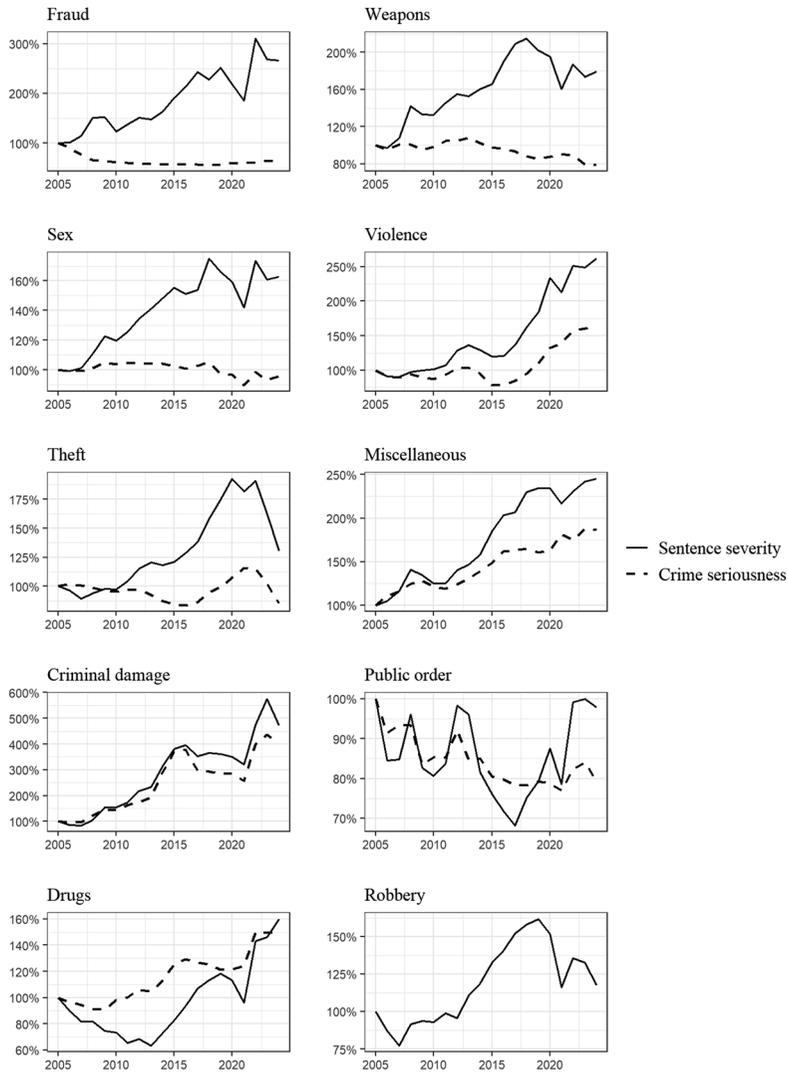


FIG. 7.—Offense-specific trends in sentence severity and crime seriousness (2025 as baseline).
 Source: <https://www.gov.uk/government/collections/criminal-justice-statistics>.

IV. Developments in Policy and Practice

In this section, we discuss four developments in English sentencing that have attracted significant recent attention: sentencing for murder, sentencing of members of minority groups, political threats to the independence of the sentencing council, and serious prison overcrowding.

A. Sentencing for Murder

A murder conviction carries a mandatory sentence of life imprisonment. To achieve a degree of proportionality, the court sets a minimum term that a prisoner must serve before becoming eligible to apply for release on license. There is no minimum period that must be served. In practice, minimum terms range from a few years (for what may be termed “merciful intention” murders) to 50 years or longer for the most serious cases not receiving a sentence of life without parole (known as a “whole life order”).

Murder sentencing was changed dramatically by enactment of the Criminal Justice Act 2003. Schedule 21 established a new system for determining the minimum term to be served, with three different starting points—whole life, 30 years, and 15 years—to assist a court in determining the minimum; there is a separate starting point for young offenders. A subsequent amendment added a 25-year starting point for some offenses involving weapons taken to the crime scene.

The Court of Appeal has reiterated in a number of judgments that the starting points should be viewed only as points of departure.¹⁹ It is unclear how closely minimum terms imposed have tracked the starting points. A very close correspondence would suggest excessive deference to the statute. If minimum terms are highly discrepant from pertinent starting points, this might suggest judicial resistance. The appropriate starting point is to be determined on the basis of key aggravating features, including the offender’s motive and the mode of killing. The system is simple yet fundamentally flawed.

