


Child Rights and Wellbeing Impact Assessment (CRWIA) Screening

Presumption Against Short Sentences

CRWIA front sheet	
<p>Policy/measure</p> <p>A general description of the policy/measure</p>	<p>The presumption against short sentences is designed to encourage a reduction in the use of short-term custodial sentences and a related increase in the use of community sentences that are more effective at reducing reoffending.</p> <p>The purpose of this policy/measure is to extend the existing presumption against short sentences from sentences of 3 months or less to sentences of 12 months or less.</p> <p>On the basis that strengthening the presumption against short periods of imprisonment is an extension of an existing policy, and that the only impact is an indirect one, it is considered that a full CRWIA is not required.</p>
<p>Project initiation document</p>	N/A
<p>Initiating department</p> <p>The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility</p>	<p>Community Justice Division, Justice Directorate, Scottish Government</p>
<p>Policy aims</p> <p>What the policy or measure is trying to achieve; what are the expected outcomes</p>	<p>While prison remains the right place for those who pose a significant risk to public safety, there is compelling evidence that short sentences do little to rehabilitate or reduce the likelihood of reoffending, and disrupt housing, employment and family stability.</p> <p>The presumption against short sentences is designed to encourage a reduction in the use of short term custodial sentences and a related increase in the use of community sentences which are more effective at reducing reoffending.</p> <p>Extending the presumption against short sentences is intended to improve the chances of individuals paying back for offending, being effectively rehabilitated and preventing reoffending.</p> <p>Further strengthening the presumption against short sentences is one part of our ongoing and wide-ranging work designed to reduce the use of short-term imprisonment through the delivery of effective, community-based sentences that better promote rehabilitation. This includes updated practice guidance on Community Payback Orders (CPOs) and work with national and local partners to help ensure CPOs are implemented as effectively as possible.</p>

	Recent statistics show that 1 in 5 individuals convicted receive a community sentence, up from 14% to 20% over the last 10 years. Extending the presumption, alongside support for effective community justice interventions, will help facilitate a further shift to community sentences. This is intended to help reduce reoffending and over time help reduce the prison population.
Timetable What is the time frame for a policy announcement/consultation/implementation?	The Programme for Government for 2018 affirms that the extension to the presumption will only be implemented once the relevant safeguards brought in by the Domestic Abuse (Scotland) Act 2018 are in place. The Act came into force on 1 April 2019 and it is intended that the statutory instrument extending the presumption will be laid in May, coming into force in summer 2019, subject to Parliamentary approval.
Date	29 March 2019
Signature	 Donna MacKinnon, Deputy Director Community Justice Division

CRWIA Stage 1 Screening - key questions

1. What aspects of the policy/measure will affect children and young people up to the age of 18?

The Articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

The presumption against short periods of imprisonment (as introduced by the Criminal Justice and Licensing (Scotland) Act 2010) currently states that a court must not pass a sentence of imprisonment for a term of 3 months or less on a person unless the court considers that no other method of dealing with the person is appropriate.

The Scottish Government intends to strengthen this presumption to cover all custodial sentences of 12 months or less. The legislative terms of the presumption replicate, and to some extent further strengthen, provisions already in place concerning the imposition of custodial sentences on children and/or young people.

2. What likely impact - direct or indirect - will the policy/measure have on children and young people?

'Direct' impact refers to policies/measures where children and young people are directly affected by the proposed changes e.g. in early years, education, child protection or looked after children (children in care). 'Indirect' impact refers to policies/measures that are not directly aimed at children but will have an impact on them. Examples include: welfare reforms, parental leave, housing supply or local transport schemes.

It is unlikely that any extension to the current presumption against short periods of imprisonment will have a direct impact on children or young people. There are already specific provisions in place in relation to the detention of "*young offenders*"¹ (individuals who are not less than 16 but under 21 years of age) and "*children*"¹ (individuals under 16) which are laid out in sections 44, 207 and 208 of the Criminal Procedure (Scotland) Act 1995.

In both sets of circumstances the court can only impose a period of detention if it considers that no other method of dealing with that individual is appropriate. This is the same test as that laid out in the presumption against short periods of imprisonment, and should already be being applied in all cases involving children, not just those in which a custodial sentence of 12 months or less is under consideration.

More broadly, parental imprisonment is recognised as an adverse childhood experience which can have a harmful impact on wellbeing and outcomes for children and young people. Children's lives are disrupted and the loss of a primary carer can have a significant impact on a child's development and emotional wellbeing, through stigma, loss, impact on attachment and relationships and other forms of adversity including changes to living arrangements.

