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POLITICAL SCIENCE ■

Understanding the relationship between inequalities and poverty: mechanisms associated with crime, the legal system and punitive sanctions

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Version: Published Version

Monograph:

Duque, Magali and Mcknight, Abigail (2019) Understanding the relationship between inequalities and poverty: mechanisms associated with crime, the legal system and punitive sanctions. CASEpapers (215). Centre for Analysis of Social Exclusion, London School of Economics and Political Science, London, UK.

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THE LONDON SCHOOL
OF ECONOMICS AND
POLITICAL SCIENCE ■

Understanding the Links between Inequalities and Poverty (LIP)

Magali Duque and Abigail McKnight

Understanding the relationship between inequalities and poverty: mechanisms associated with crime, the legal system and punitive sanctions

CASEpaper 215/ LIPpaper 6

ISSN 1460-5023

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Contents

| | |
|--|----|
| 1. Introduction | 1 |
| 2. Trends in crime rates and perceptions of criminal activity..... | 2 |
| 3. Economic determinants of crime | 8 |
| 4. Trends in incarceration rates and prison populations..... | 10 |
| 5. Relationship between trends in prison populations and economic inequality..... | 18 |
| 6. Overcrowding, prison reform and financial pressures..... | 20 |
| 7. Profile of prisoners: evidence of discrimination and poverty traps..... | 22 |
| 8. Criminal Justice Policies, Legal Aid, and Reforms..... | 26 |
| 9. Summary | 31 |
| References..... | 34 |

CASE/215

July 2019

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Centre for Analysis of Social Exclusion

The Centre for Analysis of Social Exclusion (CASE) is a multi-disciplinary research centre based at the London School of Economics and Political Science (LSE), within the Suntory and Toyota International Centres for Economics and Related Disciplines (STICERD). Our focus is on exploration of different dimensions of social disadvantage, particularly from longitudinal and neighbourhood perspectives, and examination of the impact of public policy.

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About the research programme

CASE collaborated with the LSE's International Inequalities Institute to lead a three-year programme of research on the connections between inequality and poverty, *Improving the Evidence Base for Understanding the Links between Inequalities and Poverty*, funded by the Joseph Rowntree Foundation. The programme was designed to expand the evidence base on the links between inequality and poverty and to fill this knowledge gap through: Examining philosophical concerns for poverty and inequality and how they may overlap; Estimating the empirical relationship between income inequality and a variety of poverty measures; Reviewing the existing evidence base on potential mechanisms that may drive any relationship. In other work within the programme we investigate some of mechanisms identified in the evidence review to develop a policy toolkit.

Editorial note

Magali Duque worked as a Research Assistant in CASE. Abigail McKnight is Associate Professorial Research Fellow and Associate Director of CASE.

This paper is part of the [*Improving the Evidence Base for Understanding the Links between Inequalities and Poverty*](#) programme funded by the Joseph Rowntree Foundation. The views expressed are those of the authors and not necessarily those of the funder www.jrf.org.uk. The authors would like to thank JRF for funding this research, Chris Goulden, John Hills, Eleni Karagiannaki, Nicola Lacey, Tim Newburn, Polly Vizard, and other members of the project team and advisory board for helpful comments and discussion.

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Any errors and ambiguities remain the author's responsibility.

An overview report, summarising the findings from the empirical analysis and the reviews of mechanisms can be downloaded from the CASE website [Understanding the relationship between poverty and inequality: overview report](#).

Abstract

This paper outlines the various issues pertaining to how crime, the legal system and punitive sanctions may provide a mechanism through which inequality is positively related to poverty. We analyse trends in crime rates, review evidence on the determinants of criminal activity, trends in incarceration rates and prison populations, and the profile of prisoners. We explore relevant aspects of criminal justice policies, changes to Legal Aid, and legal reforms, and finish by outlining how the evidence suggests that crime, the legal system and punitive sanctions is one of the mechanisms that contributes to the positive link between economic inequality and poverty, before reviewing policy options.