Proportionality concerns require correspondence between the seriousness of the offense and the severity of the punishment. This implies scales of crimes arrayed according to their relative seriousness and of punishments ranked in order of relative severity (von Hirsch 2017). Ordinal proportionality mandates that there be appropriate spacing between crimes and between punishments. If the seriousness of two crimes is substantially different, the severity of punishments imposed should be comparably

¹⁹ See, e.g., *R. v. Sullivan* [2005] EWCA Crim 1762, [2005] 1 Cr App R (S) 67.

different. Small differences in seriousness should correspond to minor differences in severity.

Ordinal proportionality requires that cases of different gravity attract minimum terms of commensurately different severity. The more serious forms of murder should attract longer minimum terms, and the distances between the minimum terms imposed should correspond to differences in the relative seriousness of cases. Since minimum terms are greatly influenced by the statutory starting points, ordinal proportionality should also be evident in the structure and severity of starting point sentences. Schedule 21 creates a categorical hierarchy: the most heinous murders attract a whole life order and less serious murders by adult offenders carry lesser starting points of 30, 25, or 15 years.

The different starting points, however, do not conform to a rational ranking of seriousness or culpability. Murders of roughly comparable seriousness attract markedly different starting points. The spacing between different types of murder is also inconsistent with a proportionality analysis. If the starting points violate proportionality requirements, it will be much harder for minimum terms to conform to the principle.

Schedule 21 contains many anomalies (Roberts and Saunders 2020). One obvious example relates to the starting point for “weapon to the scene” murders. If the crime was insufficiently serious to attract a whole life order or a 30-year starting point (“exceptionally high” seriousness) and was not a murder of “particularly high seriousness” but fell within circumstances enumerated in paragraph 5A(2) of the Schedule, a 25-year starting point would be appropriate if “the offender took a knife or other weapon to the scene intending to (a) commit any offense, or (b) have it available to use as a weapon, and used that knife or other weapon in committing the murder.” Taking a weapon to the scene therefore can nearly double the starting point from 15 to 25 years. This circumstance cannot justify such a jump in severity. Establishment of a much higher starting point for murders committed with a weapon brought to the scene creates additional anomalies.

Consider two scenarios. Defendant 1 picks up a knife in his kitchen, walks next door, and murders a neighbor. The starting point sentence would be 25 years. Defendant 2 goes next door and seizes a knife in the neighbor’s kitchen to commit murder. Here the starting point would be 15 years. The harm inflicted and the mens rea for murder are the same. Is there a significant culpability difference between the two defendants? It may be argued that taking a weapon to the scene is evidence of planning

and implies enhanced culpability; that might justify a slightly higher starting point. Yet if this is so, taking a weapon to the scene is evidence of, or a proxy for, enhanced culpability through planning and premeditation, a factor already taken into account in Schedule 21.²⁰ From a proportionality perspective, the blameworthiness of the two defendants are not very different. If the offender who brings his own knife to kill is indeed deemed more culpable, this can hardly justify an extra ten years in prison.

By adding a 25-year starting point for such cases, Parliament significantly undermined the proportional structure of the murder sentencing regime in Schedule 21. It in effect introduced a deterrence-based severity premium that is at odds with the concepts of harm and culpability. The very divergent minimum terms for the comparably culpable offenders also violate the principle of parity.

The incidence of killing with knives did not decline following introduction of the new starting point, raising doubt whether the increased sentence severity has any deterrent effect. There is no evidence in the annual homicide statistics that the increased minimum had any deterrent effect on other potential offenders. Authoritative reviews of the deterrence literature conclude that increases in sentence severity do not deter other offenders (e.g., Doob and Webster 2003; Webster and Doob 2012; Kleck and Sever 2018). Special or individual deterrence was seldom discussed in the parliamentary debates on sentencing for murder; the research evidence is no more encouraging. There is a consensus in authoritative reviews of the literature that longer sentences are not associated with lower re-offending rates (e.g., Nagin, Cullen, and Jonson 2009; Rosenfeld and Grigg 2022).

