**SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE**

**DATA PROTECTION FORM**

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| **Organisation: (if required)** | **Social Work Scotland** |
| **Topic of submission:** | **PRESUMPTION AGAINST SHORT TERM SENTENCES** |
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**JUSTICE COMMITTEE**

**PRESUMPTION AGAINST SHORT SENTENCES**

**SUBMISSION FROM**

**SOCIAL WORK SCOTLAND**

Social Work Scotland (SWS) supports the proposed extension of the presumption against short-term prison sentences (PASS) of up to 12 months. The Scottish National Party’s Programme for Government for 2017/18 committed to extending the presumption against sentences of up to twelve months in duration — a change that received 85 per cent support in a public consultation.[[1]](#footnote-1)

It is generally accepted that people receiving short-term sentences do not get the help they need to stop offending and the re-offending rates are poor compared to community sentences. This is in the context of the prison population in Scotland remaining stubbornly high and the continuing downward trend of reconviction rates since 2003/4.[[2]](#footnote-2) Between 2014-15 and 2015-16, the reconviction rate decreased by 1.3 percentage points, from 28.3% to 27.0%, and the average number of reconvictions per person convicted of an offence decreased by 6%, from 0.5 to 0.47.[[3]](#footnote-3) There is no direct correlation between high rates of short-term imprisonment and reduced re-offending. Imprisonment is also considerably more expensive than community-based alternatives – approximately £40,000 per annum for a person in prison compared to less than £5,000 for a person on a Community Payback Order.[[4]](#footnote-4)

Both Audit Scotland[[5]](#footnote-5) and the Prisons Commission[[6]](#footnote-6) found that in Scotland people who left prison were more likely to be reconvicted than those who received a community sentence. Whilst it is true that this doesn’t necessarily mean that community sentences are more effective in reducing reoffending (as the two groups of people convicted of offences are not directly comparable) further research taking these differences into account has shown that people who have served short prison sentences are more likely to reoffend than those on either community sentences or longer prison sentences.

Similarly, in *What Works to Reduce Reoffending: A Summary of the Evidence[[7]](#footnote-7)* the point is made that “a number of studies have found that community sentences are more effective in reducing reoffending than short-term prison sentences” (see Bales, W.D. and Piquero, A.R, *Assessing the impact of imprisonment on recidivism*, Journal of Experimental Criminology, 8(1), 71-101, 2012). Whilst this conclusion is described as tentative, our experience on the ground is similar. This outcome may be due to the increased opportunities for rehabilitation during community sentences, and the consequences of imprisonment, such as losing employment or housing.

People released from a custodial sentence had an average number of reconvictions per person of 0.86 in 2015-16, the most recent set of data.[[8]](#footnote-8) Short custodial sentences have higher numbers of reconvictions than longer sentences. As the ‘*Reconviction rates in Scotland: 2015-2016 offender cohort’[[9]](#footnote-9)* states, this is largely because people who are given shorter sentences commit relatively low level crimes, such as shoplifting, often linked to substance misuse, mental health, poverty and other unmet needs, and tend to commit these crimes in higher volumes than those committing more serious crimes. As a consequence they are reconvicted more often. In 2015-16 the reconviction rate for those discharged from custody was 43.4%, and the average number of reconvictions for custodial sentences fewer than 3 months was 1.26, compared to 0.10 for sentences over 4 years.[[10]](#footnote-10)

By comparison, the reconviction rate for Community Payback Orders (CPO) was 30.8% in 2015-16, which was a decrease of 2.1 percentage points from 32.9% in 2014-15.[[11]](#footnote-11) The average number of reconvictions per person for CPOs also fell over the past year from 0.59 to 0.54, a decrease of 8%.[[12]](#footnote-12) The Court can impose a CPO with up to nine requirements, such as unpaid work, substance misuse treatment, mental health treatment and supervision, which ensure that those sentenced have timeous access to relevant support. Compliance with CPOs is also monitored and the Court retains the power to re-sentence, including to a custodial sentence, should a person fail or be unable to comply. The overall management of all CPOs, in terms of contact with the person, coordination of relevant support, enforcement, case records and reviews, has significant resource implications, but they are more effective and less expensive when compared with imprisonment.

As Dr Hannah Graham, Senior Lecturer in criminology at the Scottish Centre for Crime and Justice, University of Stirling, says, “Short prison sentences for crimes that aren’t serious are short-sighted…Community-based approaches have better outcomes than custody”[[13]](#footnote-13). Dr Graham makes the point that a crime such as theft, vandalism and breach of bail matter, but asks is prison valid when “…there are credible community-based approaches”.[[14]](#footnote-14) She goes on to say that those serving prison sentences have lives often characterised by inequality and vulnerability, and a range of problems such as alcohol and drug misuse, mental illness and trauma, poverty, and being a care leaver. In other words, a short-term prison sentence simply means that people are released back into the same difficult circumstances with the additional stigma of a prison record.

