2026

Reflections

on the Sentencing and Penal Policy Commission

Decarceration and Changing Scottish Justice for the Next Generation

Lynsey Smith
Catherine Dyer
Hannah Graham
David Mackie



The independent Sentencing and Penal Policy Commission

February 2025 - February 2026



Martyn Evans
Chair



Cathy Jamieson
Commissioner



Hannah Graham
Commissioner



Lynsey Smith
Commissioner



Catherine Dyer
Commissioner



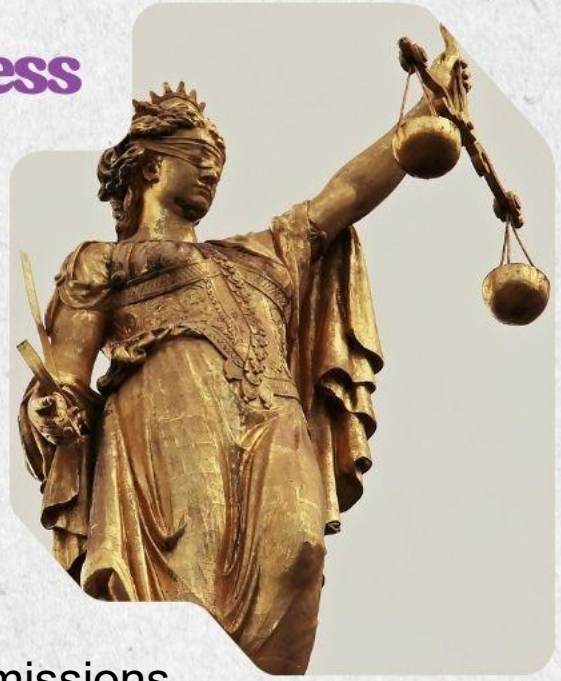
David Mackie
Commissioner

We were ably supported by a Secretariat of colleagues seconded from the civil service.

A year of listening, questioning, analysing



Reflections on Process



Call for evidence: ~100 submissions.

Lived experience workshops.

Victim support organisation roundtables.

Academic roundtable.

Funder, third sector, civic society roundtable.

Many, many meetings and visits with people spanning the Justice system and places across the nation.

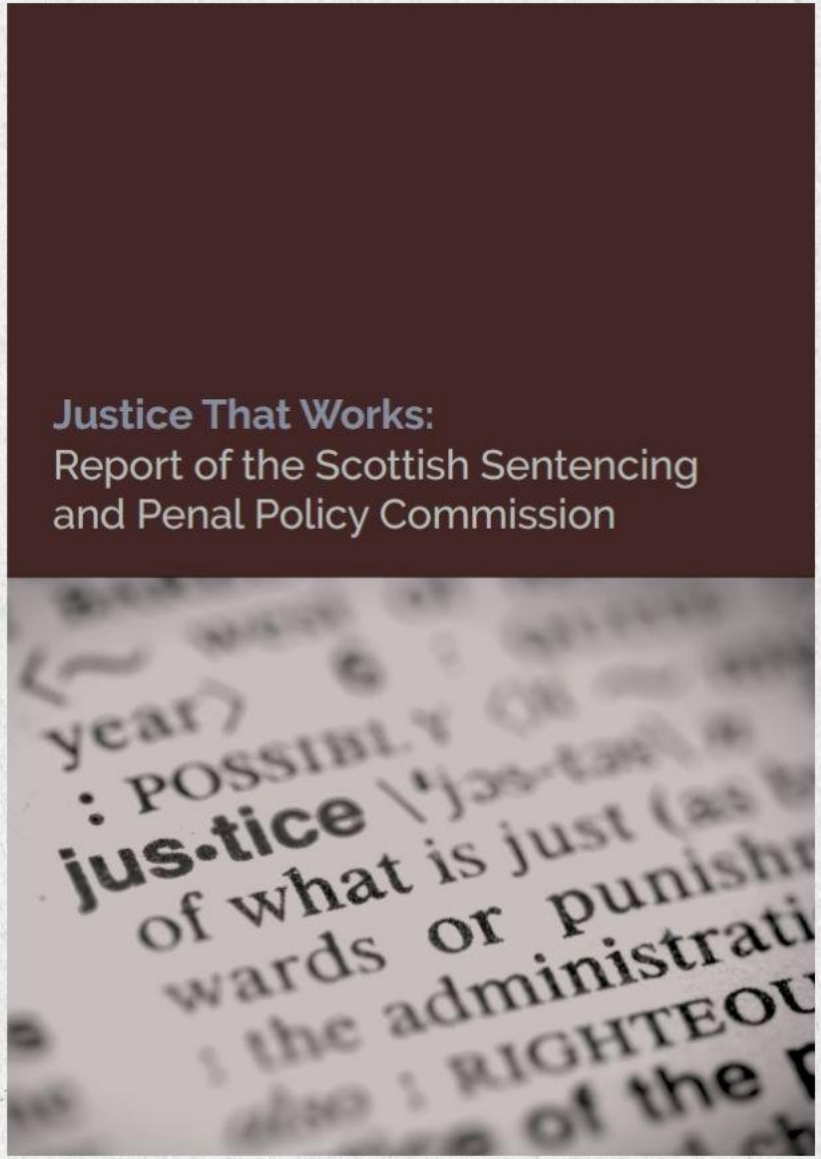
Internal papers on Scottish and international evidence.