The average length of a minimum term for murder rose from 12.5 years in 2003 when Schedule 21 took effect to 21 years in 2021 (Bromley Briefings 2025). Schedule 21 must be the cause; there is no evidence of an increase in the gravity of murders committed or in the culpability of offenders. The schedule appears to have contributed to increasing sentence lengths for other offenses, including attempted murder, manslaughter, and causing grievous bodily harm with intent.²¹ The average custodial sentence length (ACSL)

²⁰ Section 4(2)(a)(i) of the Schedule identifies “a substantial degree of premeditation or planning” as a factor which determines whether a whole life order is normally the starting point sentence. Section 10(a) notes that “a significant degree of planning or premeditation” constitutes an aggravating circumstance.

²¹ See Barot [2007] EWCA Crim 1119; Hunter [2007] EWCA Crim 3424; Duffy and others [2008] EWCA Crim 1436; Appleby and others [2009] EWCA 2693.

for manslaughter almost doubled from 5.4 years in 2007 to 8.8 years in 2017.²² These trends have contributed to the burgeoning prison population.

Schedule 21 preceded the creation of the statutory guidelines' authorities and the introduction of offense-specific guidelines. It was a legislative rather than commission-derived sentencing guideline and illustrates both the dangers of parliamentary drafting of sentencing guidelines and the need for an expert body to devise guidelines. Many of the anomalies in the schedule could be addressed if the sentencing council issued a guideline for minimum terms for murder in the same format as its offense-specific guidelines. To date it has declined to do so.

B. Racial Disproportionality

The second issue concerns fairness in sentencing. Imprisonment rates for minority defendants from various communities have been higher than for Whites for many years now. Evidence of differential sentencing has been accumulating since Hood's (1992) seminal research. Several government and independent reports have documented and discussed disproportionality in sentencing and in the criminal justice system more generally (e.g., Lammy Review 2017; Independent Commission on Race and Ethnic Disparities 2021).

All visible minority groups had higher levels of imprisonment than Whites during the period from 2009 to 2022 (Roberts and Bild 2021). Asian and Black offenders had the longest average custodial sentence lengths (ACSL) (25.4 and 25.7 months), compared with 17.9 months for White offenders. The ACSL for White offenders has long been consistently lower than for other ethnic groups, and the ACSL gaps have increased over time. These comparisons are not adjusted for many factors including criminal history. Analyses that control for offender and offense-related factors confirm these ethnicity-based sentencing differences, at least for certain offenses. Hopkins, Uhrig, and Colahan (2017, p. 58) found that offenders who self-reported as Asian or Black had a higher likelihood of imprisonment than White offenders. The difference was "statistically significant and medium sized."²³ Isaac (2020) employed the Crown Court Sentencing Survey, a

²² Sentencing Council (2018), <https://www.sentencingcouncil.org.uk/publications/item/manslaughter-data-tables>, table 1.3.

²³ Black and minority ethnic defendants were less likely to plead guilty and therefore less likely to benefit from plea-based sentence reductions. However, the discrepancies remained statistically significant even after controlling for plea and other legally relevant variables.

database in which sentencers identify the principal legal factors they had considered. The analysis was thus able to control for all mitigating and aggravating factors cited by the judge. For the drug offenses studied, a non-White offender's ethnicity was associated with a statistically significant increase in the likelihood of receiving an immediate prison sentence, after controlling for "many (but not all) of the main factors that sentencers are required to take into account when sentencing these offenses" (Isaac 2020, p. 1). The odds of an immediate custodial sentence for a Black person were 40 percent higher than for a White person.

Further research shows that the disparities reported by Isaac (2020) could not be attributed entirely to any of the few aggravating or mitigating factors left unadjusted (Pina-Sánchez et al. 2024). This suggests that disparities are likely evidence of discrimination in sentencing. Research exploring a wider range of offenses (Pina-Sánchez et al. 2025) and guidelines (Chen et al. 2023) has shown that ethnic disparities are largely concentrated among drug offenders, suggesting that racial bias is not widespread.²⁴ In addition, by comparing findings from studies based on a similar modelling strategy (i.e., focusing on the probability of custody for drug offenses sentenced in the Crown Court, and conditioning on similar offense and offender characteristics), Pina-Sánchez and Guilfoyle (2025) found a reduction in the size of ethnic disparities by a factor of 3.5 (i.e., a three- to four-fold reduction in ethnic disparities) in the last decade.