A study of the impact of a presumption against custodial sentences of three months or less in Scotland[[15]](#footnote-15), concludes that “the introduction of a presumption against custodial sentences of three months or less in Scotland in 2011 has been accompanied by a number of positive trends in the criminal justice system, including a reduction in reconviction rates, a reduction in the number and proportion of short custodial sentences awarded, and a reduction in the prison population”.[[16]](#footnote-16) However, it cautions that these trends were established prior to 2011 and it is unclear how much can be attributed to PASS, particularly given the differing impact on male and female offenders. “Nevertheless…we would not conclude that the presumption has had no effect at all – rather that there are other changes that may have had a greater impact”.[[17]](#footnote-17) Whilst the extent of the cause and effect is hard to definitively establish, there are positive findings, and the extension to 12-months is likely to have a greater impact.

SWS understand that a 7.5% increase in the use of CPOs is anticipated if PASS is extended to 12 months.[[18]](#footnote-18) In a local authority where the annual number of new CPOs is around 800, this equates to an additional 60 orders. This would require at least 2 new case managers costing approximately £100,000 p.a. for salaries alone (including on-costs). However, the ripple effect and cost implications are much wider with a concomitant impact on other resources, both for criminal justice social work (CJSW) and other services in the community, e.g. managing people on CPO unpaid work requirements; services providing the other activity component of unpaid work; other statutory sector servicers providing, for example, drug and alcohol interventions; and, importantly, Third Sector agencies providing a range of interventions, including drug and alcohol, employability and programme interventions.

There is also a wider impact on children and families. Families Outside, the only national charity in Scotland that works solely on behalf of families affected by imprisonment, says more children are impacted by parental imprisonment than divorce; and having a parent in prison is recognised as an adverse childhood experience (ACE). Maria McGinley, University of Strathclyde, references the work of Tania Loureiro (2010) when she says “Challenges of parental imprisonment for children and young people include: housing and care arrangements, schooling, victimisation, substance misuse, and risk of future offending.[[19]](#footnote-19)

SWS acknowledge that the current Community Sentences funding contained in Part 2 of the local authority grant funding for CJSW is provided to develop capacity in preparation for PASS. However, it is of paramount importance that CJSW is funded properly to meet the criminogenic needs, and reduce the risk of re-offending, of people who would otherwise have been sent to prison on a short-term sentence where. Insufficient resourcing would impact on efficacy, which would in turn undermine the confidence of courts and communities in community-based sentencing. Crucially, it would undermine the confidence of victims that justice is being delivered, that people are being properly managed and held fully to account for their actions, and that community sentences are not a soft option.

Contributing to community safety and public protection (and protecting victims) is one of the three key outcomes set out in the National Outcomes and Standards for Social Work Services in the Criminal Justice System by Scottish government (2010) (the other two are reducing re-offending and social inclusion). CJSW prepare criminal justice social work reports (CJSWR) to assist in the sentencing process and to complement the range of other considerations, such as victim information and narratives from the Procurator Fiscal. In particular, the CJSWR provides information on social work interventions and how these may prevent or reduce further offending. In 2017 – 18, 28,400 reports were completed. Each report contains an analysis of a person’s offending, a risk assessment using one or more nationally accredited tools (e.g. Level of Service & Case Management Inventory [LS/CMI], a generic risk and needs assessment tool completed on all individuals; Stable & Acute 2007 for people convicted of sex offences; and the Spousal Assault Risk Assessment v3 [SARA] for domestic abuse) and provide the court with an assessment of risk, the suitability of an individual for a community disposal and outlines public protection Issues. The report will identify who is at risk and if the risk cannot safely be managed in the community, the social worker will make this clear. Risk is dynamic and constantly re-evaluated during the course of a community sentence and if a person does not comply with their order, a breach report is submitted to court.

It is important to refer to deprivation in the context of the extension of PASS. In Inverclyde, for example, 82% of the individuals on CPOs live in the most deprived areas in Scotland, according to the Scottish Index of Multiple Deprivation (SIMD) profiles. The experience of the local authority is that poverty can become a barrier to such individuals completing their Court Order (i.e. transport costs, arriving hungry and no means to feed themselves during the day, inappropriate clothing etc.). In addition, living in such environments brings with it a range of health and well-being issues that can be challenging for the completion of Unpaid Work even where light duty placements have been identified. The cost of servicing Orders in such circumstances is significant in terms of provision of fares, food/meals and assistance with clothing beyond the usual health and safety equipment. Professor Cyrus Tata, University of Strathclyde, said the extension would be “stymied by ill-resourced welfare services”.[[20]](#footnote-20) This is because people who are homeless, battling mental illness or addiction are more likely to be receiving shorter prison sentences and, therefore, the requisite resources are required in the community to address these issues if they are made the subject of community-based sentences instead.