Key words: Poverty, inequality, crime, law, punishment, criminal justice, police

JEL number: I32, D31, E62, H2

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1. Introduction

This review is part of a programme of research exploring the relationship between economic inequality and poverty. The research in this programme includes empirical analysis estimating the statistical relationship within the UK over time, and across European and OECD countries at various points in time. This research has identified a positive relationship between income inequality and poverty, using a variety of different inequality and poverty measures (Karagiannaki, 2017; Vizard and Yang, 2017). Empirical estimates show that higher income inequality is associated with higher rates of poverty, and increases in income inequality are associated with increases in poverty. A series of literature reviews explore the evidence on how various mechanisms might drive the observed correlation between economic inequality and poverty. These include resource constraints (Yang, 2018), dynamic mechanisms (Duque and McKnight, 2019) and the relationship between poverty, inequality and growth (McKnight, 2019). A number of other mechanisms such as spatial segregation, political economy, public opinion and shifts in social and cultural norms have been explored in a related paper (McKnight, Duque and Rucci, 2017). The final stage of this project is the development of an online policy toolkit which contains a review of the evidence on a range of policy options which have been informed by the review of mechanisms.

This review outlines the various issues pertaining to how crime, punitive sanctions and the legal system may provide a mechanism through which inequality is positively related to poverty. We analyse trends in crime rates, evidence on the determinants of criminal activity, trends in incarceration rates and prison populations, and profile of prisoners. We explore relevant aspects of criminal justice policies, changes to Legal Aid, and legal reforms, and finish by reviewing policy options. We mainly review evidence for the UK but in places make comparisons with the US and more broadly European and OECD countries.

The UK–US comparison is often used in case studies, and for good reason. Apart from the obvious cultural connections between the two countries there are similarities in social and economic policies, systems and outcomes. Both exhibit high levels of earnings and income inequality, and high rates of imprisonment and both have been characterised as countries with weaker institutions and less generous welfare states than other developed countries (Cowell et al, 2019, p.1).

2. Trends in crime rates and perceptions of criminal activity

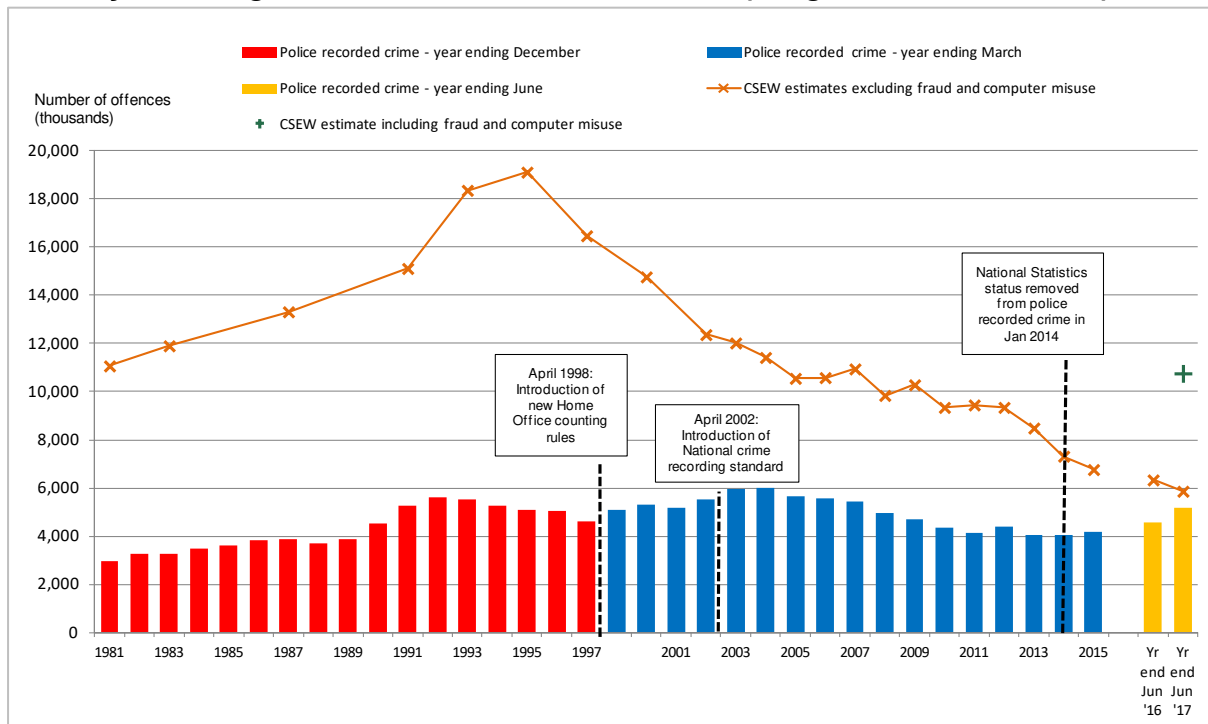
In this section we report on the levels and trends in crime rates and contrast this information with survey evidence on people's perceptions on whether national or local crime rates are increasing. We also review evidence on the main factors shaping trends in crime.