In its response to the Scottish Government's consultation on extending the presumption, Barnardo's Scotland noted that "*women are usually the main caregivers, when a woman is sent to custody the majority of children end up leaving the family home, often being placed in unstable and unsuitable care arrangements until their mother is released. Even ten days in custody can have a detrimental effect on children, particularly with babies who can experience severe disruption in their attachment process, whilst separated from their mother*".

¹ As defined by the Criminal Procedure (Scotland) Act 1995

The risks to children following the imprisonment of a parent can be summarised as including stressful identification with the parent's plight; insecurity and fear of abandonment; 'survivor guilt'; uncertainty; fear of disclosure; stigma; aggression as a response to trauma; low self-esteem; and problems in school (Grimshaw & King (2002).

There can also be a financial impact on children when a parent is sent to prison. The 'revolving door' of short sentences means frequent changes in circumstances which often result in disruptions and delays to benefits payments. Two-thirds of prisoners in Scotland have served at least one prison sentence before their current one, and fifteen percent have served ten or more sentences². For families this can mean frequent and ongoing disruption to their benefits claims. Entitlement for most benefits is calculated on a household, rather than on an individual basis, which means that if one person goes to prison, this can have an immediate impact on other members of the household. As Universal Credit is routinely paid via Single Household Payment, it increases the likelihood that payments may be suspended if a partner goes to prison.

Children who experience their mother's imprisonment are vulnerable to even poorer outcomes than those for children who experience their father's (or other family member's) imprisonment³. Furthermore, only five per cent of children with a mother in prison remain in the family home during their mother's imprisonment, and only nine per cent are cared for by their fathers, whereas most children with an imprisoned father remain with the mother⁴.

It is therefore possible that there will be a positive indirect impact on dependent children of adults who might otherwise have received a custodial sentence of between 3 and 12 months. Conversely, for some children the imposition of a custodial sentence may also provide relief that a threatening person has been removed from their environment.

3. Are there particular groups of children and young people who are more likely to be affected than others?

Under the UNCRC 'children' can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected characteristics under the Equality Act 2010: disability, race, religion or belief, sex, sexual orientation. It may be possible to align the CRWIA with the EQIA in these cases. 'Groups' can also refer to children by age band or setting, or those who are eligible for special protection or assistance e.g. pre-school children, children in hospital, children in rural areas, looked after children, young people who offend, victims of abuse or exploitation, child asylum-seekers, or children living in poverty.

As noted above, the impact of strengthening the presumption is likely to be limited to dependent children of adults who would otherwise have received a custodial sentence of between 3 and 12 months.

A survey of serving prisoners published in December 2017 found that almost two thirds of those taking part in the prisoner survey reported having children (62%). Estimates based on this figure suggest that up to 14,000 children in Scotland may have a parent in prison at any one time. It is not possible however to determine how many of these children might be affected by an extension to the presumption.

The Independent Care Review has stated that, in principle, it welcomes the extension to the presumption. The Review has heard from children, young people and families about the negative impact of parental/carer imprisonment. It advises that care-experienced children,

² SPS Prisoner Survey (2017) p8

³ Epstein, R (2014) *Mothers in prison: The sentencing of mothers and the rights of the child*

⁴ Minson, S, Nadin, R, Earle, J (2015) *Sentencing of mothers: Improving the sentencing process and outcomes for women with dependent children*

young people and adults are more likely to be involved with the justice system than their non-care-experienced peers. Therefore, it supports the intention of the extension as it could affect a reduction in parental imprisonment and help reduce numbers of care-experienced young adults entering the revolving door of short-term custodial sentences and the associated impact on family life, employment and wellbeing.

Data from the Scottish Prison Service suggests that a disproportionate number of prisoners come from areas of multiple deprivation. As such, any impact on children which results from their parent(s) not being incarcerated is likely to be greater in relation to children living in poverty than other groups.

4. Who else have you involved in your deliberations?

Have you included all policy leads who may have an interest in these developments?

Justice Analytical Services
Children & Families Directorate

5. Will this require a CRWIA?

Explain your reasons

On the basis that strengthening the presumption against short periods of imprisonment is an extension of an existing policy, and that the only impact identified is an indirect one, a full CRWIA is not required.

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

✓

Authorisation

Policy lead:

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Team Leader
Community Sentences & PASS Team
Community Justice Division

Date:

26 March 2019

Deputy Director or equivalent:

Donna Mackinnon
Deputy Director
Community Justice Division

Date:

29 March 2019