The Care Inspectorate’s recent Inspection of justice social work services in Scottish Borders council (23/4/19), the first of a series of inspections of local authority criminal justice social work Community Payback Orders, also covers the preparedness of local authorities for the extension of the presumption against short sentences. The report concludes that whilst the justice group manager and chief social work officer were confident that they had capacity to absorb a moderate increase in CPOs, the Care Inspectorate “could not share their confidence”[[21]](#footnote-21). The Care Inspectorate concluded that even a moderate increase in demand would impact on performance with the current investment in the service. One inspection does not represent the other 31 local authorities and their preparedness for PASS; but, as demonstrated below, Scottish Borders is unlikely to be on its own.

To take one example. Local authority X received 608 new CPOs in 2017/18 (603 in 2018/19 – raw data), which would mean an additional 46 orders based on the Scottish government assumption of a 7.5% increase. The Part 2 funding referred to above to prepare for the extension of PASS was introduced in 2018/19 and amounted to an additional £62,940. Given the direct impact on CJSW and the wider ripple effect of effectively managing additional CPOs described above, this funding is inadequate. This is in the context of the same amount to prepare for PASS in 2019/20 and only a £50,000 increase in Part 1 funding in 2019/20. (Part 1 funding is to provide flexibility and for the local authority “…working in partnership with other statutory partners and the third sector to direct this funding to meet Community Justice local priorities, but have regards to the key delivery of statutory Criminal Justice Social Work services” [Scottish government allocation of grant for 2018/19 letter] – in short, Part 1 funds CPOs, managing people on prison licences, diversion, bail services etc.) This small uplift doesn’t cover the impact of pay awards, salary increments, and inflationary increases. In short, it is a cut in real terms. But, and this is crucial, local authority X is relatively well off compared to many local authorities receiving a cut in their grant allocation year-on-year due to the ongoing impact of the new section 27 funding formula for CJSW, now into year 3 of the 5 year transitionary period. And this is in the context of increasingly complex and resource intensive cases and a proliferation of commitments.

Therefore, **SWS would strongly recommend Scottish government ensure that CJSW, and associated stakeholders, are properly funded to provide the level of services required for the increased number of people on community orders.**

The proposal to extend PASS could be a watershed moment for Scotland when real transformational change occurs and a decisive shift takes place from prison to the community. As of 2 April 2019 there were 8,196 people in prison across the estate and it is common knowledge that Scotland has the highest prison rate per 100,000 head of population in Western Europe (c150); this compares to less than 80 in Germany and less than 60 in Sweden, for example. If Scotland gets this right, not only will the prison population fall but so, too, will re-offending.

1. Scottish Government, 2016, Consultation on proposals to strengthen the presumption against short periods of imprisonment: an analysis of responses. [↑](#footnote-ref-1)
2. Scottish Government, 2018, Reconviction Rates in Scotland: 2015-16 Offender Cohort [↑](#footnote-ref-2)
3. ibid [↑](#footnote-ref-3)
4. XXX [↑](#footnote-ref-4)
5. Audit Scotland, 2012, ‘Reducing reoffending in Scotland’ [↑](#footnote-ref-5)
6. Scottish Government, 2008, Scotland’s Choice: Report of the Scottish Prisons Commission [↑](#footnote-ref-6)
7. Scottish Government (Justice Analytical Services) 2015, , Scottish Government, 2015) [↑](#footnote-ref-7)
8. Scottish Government, 2018, Reconviction Rates in Scotland: 2015-16 Offender Cohort [↑](#footnote-ref-8)
9. ibid [↑](#footnote-ref-9)
10. ibid [↑](#footnote-ref-10)
11. ibid [↑](#footnote-ref-11)
12. ibid [↑](#footnote-ref-12)
13. Dr Hannah Graham, *Pragmatic plan and cross-party consensus*, Press & Journal article 2/5/19 [↑](#footnote-ref-13)
14. ibid [↑](#footnote-ref-14)
15. Manon Roberts & Callum Tipple, May 2019, What could England and Wales learn from Scotland’s approach to justice? Crest [↑](#footnote-ref-15)
16. Ibid p.26 [↑](#footnote-ref-16)
17. Ibid p26. [↑](#footnote-ref-17)
18. Figure generated through discussion with relevant partners [↑](#footnote-ref-18)
19. Loureiro, T., 2010, Perspectives of children and young people with a parent in prison. Edinburgh: Families Outside referenced in The impact of parental imprisonment: an exploration into the perspectives and experiences of children and young people affected, McGinley. M., In Brief, Families Outside February 2018, no 3). [↑](#footnote-ref-19)
20. Referenced in The Times, *Plan to scrap short jail terms ‘will falter’*, 6/2/19 [↑](#footnote-ref-20)
21. Care Inspectorate (23/4/19) Inspection of justice social work services in Scottish Borders council, p.16 [↑](#footnote-ref-21)