Our final report

1. A critical inflection point: Trends
2. Before crime happens: Prevention and support
3. Use of early interventions and alternatives to court proceedings
4. Crossing the line: Entering the court system
5. At the crossroads: The sentencing decision
6. Paths in the community: changing lives to leave crime behind
7. Custody, accountability and making progress
8. The road home: reintegration and reducing reoffending
9. Strengthening the delivery of community justice
10. Looking ahead: Towards a smarter penal policy

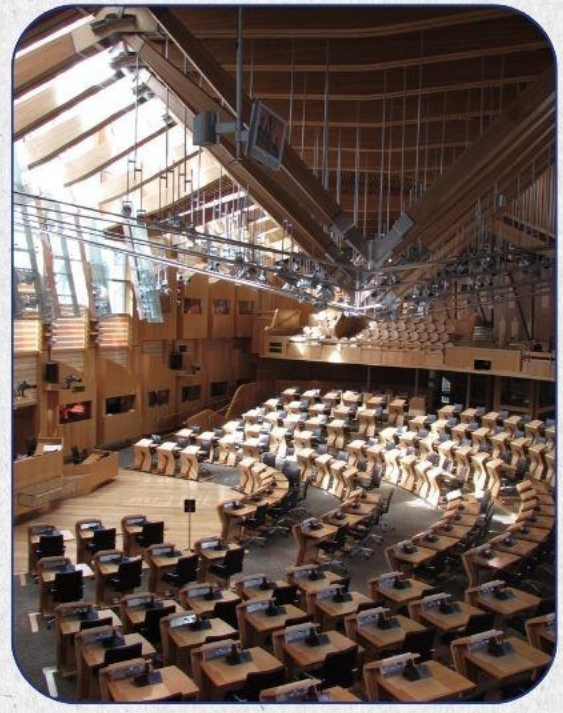
Annex: Reflecting on the legacy of the McLeish Commission

Annex: Prison population pathway



As the McLeish report turns 18... Our ambition in 2026





‘The Commission has set a clear ambition: that Scotland should work towards reducing its prison population in line with the European average – doing the calculations for our nation, that works out at approximately **5,775 people**. This would mark a decisive shift away from over reliance on imprisonment towards approaches that are proven to reduce crime and still protect the public... **Achieving this goal will require change at every stage of the system**.’

- Chair’s Foreword, *Justice That Works.*







Prevention Prevention Prevention Prevention

‘Prevention is about acting early – before harm occurs and before people enter the criminal justice system – so that individuals and families receive the right support at the right time. Current investment remains weighted toward managing crime after it occurs rather than reducing the risks that lead to harm.’ (page 25, *Justice That Works*)

Early intervention & alternatives to court

What can Police, prosecutors, social workers, and youth workers do to resolve issues outwith courts?