With the widespread, and often sensational, reporting of criminal activity, it would be easy to get the impression that crime is widespread and on the rise. However, overall crime¹ rates in the UK have been declining for some time. Overall levels of crime, and specific crime rates are calculated from information collected in household surveys or from administrative records of police recorded crimes. Police recorded crime is known to underestimate the level of actual criminal activity due to underreporting, and because changes over time in the rules around which crimes should be recorded mean that both levels and trends in these statistics are unreliable. Due to problems with the reliability of UK police recorded crime statistics, in 2014 National Statistics status was removed. However, published crime statistics continue to be derived from a combination of survey evidence and police recorded crime as for some types of crime police recorded statistics are considered to be more reliable and some crimes are not measured in surveys (for example, homicides)². In Figure 1 we show evidence from both sources for England and Wales which highlights differences in both the level of crime and trends in crime estimated in the two series; although by 2017 estimated crime rates from both series were more closely aligned than in previous years. Survey evidence from the Crime Survey for England and Wales (CSEW) (formerly the British Crime Survey) shows that aggregate crime rates increased from the early 1980s and reached a peak in 1995. Since the mid-1990s overall crime rates have followed a downward trend but trends have varied across different types of crime. Analysis of the British Crime Survey, found that violent crime fell by 49 percent, burglary by 59 percent and car theft by 65 percent between 1995 and 2007 (Tseloni et al., 2010, p.376).

¹ Although we often refer to 'crime' as a single category, we recognise that this catch-all term masked the fact that it encompasses very heterogeneous forms of criminal activity. For example, sexual assault, domestic violence, cyber-crime, racial abuse, robbery and murder. We note that incentives and behaviours vary greatly by different types of crimes, as does the impact on any victims.

² A guide to which source provides the most reliable estimate for which crimes is provided by the Office for National Statistics (ONS, 2018a, p 39).

Figure 1: Trends in crime rates: Police Recorded Crime and Crime Survey for England and Wales estimates (England and Wales)



Source: ONS (2018b) Statistical bulletin: Crime in England and Wales: year ending June 2017 (Bulletin Tables, Figure 1).

Recent estimates from CSEW to the year ending December 2018, shows a small increase in crimes excluding fraud and computer use but no statistically significant change in crimes including fraud and computer use (ONS, 2019). However, beneath these headline figures, there have been changes in rates for some types of crime. For example, there has been an increase in theft offences and, although there is no overall change in violent offences estimated in CSEW, there has been an increase in police recorded lower-volume, higher-harm types of violence, which tends to be concentrated in metropolitan areas. In addition, the number of homicides increased between 2017 and 2018 by 12 percent (excluding the London and Manchester terror attacks in 2017) and a 6 percent increase in police recorded offences involving a knife or sharp instrument³ (ONS, 2019). Detailed UK analysis of trends in violent crimes and the victims of violent crime can be found in Cooper and Lacey (2019).

