

Short and suspended sentences: the criminal record implications

About Unlock

[Unlock](#) is a national independent advocacy charity that supports, speaks up and campaigns for people facing stigma, prejudice and discrimination because of their criminal record. A core mission for Unlock is to provide advice for people in respect of their criminal record, including help overcoming the barriers they're facing. Our website provides vital information and guidance about the criminal records system and we have a helpline provided by dedicated staff and volunteers, which deals with specific queries. People can [contact the helpline](#) in various ways, including via email, WhatsApp or our free phone line.

The issue

The harms that a prison sentence can have on an individual's life are many, ranging from psychological harm and damaging personal relationships to reducing access to employment, housing, education and treatment programs upon release.¹ These are all critical factors that interfere with effective rehabilitation, meaning that the repercussions of a custodial sentence continue to be felt long after the sentence has been served. This is disproportionately true for shorter sentences. Sentences under 12 months have all the dislocating effects mentioned above despite their brevity, yet still fail to support effective rehabilitation. 30,000 people a year are sent to prison for a period of six months or less, with the majority of such sentences being for non-violent crimes such as theft or drug offences, which are often indicative of underlying issues like homelessness, poverty, addiction or poor mental health.² These underlying issues are only exacerbated by short sentences.

The criminal record implications of a short prison sentence are also disproportionate. While, broadly speaking, shorter sentences have shorter spending periods attached to them, any custodial sentence (regardless of length or whether it is suspended) can never be filtered, so will always be disclosed on elevated checks.³ Sentence length indicates the seriousness the court attaches to a specific offence, meaning shorter sentences are given for offences judged to be less serious. Therefore, it does not make sense that some of the criminal record implications for short sentences remain equally as harsh for longer sentences. The shorter spending periods attached to shorter sentences indicate recognition that less severe criminal record implications are necessary and appropriate. This makes it particularly dissonant that there is no nuance

¹ [\(PDF\) The Prison Crisis in England and Wales: How Incarcerated Populations Are Psychosocially Harmed \(researchgate.net\); RDA-SHORT-SIGHTED-BREIFING MAR18-FINAL-3.pdf \(revolving-doors.org.uk\)](#)

² [RDA-SHORT-SIGHTED-BREIFING MAR18-FINAL-3.pdf \(revolving-doors.org.uk\)](#)

³ Information about the types of DBS checks can be found on our website: [Criminal record checks for employment \(basic, standard and enhanced DBS checks\) - Unlock](#).

around the length of a sentence having an impact on how long something is disclosed on higher level checks.

Custodial (immediate or suspended) sentences of any length will always be disclosed on all elevated checks (Standard or Enhanced). These checks can be done by many employers, including for professional roles (such as teaching, working as a lawyer or in healthcare) and regulated roles working with children or vulnerable adults. This can present huge barriers in finding employment, as many employers hold prejudice towards people with criminal records. Research from Working Chance has shown that while there has been positive change in employer attitudes towards people with criminal records, 27% still say they wouldn't knowingly recruit an "ex-offender".⁴ There is also sometimes confusion where employers are allowed to carry out higher level checks. They may not be aware that it is not always mandated to conduct a check or that having information disclosed via an elevated check should not automatically mean someone is excluded. Where elevated checks are permitted, it is generally good practice that various factors are considered when deciding whether a conviction should bar someone from a specific role.⁵ This means employers can take the approach that a criminal record showing someone received a very short sentence a long time ago is no longer relevant, so they do not need to exclude them from a role. Unfortunately, employers often use checks as a pass or fail process. This means that even where people are given a shorter sentence, as the justice system deems an offence to be less serious, they can often be excluded from roles unnecessarily. In this way, short sentences have a disproportionate impact on people. This impact is life-long as prison sentences can never become filtered, so will remain on higher level checks throughout someone's life.

Suspended sentences are an example of even greater disproportionality. In these cases, the courts found that it was not necessary for someone to be immediately imprisoned, therefore the offence was likely to be less serious than where it is inevitable for immediate custody to be ordered. It can be inferred that short sentences are more likely to be suspended than long ones, as a judge deems the crime to be less serious. However, the criminal records implication of these sentences is as severe as they would be if the person had actually been sent to prison, as a suspended sentence is treated as a custodial sentence and will therefore never be filtered from elevated checks. The same negative impacts in relation to the disclosure of a criminal record exist, then, where elevated checks are done, which is an obstacle to effective rehabilitation.

Another concern with regards to short sentences is that fact that women are more likely to receive them for non-violent offences, therefore suffering their negative impacts. Only 36% of imprisoned women are serving a sentence of over a year, with 50% serving six months or less. Women entering prison are more likely than men to report having mental health issues, be subject of abuse as a child, and have drug or alcohol problems.⁶ Prison does little to address these issues. Even where there is positive intent to focus on rehabilitation as much as punishment, the prison setting is a challenging environment in which to address complex needs or trauma. Furthermore, as women are disproportionately subject to Enhanced DBS checks, they

⁴ [Progress Prejudice Shifts in UK employer attitudes to hiring people with convictions.pdf](https://ams3.cdn.digitaloceanspaces.com/Progress_Prejudice_Shifts_in_UK_employer_attitudes_to_hiring_people_with_convictions.pdf) (ams3.cdn.digitaloceanspaces.com)

⁵ Roles where barred lists are relevant are treated differently, as if someone is on the barred list, they must not be employed in a role which engaged a barred list check.

⁶ [Why-women-2022-briefing.pdf](https://www.prisonreformtrust.org.uk/Why-women-2022-briefing.pdf) ([prisonreformtrust.org.uk](https://www.prisonreformtrust.org.uk/))

will need to disclose their prison sentence more often, so on top of the harmful impacts of time spent in prison women are faced with particular challenges finding employment after a prison sentence. Two-thirds of all Enhanced level checks were done on women in the 2020-22 period, leading to the harmful impacts on employment prospects outlined above.⁷ This means women will face these barriers to employment in those professions where they are more likely to be seeking to work – meaning they experience a disproportionate impact in respect of receiving a short prison sentence.

Recommendations

These concerns around short sentences are one reason why Unlock believes that there needs to be [reform of the criminal records system](#). Unlock has two specific recommendations that would strengthen the long-term rehabilitation of people who receive shorter sentences.

1. Shorter sentences (custodial and suspended) should be able to be filtered after a certain period of time. The permanent disclosure of all prison sentences on elevated criminal records checks is not a requisite for an effective criminal records system.
2. Suspended sentences should not have to be disclosed (on all level of checks) for the same period as immediate custodial sentences. This would reduce the amount of time that the barriers to rehabilitation are experienced and would be more proportionate in respect of the sentence issued by the court.

These asks form part of our wider call to reform the criminal records system as a part of our [#FairChecks campaign](#).

Conclusion

Shorter prison sentences disproportionately carry many of the harms relating to criminal record disclosure that longer prison sentences cause. Long-term rehabilitation is linked to people finding a job, somewhere to live or perhaps getting into further education – and all these things would be better supported through reform of the criminal records regime in relation to short sentences. Unlock calls for shorter spending periods for suspended sentences, as well as allowing all short prison sentences (suspended and immediate custody) to be filtered from higher level checks. This will tackle the disproportionate criminal record implications which short sentences, particularly those that are suspended, carry.

⁷ [Women-and-DBS-checks-2023.pdf \(unlock.org.uk\)](#)