- Embed prevention as a central organising principle of Scotland's social and justice policy.
- Improve coordination and targeting of resources across public services.
- Consciously increase use of early interventions and alternatives to court proceedings.



Early intervention & alternatives to court

What can Police, prosecutors, social workers, and youth workers do to resolve issues outwith courts?



Commission report recommendations

3.1: Extend the whole system approach to those under 25.

3.5: Consider widening the actions available to the Police to include the ability to divert an individual to Justice Social Work or third sector service.

3.6: Increase the number …... diverted from prosecution.

3.8: Substantially increase the use of Fiscal work orders.



Supervision and support for

Bail

while being attentive to victim support & safety

Reducing the use of

Remand



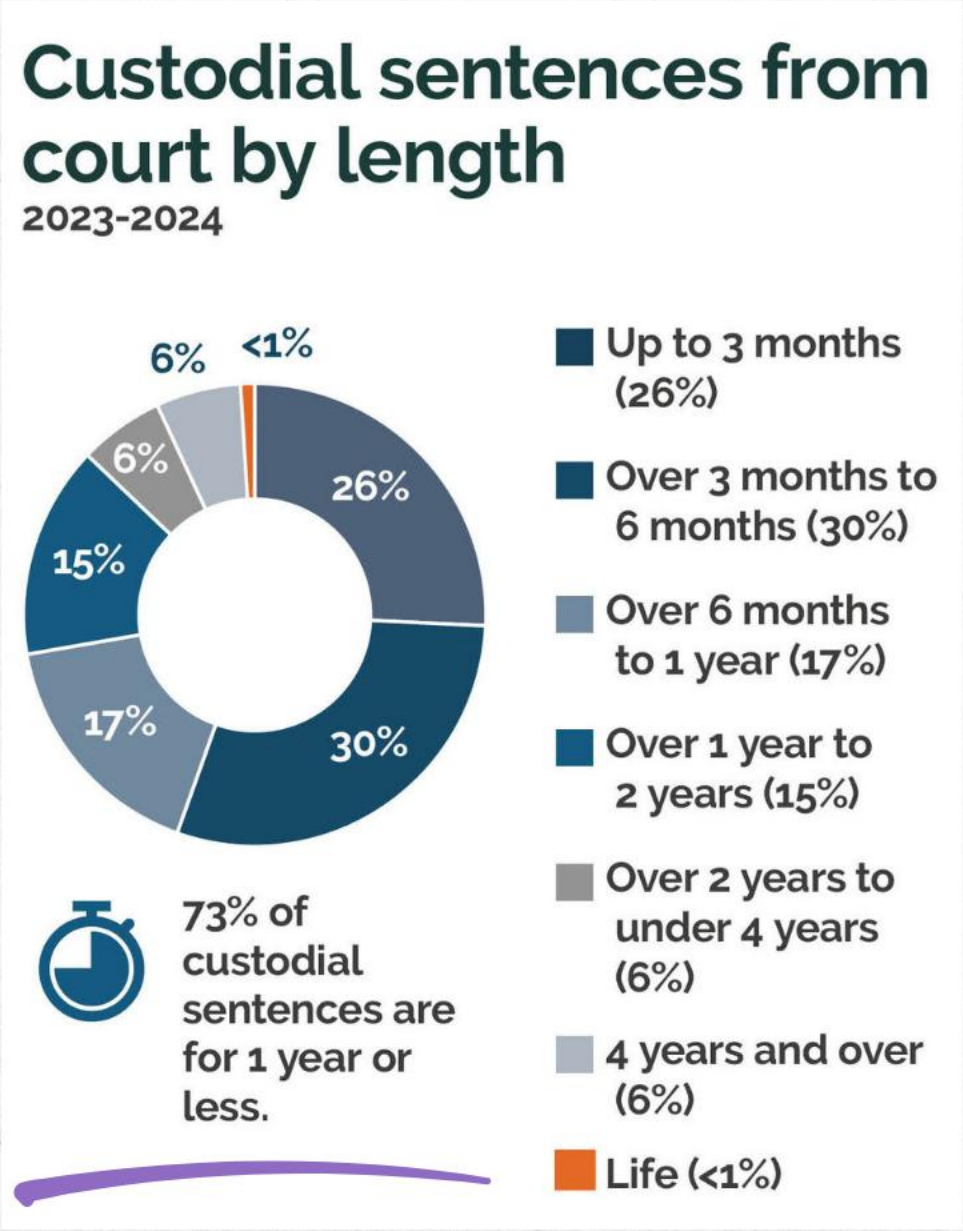




Short prison sentences

in context

- May cause significant disruption and loss.
- Most serve 30% (days, weeks, or months) and some serve 50% (for specific offences) before automatic release, without supervision.
- Don’t get access to programmes in prison.
- Don’t get interventions and support while in prison from prison-based social workers.



Sentencing & courts

Prohibition on short sentences under 12 months

‘Given the very large number of short sentences that are issued every year, it is clear that only further restrictions will reduce their use. To achieve this policy aim the Commission considers it is necessary to convert the “presumption” against short sentences of under 12 months into a prohibition against their use, except under exceptional circumstances. We consider that the exceptions should be tightly restricted so that a person may not be imprisoned unless there is real risk of serious harm to another individual, or recent serious breaches of an order which cannot be dealt with in any other way. These exceptions must be used sparingly and transparently.’ (page 51, *Justice That Works*)





Sentencing & courts

Other recommendations and reflections

- Child rights and sentencing parents/carers.

Recommendation 5.8: The Scottish Sentencing Council should issue a guideline on how children's rights should be considered at the point of sentencing of parents and primary carers. Lead partner – Scottish Sentencing Council.



- Problem-solving approaches, solution-focused judging, and specialist courts working with JSW and local community services.