Practitioners' perceptions align with findings from statistical research. Veiga, Pina-Sánchez, and Lewis (2023) reported findings from a small sample of barristers. They found that "all the barristers interviewed felt that indirect discrimination was an issue in sentencing" (p. 173).

1. *Responses to Disparities.* Sentencing guideline commissions across the US and in other jurisdictions have done little to acknowledge or address racial and ethnic disparities or over-incarceration of minorities. The English Sentencing Council has recently taken modest remedial steps. The council has a "public sector equality duty," set out in section 149 of the Equality Act 2010, that requires public authorities to have "due regard" to the need to eliminate discrimination, harassment, victimization, and any other conduct prohibited under the 2010 act. Understanding unintended

²⁴ Similarly, exploring disparities in the application of offender and offense characteristics listed in the sentencing guidelines, Guilfoyle and Pina-Sánchez (2024) found differences favoring White offenders only for the application of three mitigating factors: show of remorse, good character, and potential for rehabilitation.

effects of guidelines on racial and ethnic minority defendants clearly falls within this duty. As a remedial response, the sentencing council has inserted references in its guidelines to differential sentencing outcomes. For example, the following direction is provided in the guideline for firearms offenses:

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offense which indicates that a higher proportion of Black and Other ethnicity offenders receive an immediate custodial sentence than White and Asian offenders. . . . There may be many reasons for these differences, but to apply the guidelines fairly, sentencers may find useful information and guidance at the Equal Treatment Bench Book. (Sentencing Council 2021, p. 3)

The Equal Treatment Bench Book (Judicial College 2025, chap. 8)²⁵ documents overrepresentation of Black and minority ethnic people at various stages of the criminal process and lower levels of confidence and trust in criminal justice in ethnic minority communities.

The council's direction to sentencers is not intended to specify an automatic or categorical reduction in sentence to reflect Black and minority ethnic overrepresentation in criminal justice system statistics. No study has yet sought to evaluate the impact of the measures adopted by the council to address ethnic disparities. However, a substantial reduction in ethnic disparities among drug offenders roughly coincides in time with adoption of some of these measures. Perhaps more importantly, the observed reduction coincides with raised political awareness of disparities that followed the publication of the 2017 Lammy review.

C. Penal Populism

Politicians in the past largely ignored the sentencing council and the emergence of its guidelines over the period 2010–24. The House of Commons Justice Select Committee held periodic, perfunctory hearings in which the chair of the council described the council's recent work and responded to questions. News media coverage of sentencing decisions seldom mentioned the council or the guidelines. Public awareness of both was very limited.

²⁵ This document is used by courts with the goal of ensuring that “all those in and using a court leave it conscious of having appeared before a fair-minded tribunal” (Judicial College 2025, p 2).

Surveys of public knowledge and opinion suggest that awareness of the council and its guidelines has grown in recent years. A nationwide survey conducted in 2012 found that few members of the public had heard of the sentencing council and even fewer likely knew about its functions (Roberts et al. 2012). One explanation for the low public profile of sentencing is the succession of economic and political shocks that began with the financial crisis of 2008–9, followed by the referendum on Scottish independence that threatened to fracture the Union and the debate and referendum regarding Britain’s membership in the European Union. Brexit triggered a constitutional crisis resolved only by the Supreme Court, and that national crisis was soon followed by the global pandemic.

By 2022, however, sentencing returned to the headlines. High profile sentencing hearings in the Crown Court and the Court of Appeal attracted many viewers and much commentary. A series of high-profile murders fuelled public concern about sentencing. Finally, the Lammy report (2017) documented what appeared to be wide discrepancies in sentencing patterns for racial and ethnic minorities. The sentencing council has sought to document and address the problem of ethnic disparities. Paradoxically, one of its initiatives triggered a major rift between the council and politicians from both principal parties.

Since its creation, the sentencing council has operated without interference or pressure from government or politicians.²⁶ Neither has paid much attention to the council or its guidelines. Until now. In March 2025, the Lord Chancellor, the government minister responsible for sentencing, and the shadow minister both expressed strong opposition to an element of a recently issued guideline on the basis that it authorized a “two-tier” sentencing process in which White offenders would be disadvantaged. The shadow minister went further, introducing a private member’s bill to amend the Coroner’s and Justice Act 2009. The amendment would require the council to seek the consent of the secretary of state prior to issuing a guideline. The government would then have power to determine the content of the guideline or to prevent its issuance.