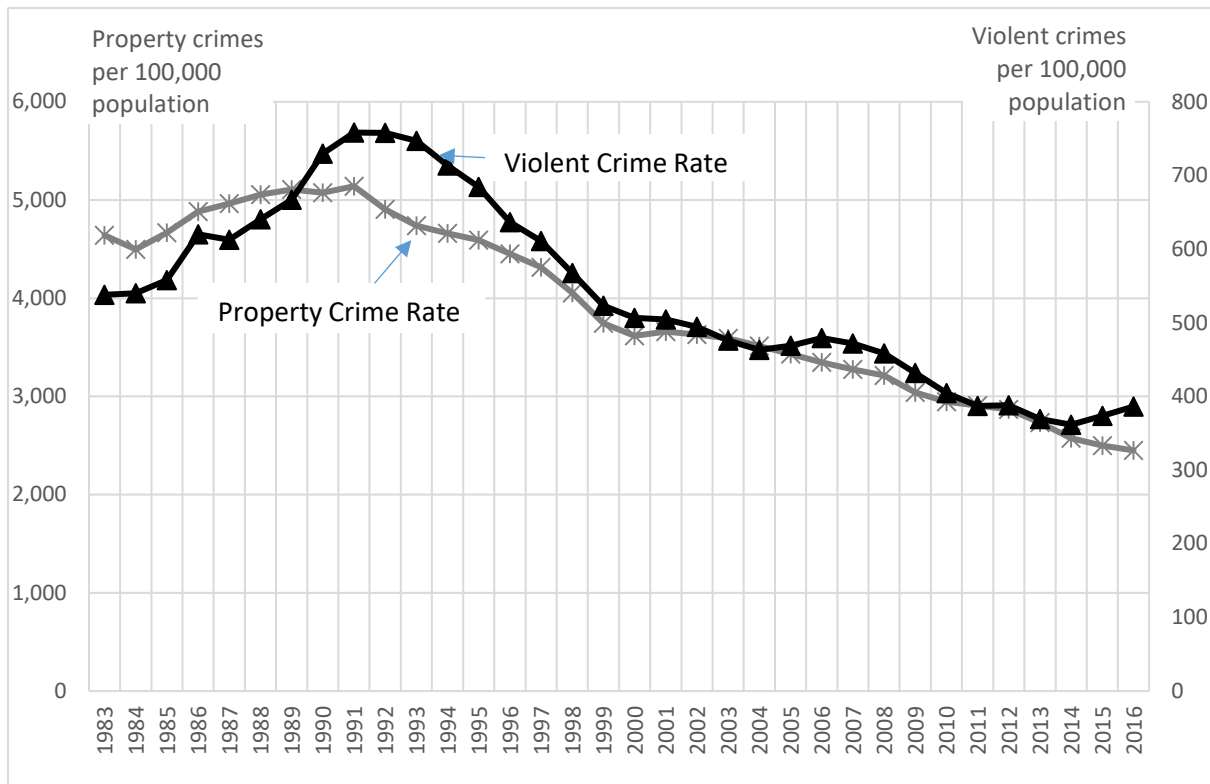
Perceptions of increasing criminal activity vary between assessments of changes in national and local crime. Analysis of statistics from the British Crime Survey (now called the Crime Survey for England and Wales (CSEW)), found that around 50 percent of adults living in England and

³ This figure excludes Great Manchester Police figures due to a change in their recording methodology.

Wales perceived that local crime had increased (a little or a lot more) in the two years up to 2000/01. In contrast, 65 percent of respondents to this survey believed that national crime rates had increased over the same period (McKnight and Tsang, 2014). As crime rates continued to fall perceptions of increasing criminal activity have declined, particularly in relation to local crime rates. By 2010/11 less than 30 percent of survey respondents reported a perception that local crime was increasing while 60 percent believed that national crime was increasing. Recent statistics show that still more than half of the adult population in England and Wales believe that national crime rates are increasing (ONS, 2017). The role the media plays in influencing people's perceptions of the prevalence of crime appears to be a factor behind why national crime levels are perceived to be higher than local crime levels. Evidence from CSEW shows that people's perceptions of local crime are more accurate and informed by their own experiences, the experiences of those around them or reports in local media, but their perceptions of national crime are much more likely to be informed by news programmes on television or radio (ONS, 2017). There is evidence that national reporting of high profile crimes, is one of the factors behind people's perceptions of increasing national crime rates (see, for example, McKnight and Tsang, 2014).

