

# Unlock submission to Ministry of Justice Sentencing Review

## Introduction

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 in overcoming the barriers they are facing. Our website provides vital information and guidance for people with criminal records, but we also 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.

This document is a submission to the Ministry of Justice Sentencing Review. This review, chaired by former Lord Chancellor David Gauke, was [formally announced](#) on 21 October 2024, and is likely to report in the spring of 2025. Full details can be found [here](#).

At Unlock, our expertise lies in the area of criminal records, specifically looking at the long shadow of the criminal record, and the comments we have made for this review are restricted as such. We do not seek to comment on sentencing policy in a broad sense, but rather to draw attention to the criminal records implications of various sentencing options. We have consulted with people with criminal records to guide this submission. Our website received over 1.5 million visits annually and our helpline responds to c 10k calls annually, with callers seeking help in navigating life with a criminal record. We are clear that the impact of a criminal record is more keenly felt whilst it remains unspent and recognition of the length of time before a criminal record becomes spent should be a factor in sentencing.

“the relief I felt when the sentence was spent was enormous, until I knew that it was over I couldn’t really start putting it all behind me “

## Background – the criminal records regime

The legislation governing criminal records in England and Wales is complex. It is based on the Rehabilitation of Offenders Act (ROA), passed in 1974 and amended via secondary legislation numerous times since. This is in addition to the ROA Exceptions Order 1975 and the Police Act 1997, both crucial to the regime of criminal records checks (DBS checks), as well as data protection legislation. Such a complex regime inevitably causes confusion, and Unlock would urge this is a key reason why wide-ranging review and reform is needed.

Under the ROA, all disposals have a ‘rehabilitation period’, during which the conviction is considered ‘unspent’. Although cautions, and some convictions, can become spent upon completion of sentence, for more serious offences the rehabilitation period only begins at the end of the sentence. After this period, the offence becomes ‘spent’ and only disclosable in

specific circumstances, such as when consenting to an appropriate elevated level of DBS check (for example when applying for specific types of work).

Generally speaking, spending periods are half as long for childhood offences as compared to those committed by adults. Many spending periods [changed](#) in October 2023 under the Police, Crime, Sentencing and Courts Act 2022 (PCSC).<sup>1</sup> Notably, it became possible for the first time for custodial sentences of over four years (with certain offences exempt) to become spent, a benefit to those subject to such sentences seeking to move on with their lives.

There are various levels of criminal records checks, further detailed on our [website](#):

- **Basic checks:** can be requested by any organisation in any situation and includes all unspent cautions or convictions.
- **Standard checks:** can only be used for certain professional roles (such as solicitors) and shows any cautions or convictions that are not protected (see “filtering” below).
- **Enhanced checks:** can only be used for certain “regulated” roles (such as nurses) and includes any cautions or convictions that are not protected as well as any relevant information the police may choose to disclose (against a set of guidelines).
- **Enhanced and Barring checks:** can only be used for certain roles which involve unsupervised work with children or vulnerable adults, known as “regulated activity”. The additional information here is to check whether someone is on the relevant barring list (for children or vulnerable adults).

Some useful context for understanding the criminal records regime includes:

- **Ineligible checks:** an organisation carrying out a check at a higher level for a role than is legally allowed, thus giving them access to excessive criminal records information.
- **Filtering:** rules governing the time after which certain cautions or convictions, those which are “protected”, can be removed from standard or enhanced DBS checks. A conviction resulting in a prison sentence, suspended or otherwise, can never be filtered. The time after which something is filtered is unaffected by whether an offence is from childhood or adulthood, unlike spending periods.

## Response to the themes of the Sentencing Review

### **Theme 4: community sentences.**

#### **Question: How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?**

From a criminal records perspective, there is a profound difference between the criminal records impact of a custodial sentence and that of a community sentence. Community sentences can, typically, become spent far sooner. This would deliver justice more generally through increasing the chances of effective rehabilitation and reintegration. Effective rehabilitation contributes significantly to reducing reoffending by supporting individuals who might otherwise become further marginalised from society.. We know from our work the punitive impacts of an unspent criminal record which inhibits , for instance access to employment and education , Therefore, more use of community sentences, which can shorten the time during which someone has to live with the prospect of frequent disclosure of their past , as offered by community sentences – is vital.

However, increased use of community sentencing is not, in and of itself, the solution. Community sentencing must be supported by adequate resourcing for the probation service. This means both in terms of basic resources to ensure that people receive adequate support while on license, but also that probation practitioners are well-trained with regards to individual rights and responsibilities around criminal records. Although supporting someone while their disposal remains unspent, many people under probation supervision may also have historic spent convictions. Probation staff will provide a trusted source of authoritative advice that someone may continue to reflect on later, so it is crucial that increased use of community sentencing is matched by appropriate training for those supporting people subject to this. The heavy use of our website and our helpline confirms the paucity of understanding in statutory services .

“ I had no idea about what a spent period meant , or when or how I should disclose ; I can only thank goodness someone mentioned Unlock to me “

### **Theme 5: custodial sentences**

#### **Question: How should custodial sentences be reformed to deliver justice and improve outcomes for offenders, victims and communities?**

Short prison sentences have a disproportionate criminal records impact, something we explored in more detail in a [recent briefing](#).<sup>2</sup> In this context, it is worth considering the criminal records benefits of reforming, progressively, the use of custodial sentences. This would be to the benefit of victims, offenders and communities, given the way in which a criminal record inhibits someone’s opportunity for genuine rehabilitation. Barriers to employment, housing, education, finance and travel – as well as negative impacts on personal relationships and self-perception –

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<sup>2</sup> <https://unlock.org.uk/wp-content/uploads/2024/09/Unlock-briefing-short-and-suspended-sentences.pdf>

are entrenched by criminal records, so anything that exacerbates this is harmful for wider society. Those marginalised by society are more likely to become criminalised, and a criminal record itself is substantially marginalising, perpetuating a vicious cycle.