²⁶ In an appearance before the House of Commons Justice Select Committee in 2016, the chair of the council, Lord Justice Treacy, was asked about “the role that the Government plays in interacting with you and the Sentencing Council. How much communication or interference—whatever word you prefer to use—do the Government give you and your colleagues?” Lord Justice Treacy responded, “We have no interference and we are strongly independent.” (House of Commons 2016, p. 13).

This sudden, critical, political interest surprised many, especially the sentencing council. It had recently issued a revised guideline on use of community and custodial sentences (Sentencing Council 2024). The guideline notes that a presentence report will normally be considered necessary if the offender belongs to one of the enumerated categories of people listed. The council noted that courts need more information about some categories of offender and that the presentence report (PSR) is the means by which to obtain this information. The list of categories was not exhaustive, and the guideline emphasized that a PSR may still be necessary in cases involving other individuals. The category that triggered critical political commentary refers to offenders from an ethnic minority, cultural, or faith community (see discussion in Roberts, Watson, and Hester 2023).²⁷

The controversial guideline provision was based on previous reports that had highlighted the need for courts to have more information when sentencing minority defendants. As the council (2024) noted in its “Response to Consultation,” most respondents, including the Magistrates’ Association, the House of Commons Justice Select Committee, and voluntary sector organizations such as the Sentencing Academy, approved the proposal. It was also “road-tested” with members of the judiciary, who approved its content.

The political reaction was surprising because the proposed guideline provision was consistent with guidance provided to courts through the Judicial College²⁸ and because the council had conducted a protracted professional and public consultation on its proposals. Neither the lord chancellor nor the shadow minister responded to the consultation; they appeared to have noticed the council’s position only when the news media reported on the guideline. The issue in contention, whether categories of offenders should be mentioned in relation to use of PSRs, is less important than the council’s independence.

The overreaction by the lord chancellor has politicized the guidelines and the sentencing council. Experience in other guidelines jurisdictions may be instructive. The Minnesota legislature, for example, exercises considerable control over that state’s sentencing commission. The commission’s members must be approved by the legislature; judges account for only a

²⁷ Curiously, the cohort “female offenders” attracted no criticism although it would appear to provoke the same potential criticism of creating a two-tier sentencing regime.

²⁸ The Judicial College is responsible for providing training for judges in England and Wales.

small minority of the commission's members. All proposed changes to the guidelines must be submitted to the legislature (Fraser 1993). They become effective unless the legislature provides otherwise. The combination of political appointment of members and the legislature's veto power politicized sentencing practices and contributed to high levels of Minnesota incarceration. The federal sentencing commission experience has been similar. Scholars and practitioners alike have criticized its susceptibility to political influence. Former federal district court judge Nancy Gertner, for example, noted that the commission "could not pretend to independence from the political forces surrounding it" (2008, p. 108). The Sentencing Council of England and Wales was constituted to be independent of parliament and the executive.

Because of this minor dispute over a single guideline, the government proposes to require ministerial approval for all future guidelines and the sentencing council's activities generally. Section 18 of the draft 2025 Sentencing Bill would require the council to "seek the consent of the Lord Chief Justice and the Lord Chancellor to issue them as definitive guidelines." (Ministry of Justice 2025*b*). We discuss the proposed legislation in greater detail below.

The recent conflict between politicians and the sentencing council appears to show that populist punitiveness unites politicians across the political spectrum. Punitive populism, often attributed principally to conservative law and order politicians who argue that "prison works" and advocate severe mandatory sentences (e.g., Roberts, Hough, Stalans and Indermaur 2003; Pratt 2006), has emerged from a Labour government early in its five-year mandate. It has a significant parliamentary majority that should provide more than sufficient protection from opposition criticism. Even Prime Minister Sir Keir Starmer, a former member of the Sentencing Council, supported the lord chancellor's plan to override the council.

D. The Crisis in the Prisons

The significant increase in the use of imprisonment passed unnoticed by politicians from both major political parties. The current government awoke to the problem when prison governors warned that their institutions were about to exceed maximum capacity. The adult male prison population had been running at over 99 percent capacity. As a result, in 2024 the government reduced the automatic release point for standard determinate sentences for a range of offenses from 50 percent to 40 percent. The earlier release of thousands of prisoners attracted widespread media footage of

friends and relatives awaiting the release of prisoners, many popping champagne corks in welcome. The government pledged to review the reform 18 months after implementation. Despite this measure, the prison population was projected to increase by an average of 3,000 prisoners annually in coming years, the equivalent of two large prisons each year.