Falling crime rates have also been recorded in a number of other countries. As we can see from Figure 2, trends in violent crime and property crime in the US have declined from their peak in the early 1990s. Violent crime rates fell by 39 percent between 1980 and 2014, and by 52 percent from their peak in 1991 (US government, 2016, p.11). This represented a decrease from about 750 violent crimes per 100,000 people in 1991 to under 362 violent crimes per 100,000 people in 2014, although rates increased in 2015 and 2016 back up to 386 per 100,000 (Figure 2).

Figure 2: Trends in violent and property crime rates in the US, 1983-2016



Source: Federal Bureau of Investigation. Uniform Crime Reports.

There exist competing explanations for why crime rates have fallen over recent decades. A study by Tseloni et al. (2010, p.376) suggests that the downward international trend in crime rates towards the latter part of the 20th century, and within the US and UK in particular, could be traced to the decline in burglary and car theft rates in the 1980s and the subsequent decline in assaults at the end of the 1990s. Other explanations for falling crime rates are that major increases in security technology and prevalence have improved crime prevention measures such as car immobilisers, bulletproof screens, security guards, marked money, alarms and DNA databases, CCTV cameras and security tags (The Economist, 2013).

The US Government (2016, p.12) reports that while a consensus among experts on the relative importance of various causes has not been reached, a variety of factors which could be linked to the decline in crime in the US have been identified:

- Improvements in economic conditions through rising incomes and falling unemployment;
- Demographic changes, in particular the decrease in proportion of young people (aged 15-30) in the US population by 12 percent between 1980 and 2013, reducing the general propensity for criminal behaviour that is more prevalent among young people;

- Improvements in police tactics and technology used in policing;
- Substance related declines such as decreased alcohol consumption, decreased use of “crack” cocaine, and a reduction in exposure to lead (associated with the removal of lead from petrol).

In fact, the latter is an interesting argument that points to the intersection of health, science and crime levels. Research in the US found a correlation between high blood-lead levels, decreased IQ and increased crime (Nevin, 2000). The study was expanded in 2007 to include violent crime data from the US, UK, Canada, Australia, West Germany, France and New Zealand, and repeated again in 2012, all showing consistent results with the earlier US findings (Illing, 2013). Another study by Meilke and Zahran (2012) researched lead emissions and latent aggravated assault behaviour in six US cities and found a positive correlation between increases in lead pollution and a rise in aggravated assault rates two decades later. As Illing (2013) notes, the increase in aggravated assault is unlikely to be due to policing tactics which would have been implemented differently or at varying times. Additionally, research conducted at the neighbourhood level found comparable correlations between lead levels and crime levels. For example, the poorest areas of New Orleans had both high lead levels and high crime levels (Drum, 2016).

Although there has been a tendency in recent research to focus on understanding the upward trend in crime rates over the 1980s and the subsequent decline starting in the early to mid-1990s, Tonry (2014a) takes a longer run view of declining crime rates. He traces theories and evidence of a civilising process from the Middle Ages which included reduced use and acceptance of violence. Pinker (2011), also examining the historical decline in violent crime, and identifies five key explanations (the rise of the modern nation-state and judiciary; commerce (making people’s lives more valuable); feminisation of social life (or reduced male dominance); Cosmopolitanism (literacy, mobility, etc.); the ‘escalator of reason’ (intensifying application of knowledge and rationality to human affairs). Tonry concludes that the long term decline in crime rates across developed countries has little to do with policing or punishment regimes due to the considerable variation that existed over different time periods and countries. He sees the rise in criminal activity that occurred in many English speaking countries in the 1970s, 1980s and 1990s as a blip, with rates resuming the long term downward trend shortly thereafter. Tonry (2014a) concludes that factors behind recent trends do not help explain the historical downward trends in crime rates.

As we are interested in crime in relation to the role it plays in shaping the relationship between economic inequality and poverty, we are particularly

interested in research examining how poverty and economic inequality determine criminal activity. One area of research that has sought to understand determinants of individual criminal activity and the role of financial circumstances examines the economic determinants of criminal behaviour. We examine the theory and review some of the key empirical evidence in the next section.