There are two specific issues with custodial sentences worth considering further.

Firstly, even short prison sentences can currently never be filtered from elevated (standard or enhanced) DBS checks. This means that, for roles able to conduct these more detailed criminal records checks, a prison sentence of any kind will always show up. Given that we know that as many as 27% of employers would automatically discount anyone's application if they had any kind of criminal record, this means that once someone has been to prison they face significant and permanent barriers.<sup>3</sup>

Secondly, suspended sentences – more likely to be used for short custodial sentences than longer ones – are treated exactly the same way for criminal records purposes as sentences immediately served in prison. This means that such sentences remain visible indefinitely on elevated checks. It is curious that where a court did not judge that there was a need for someone to spend immediate time in prison, the criminal records regime is unable to make this distinction. Although the use of suspended sentences are not directly within the terms of reference of this review, any changes to the use of short sentences would have the added benefit of addressing this anomaly if more community sentences were used in place of suspended custodial sentences.

Any changes to the use of short prison sentences would have a positive effect on rates of reoffending. Given what we have outlined above regarding the criminal records implications of a short sentence, it is valuable to consider the potential links between a criminal record and reoffending. A criminal record can serve to marginalise people from society – through barriers to employment, housing, finance and education – and can increase people's levels of vulnerability. All of this does little to support people to move on with their lives. As reducing the use of short sentences would give more people the opportunity to see their convictions forgotten by the criminal records regime, it is a measure that would help more people to move on.

## **Theme 6: progression of custodial sentences**

### **How should we reform the way offenders progress through their custodial sentences to ensure we are delivering justice and improving outcomes for offenders, victims, and communities?**

Mentioned in the introduction for this theme is the “role of incentivisation in sentence progression” and “progression through a sentence from custody to community”. Similarly, in parliamentary debate following the announcement of the review, we note that the idea of time off sentences being earned was mooted.<sup>4</sup> This was presented in the minister's statement under

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[https://workingchance.ams3.cdn.digitaloceanspaces.com/media/documents/Progress\\_Prejudice\\_Shifts\\_in\\_UK\\_employer\\_attitudes\\_to\\_hiring\\_people\\_with\\_convictions.pdf](https://workingchance.ams3.cdn.digitaloceanspaces.com/media/documents/Progress_Prejudice_Shifts_in_UK_employer_attitudes_to_hiring_people_with_convictions.pdf)

<sup>4</sup> <https://hansard.parliament.uk/commons/2024-10-22/debates/8D3769B7-66B7-47C0-91B3-5198D47CA532/SentencingReviewAndPrisonCapacity>

the principle of seeking to “encourage offenders to turn their backs on crime”. As noted above, criminal records can act as a barrier to this. As such, any system that does build in incentives to reduce sentences must ensure that reduced sentences carry with them the reduced criminal record implications; i.e. the spending period should be reflective of the sentence served, not the sentence initially given. Of course, further detail would be needed to understand whether what is being considered is earlier release to community supervision (so just the same sentence served differently) or actual sentencing shortening. The latter would have benefits for rehabilitation if sentence shortening was reflected in the spending period attached. Any incentive designed to discourage reoffending would be undermined if the criminal records barriers are overlooked. Our response to Theme 4 outlines some wider considerations about how probation supervision can impact on criminal records understanding and impact.

## **Theme 7: individual needs of victims and offenders**

### **Question: What, if any, changes are needed in sentencing to meet the individual needs of different victims and offenders and to drive better outcomes?**

It is worth also considering the ways in which disproportionality in the criminal justice system interacts with criminal records implications of disposals. This is true in a number of ways.

These disproportionalities have a particular impact when considering short prison sentences. Using data we acquired from the DBS last year, we [revealed](#) that women are subject to a disproportionate number of elevated DBS checks.<sup>5</sup> Combined with the way in which custodial sentences remain on these DBS checks forever, this creates a particular barrier for woman seeking work following time in prison. Furthermore, women are more likely to be in prison as a result of a non-violent offence and for a short sentence, making the never-ending criminal records implication seem more disproportionate. Decreased use of short prison sentences would be beneficial here.

The review also has a remit to look at whether sentencing ought to better consider key cohorts, such as young adults. Data from the DBS last year revealed that 20% (nearly four million in total) of all DBS checks between 2020 and 2022 were conducted on those aged 17-24.<sup>6</sup> We believe it is worth considering the ways in which a criminal record can have a distinct impact, therefore, on young adults. Our recent [Young Adult Panel](#) highlighted this as a significant issue. At a younger age, people are less able to counterbalance the effect of a criminal record with significant professional experience or skills on their CV – a criminal record may make up a larger portion of what they have to say about themselves. As such, addressing the criminal records impact of a conviction through addressing the use of short sentences could be transformative for this demographic.

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<sup>5</sup> <https://unlock.org.uk/wp-content/uploads/2023/06/Women-and-DBS-checks-2023.pdf>

<sup>6</sup> [https://www.whatdotheyknow.com/request/disaggregated\\_data\\_for\\_dbs\\_appli#incoming-2231878](https://www.whatdotheyknow.com/request/disaggregated_data_for_dbs_appli#incoming-2231878)

## Conclusion

In conclusion we seek to make clear the enduring impact of a criminal record and how their spending periods impact on an individual's ability to move on successfully and rebuild their lives. It is important to recognise the disproportionate impact of a criminal record felt by both young people and women. Any decisions around sentencing ought to consider this seriously and address the poor levels of understanding about disclosure and knowledge about when criminal records are spent

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