The crisis triggered many calls for a royal commission on the criminal justice system with a focus on sentencing (e.g., Blom-Cooper and McConville 2014). The last such commission was in 1993. The government rejected these appeals and instead created what it termed a short-term “independent review of sentencing” led by David Gauke, a former Conservative politician. The review conducted a hasty public consultation in early 2025 and published its final report in May 2025 (Independent Sentencing Review 2025*a*).

At the same time, *The Times of London* organized a “crime and justice commission” that heard evidence from a range of stakeholders. The *Times* commission’s report recommended creation of an arms-length advisory body that would “depoliticise the process [of reform] and offer advice to the government on proposed changes to legislation” (Times Commission on Criminal Justice 2025, p. 2). Other recommendations included a statutory presumption against short prison sentences and a comprehensive review of sentencing for murder. That a Conservative newspaper’s review made such recommendations reflects the broad consensus that the sentencing process is in great need of reform.

The Gauke review’s first report found that the huge cost of imprisonment to government and the taxpayer has been exacerbated by more offenders receiving custodial sentences and by custodial sentences becoming longer (Independent Sentencing Review 2025*b*). The average cost of holding a prisoner for the year was estimated to be £53,801. The government’s prison building program is estimated to cost between £9.4 billion and £10.1 billion. The number of people being sent to prison is expected soon to exceed the current supply of prison places.

The Gauke review’s final report contained recommendations to reduce the size of the prison population. These include strengthening alternatives to custody, discouraging use of custody by establishing a statutory presumption against short sentences, increasing the ceiling on suspended sentence orders, and encouraging greater use of deferred sentencing. In addition, the review advocated an increase in funding for the Probation Service and creation of an external advisory body for sentencing (Independent Sentencing Review 2025*a*).

The principal recommendation involved a legislative presumption in favor of suspension of short prison sentences. It reflects research findings that suspended sentences are associated with lower re-offending rates than short sentences (Hamilton 2021). However, the review's proposed presumption goes further than earlier legislative proposals in three respects: the sentence length ceiling of the presumption is higher, the language is more restrictive, and exceptions to the presumption are more limited. Together these three elements will likely trigger a significant increase in the number and seriousness of cases receiving a suspended sentence order rather than immediate imprisonment.

1. *Presumption Against Imposition of Short Prison Sentences.* Recommendation 3.1 would create a presumption in favor of a suspended sentence instead of immediate imprisonment for short custodial sentences. The review proposes that unless the offense involves a breach of a court order, courts must find "exceptional circumstances" before imposing a short prison sentence.

Academics and advocacy groups have long endorsed a ban or presumption against short prison sentences. An influential British Academy report in 2014 proposed two options: a blanket prohibition on prison sentences below a certain limit or a presumption against such sentences unless exceptional circumstances existed (British Academy 2014). More recently, Andrew Ashworth and Rory Kelly suggested amending section 230 of the Sentencing Act 2020 by adding the following requirement: "If the court imposes a custodial sentence of less than six months, it must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a community order with a curfew requirement could not be justified" (Ashworth and Kelly 2021*a*). Restrictions on the use of short custodial sentences exist in other jurisdictions including Scotland, Germany, and New South Wales, Australia.²⁹

The language proposed by the sentencing review and endorsed by the government is more restrictive than equivalent legislation in other jurisdictions. Comparison is frequently made to the Scottish experience, although the presumption there is very different. In Scotland, courts are required only to "consider that no other method of dealing with the person is appropriate." The Scottish language is a legislative nudge, a reminder to courts

²⁹ See, for example, section 5 of the Crimes (Sentencing Procedure) Act 1999 in New South Wales.

that imprisonment is the sanction of last resort. This is similar to existing law in England and Wales; a court can impose a suspended sentence order when it considers that to be appropriate. The more robust presumption proposed for England and Wales may reflect recognition that the Scottish approach has failed to reduce the number of short custodial sentences significantly (Mills 2019). Introducing a stronger presumption against short prison sentences with a high ceiling of 12 months creates challenges.