3. Economic determinants of crime

Much of the early literature on the determinants of crime focused on highlighting the characteristics of criminals and their cultural and social surroundings: biological factors, family background, social surroundings, cultural, and disenfranchisement with society. A growing literature on the economics of crime shifted this focus to examining behavioural incentives: how individuals' economic circumstances influences their incentives to commit certain types of crime. When economic inequality is high and economic opportunities are low, economically disadvantaged individuals have an increased incentive to commit certain types of crime; those associated with an economic gain: robbery, burglary, theft, etc. (with crime acting as a form of redistribution between the 'haves' and the 'have-nots').

Becker (1968) is acknowledged as one of the first to use a cost-benefit model to outline the modern economic model of behavioural determinants of crime⁴. This model predicts that increasing unemployment and falling relative wages of unskilled workers will lead to an increase in criminal activity, through reducing the opportunity cost of crime. An increase in crimes involving direct financial gain is predicted, but changing economic circumstances are less likely to have a direct impact on assault, sexual offences and criminal damage.

In 1975, Danziger and Wheeler tested a number of the theoretical predictions in relation to economic incentives to commit crime, using US data 1949-1970 and a sample of metropolitan areas for 1960. They found that fluctuations in crime rates were consistent with the predictions of the theoretical model and conclude that too much emphasis has been put on punishment as a crime deterrent and not enough consideration has been given to economic factors or the effectiveness of income redistribution. For the US, there are now numerous empirical tests of the model which mainly support the theory that economic inequality is linked to greater criminal activity for crimes involving a direct financial gain (see review by Wu and Wu, 2012). For the UK, Machin and Meghir (2004) find empirical support for the theory of economic incentives through examining whether a fall in unskilled workers' wages leads to an increase in criminal activity using regional data for England and Wales for the period 1975-1996. Similarly, Witt et al., (1998; 1999) and Carmichael and Ward (2000) find a positive relationship between local unemployment rates and burglary, theft and

⁴ Becker was not the first economist to highlight the connection between economics and crime. In 1937, in the *Wealth of Nations* Smith noted: 'The affluence of the rich excites the indignation of the poor, who are often both driven by want and prompted by envy; to invade his possessions ... can be protected only by the powerful arm of the civil magistrate.' (quoted in: Wu and Wu, 2012, p.3766).

robbery rates. Wu and Wu (2012) examine the relationship between crime, inequality and unemployment in England and Wales 2002-2007 using panel data. They also find that earnings inequality and unemployment are important explanatory variables for the determinants of crimes motivated by economic gain. No such evidence was found for other types of crime, such as, homicide, assault or rape.

At the macro-level a number of cross-country studies have examined the relationship between economic inequality and crime rates. Some find a positive cross-sectional correlation between income inequality and crime rates (Wilkinson and Pickett, 2009). In June 2018, *The Economist* reported results from Gallup's annual Law and Order Index which covers 142 countries (*The Economist*, 2018). They plotted income inequality levels against responses to a series of crime related questions. In all cases they find a positive correlation, concluding that higher inequality is associated with lower trust in local police, less likelihood of feeling safe walking home alone, a greater likelihood of having property or money stolen and a greater likelihood of assault over the past year.

Time series analysis examining the relationship between trends in overall crime rates and trends in income inequality have produced results which are less conclusive. McKnight and Tsang (2013) did not find a systematic relationship between trends in the UK 1980-2010 and this was largely true of the 30 countries covered in the international study that this research was part of (Nolan et al., 2014). Lack of an overall relationship between changes in aggregate levels of crime and changes in income inequality was also the conclusion from recent analysis and reviews of time series evidence (Rufrancos et al., 2013 and Jennings et al., 2012). However, Rufrancos et al.'s review of the evidence found that property crime increases with rising income inequality and specific measures of violent crime, such as homicide and robbery, also display sensitivity to changes in income inequality over time. As we have shown, in many rich and middle income countries, including the US and the UK, crime rates have followed a downward trend over recent decades (even taking into account measurement difficulties) while economic inequality has increased⁵. As noted above, a number of factors seem to be behind the downward trend in crime rates, while economic inequality appears to be a factor behind determining some types of criminal activity, trends in aggregate levels of crime have been driven by other strong forces.