Recommendation 6.7: Ensure every Sheriffdom has problem-solving capacity and problem-solving approaches are encouraged through appropriate judicial training so this approach can be taken in all Sheriff courts. Lead partners – Sheriffs Principal and Judicial Institute.



Key recommendations and reflections on

Community sentences & Justice Social Work







Our final report is called 'Justice That Works'. A participant in our lived experience workshops ably articulated the need for systemic change and what that could look like:

> "*If the Justice system really worked for people, it would focus on rehabilitation, support, and fairness, rather than just punishment. And make sure that people are supported and not just set up to fail, the system should build in proper throughcare from the start. I mean, every person on bail, remand, community sentence, or custody should have a clear support plan that covers housing, mental health, employment, and family support. And what should happen more often is getting access to education, skills training, and counselling. These help people build confidence, stay busy in positive ways, and prepare for life outside […] People don't succeed or fail in isolation, the system itself plays a huge role. Real change will only happen if the Justice system focuses on rehabilitation and dignity and giving people the tools to build a different future*."

Success or failure to realise the ambition of penal reform and decarceration (reducing our prison population) won't happen in isolation, either.

Reflections and key messages

Changing Scottish Justice for the next generation



Addressing causes of harmful behaviour in community settings and supporting development towards different futures

When custody is not needed for public safety, quicker referral to well-resourced support which is:

- **person centric,**
- **focussed on addressing underlying causes,**
- **aimed at reducing offending and supporting desistance process**

leads to:

- **better outcomes for young people,**
- **fewer victims,**
- **and safer communities**

Decarceration

In pursuit of different futures, changing Scottish Justice for the next generation

- Decarceration is wider than sentencing or release policies – we require good investment in prevention, mental health services, drug and alcohol services, housing, and welfare support. It is a broader social policy agenda for a safe and just nation, **not just a criminal justice agenda.**
- Decarceration and public safety are complementary, not conflicting.
- Need for long-term planning, for political and moral courage, with scrutiny and accountability.



Questions?



Thank You

Image source: multiple images in this presentation are from the Community Justice Scotland national image library.