The Ministry of Justice's (2025c) estimate of the presumption's effectiveness predicts that only 2 percent of prison sentences affected by the presumption will be imposed through the "exceptional circumstances" provision and that approximately one-third of eligible cases will remain as immediate prison sentences because they involve breach of a court order. Using these projections, the suspended sentence order caseload would increase by approximately two-thirds.³⁰ Much will turn upon judicial interpretation of "exceptional circumstances." In all likelihood, the requirement of exceptionality will be highly constraining. Removal in 2003 of an "exceptional circumstances" requirement for the imposition of a suspended sentence led to a huge increase. Suspended sentence orders in all courts accounted for 2,717 cases in 2003 but 33,509 in 2006, 12 times more (Roberts and Ashworth 2016, table 1). The expanded caseload of suspended sentence cases will include more serious offenses and higher-risk offenders.

In September 2025 the government introduced legislation that would implement many of the Gauke review's recommendations including the presumption against prison sentences of 12 months or less (Ministry of Justice 2025b). Sixty-two percent of immediate prison sentences fell into this range in 2024.

There is a clear consensus among stakeholders and more generally that prison sentences of a few months accomplish little except disruption of the offender's family life and employment prospects. There is unlikely to be as much agreement that most prison sentences of 12 months should be replaced by a suspended sentence. At the very least, it is important to understand the profile of offenders affected by the presumption and to

³⁰ We do not discuss "up-tariffing," the possibility that cases which previously received a prison sentence near or at the 12-month limit will receive sentences just above the 12-month limit. This may be significant. Ministry of Justice (2025c, p. 13) projections assume that 25 percent of those receiving custodial terms of 9–12 months and all those receiving exactly 12 months will be uplifted beyond 12 months.

consider whether the suspended sentence as currently constructed is appropriate. To date, no such analysis has been published by the ministry of justice.

2. *Current Short-Sentence Caseload and Offending Profiles of Short-Sentence Prisoners.* A report by Parliament in 2023 estimated that approximately one-quarter of short custodial sentences (defined as less than 12 months) were imposed for common assault and battery, assault of an emergency worker, or possession of a knife (Mutebi and Brown 2023). Almost all of these offenders had previous convictions, and approximately half had served all three principal sanctions (a community order, a prison sentence, and a suspended prison sentence). That finding alone raises legitimate concerns about a proposal to replace 12-month prison sentences with suspended sentence orders; many of these offenders will prove challenging for the probation service to supervise in the community.

Over a longer period (2020–24), 42 percent of offenders sentenced for assault in the Crown Court for assault occasioning actual bodily harm and 20 percent of offenders sentenced for wounding received an immediate prison sentence of 12 months or less (Roberts and Harris 2025). Fully 85 percent of convictions for possessing a bladed article in a public place resulted in a short prison sentence: there is a six-month minimum sentence for a second such offense and the sentencing guideline has a starting point of six months for such offenses. Approximately half the prison sentences for sexual assault in 2023–24 and almost all prison sentences for common assault (99.8 percent) were 12 months or less (see Roberts and Harris 2025 for further discussion).

The presumption in favor of a suspended sentence order (SSO), rather than a short prison sentence, will greatly increase the number of SSOs imposed. So will the bill's proposed increase to the upper limit for a suspended sentence from two to three years. Writing of the current two-year limit, Martin Wasik observed that it "stretches credulity with the idea that an offender requires a sentence as long as two years' imprisonment but nevertheless need not serve it [in prison]" Wasik 2014, p. 479). This change will move a large number of offenders into the suspended sentence category. The three-year limit encompasses 80 percent of prison sentences. The additional cases beyond the current two-year limit will naturally involve more serious offenses. For instance, the bottom of the guideline offense range for rape is four years. With a 25 percent reduction for a guilty plea entered at the plea and trial preparation hearing, the sentence would fall within the three-year limit.

V. Conclusion

The guidelines issued by the sentencing council represent the most significant positive development in sentencing in the United Kingdom. They have greatly increased sentencing transparency and improved consistency across courts. Their limitations are largely instances of unfulfilled potential. The council has been cautious in its efforts to achieve more effective and cost-effective sentencing. For example, it has declined to provide sentencers with information about the relative costs of different sanctions. Research in the United States has shown this to be an effective way to encourage courts to reduce the use of imprisonment. Aharoni et al. (2022) conducted an experiment in which judges were randomly assigned to sentence a case with or without having read a summary of the negative consequences of incarceration. Judges who received the information imposed shorter sentences. The council could do more to highlight the relative costs of different sanctions. More could also be done to strip the guidelines of elements that contribute to racial differentials in sentencing outcomes (Roberts, Watson, and Hester 2023). Greater or more detailed guidance could be provided for sentencing of female offenders (e.g., Gelsthorpe 2023).

The council could also be more active in reviewing sentencing proposals by the government or members of Parliament; it has the expertise and authority to do so. The council's reluctance may be a product of a statutory remit to focus on the guidelines' function. The council's statutory duties and functions could be amended to increase the guidelines' impact on trial court practices and sentencing more generally. It is unlikely, however, that the council will ever become "an advocate for policies that will reduce the prison population" as some have suggested for US sentencing commissions (e.g., Adelman 2013, p. 312).

In some respects at least, sentencing in England and Wales is moving in a positive direction. First, the Gauke review proposed establishment of an independent body to "advise on the impacts of current and future policy decisions relating to prison and probation resources. This would support decision-making grounded in robust evidence, promote transparency in policy-making and encourage awareness of the systemwide impact of policy decisions" (Independent Sentencing Review 2025a, p. 140).³¹ The

³¹ The need for such a body has never been more pressing. Such bodies have existed before. The Advisory Council on the Penal System, beginning in 1966, provided independent advice on sentencing and penal affairs. Until its abolishment in 1980 by the Thatcher government, it issued a series of important reports, including *Non-Custodial and Semi-Custodial*

review's proposal for an independent advisory group may be its most important recommendation and has received widespread support. There is general agreement that sentencing policy and the legislative process need to be more evidence-based and less political (Independent Sentencing Review 2025*a*). In light of the populist nature of the current Labour administration, it is unsurprising that it has rejected the recommendation for an advisory group to serve as a buffer between the government and sentencing practice.

Second, there is growing recognition that the use of custody, particularly short prison sentences, needs to be reduced. The government has introduced legislation to create a presumption against the use of short prison sentences. Third, courts in England and Wales and to a lesser degree Scotland and Northern Ireland benefit from much more (and better) guidance on sentencing than in years past.

The key trends in English sentencing patterns, increases in use of imprisonment and in sentence lengths, are clear. We have in this essay explored explanations for the increases, but the relative contribution of each remains to be determined. Sentencing in the United Kingdom is entering a period of transition. Three key developments will change its face in England and Wales. The first is the proposed legislation that has been introduced in Parliament. In addition, the Law Commission, which undertakes reviews of existing legislation and proposes reforms, has recently launched a consultation on reforming the sentencing regime for murder. Finally, in November 2025, the second report of a review of courts will be published. This review is exploring ways to increase the efficiency of the criminal courts. It is contemplating changes to the plea-based sentence reductions and other elements of the sentencing regime. Taken together, these three developments will have a significant impact on sentencing practices. They may affect policy and practice in Scotland and Northern Ireland.

The effect of the presumption against short prison sentences introduced in England and Wales may well result in amendment to the Scottish presumption, which as noted, has proved ineffective in reducing the use of short sentences. If the UK government does assume greater control over the English Sentencing Council and its guidelines, this may cool enthusiasm for creation of a similar body in Northern Ireland. In all likelihood sentencing on all nations of the United Kingdom will look very different a decade from hence.

Penalties. This report recommended use of deferred sentences and intermittent (weekend) imprisonment, which the government accepted, and proposed research on use of community service orders. (Advisory Council on the Penal System 1970).

The ongoing problems of prison overcrowding and penal populism cannot be ignored. Politicians created the disastrous indeterminate sentence known as the Indeterminate Sentence for Public Protection (Grimshaw 2024), the unprincipled murder sentencing regime, and a complex release system according to which the proportion of the sentence a prisoner serves in prison is unrelated to either desert or dangerousness. The sentencing environment is likely to become increasingly politicized as a consequence of the rise of the right-wing Reform party. The government's large parliamentary majority makes it likely that the sentencing bill will be enacted with only minor amendments, but it will be several years before its effects are apparent. One thing is clear: This legislation marks the end of a period in which English sentencing developed free from political interference.

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