⁵ Although income inequality has increased in most rich countries since the 1970s, the timing and extent of any increase varies between countries (Salverda et al., 2014). In the UK, for example, the main increase in income inequality occurred in the 1980s (McKnight and Tsang, 2014).

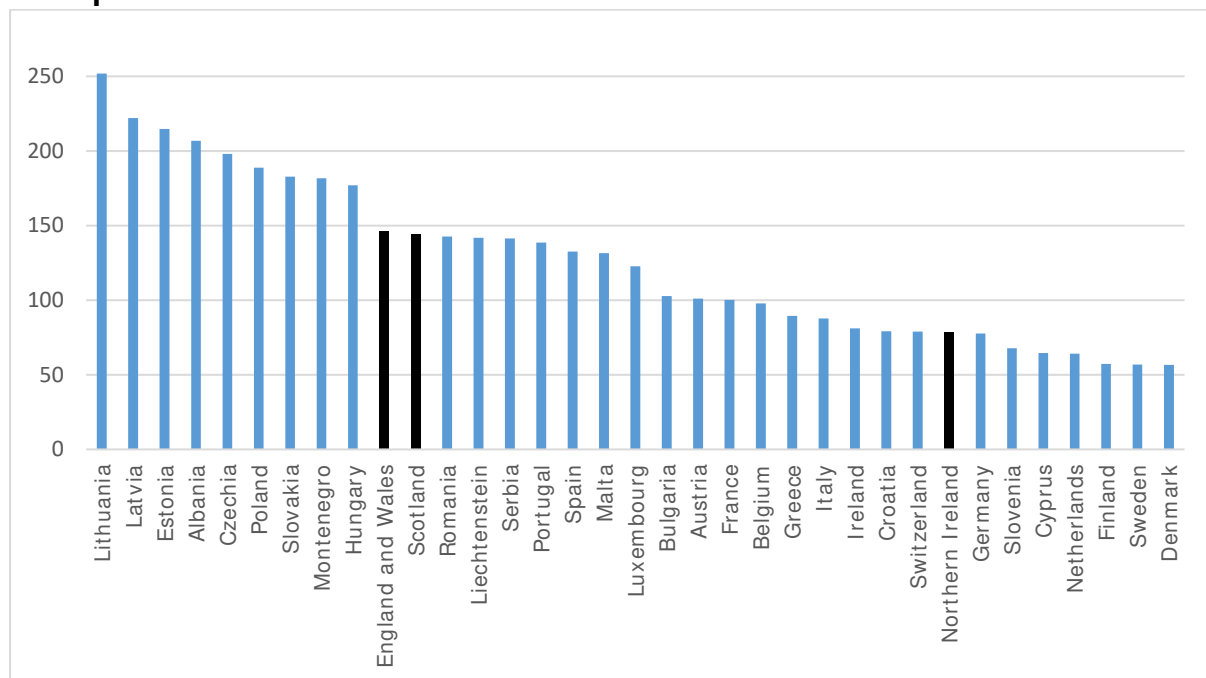
4. Trends in incarceration rates and prison populations

In this section we examine trends in incarceration rates and prison populations. While trends in overall crime rates are a factor in determining these trends, they are also influenced by changes in the types of crime committed, prosecution rates, changes in sentencing and wider penal policy.

Over the past 40 years, particularly in the UK and US, there is evidence that economic inequality and insecurity have fed popular anxiety about crime (Lacey and Soskice, 2013, p.9; Jones and Newburn, 2006, p.791). This growing anxiety has been linked to calls for harsher sentencing and a general increase in preferences for punitive sanctions. The relationship between crime, public perceptions of crime, and sentencing policy, is complex (Reiner, 2007). Media representations may play a role in shaping public and politicians' perceptions of crime, which in turn affect penal policy (Lacey, Soskice and Hope, 2017, p.10). The incidence of crime is not the only factor shaping penal policy, and the information on which policy is based may not be accurate or may be distorted in many ways, not least by media representations (Berry, et al., 2012; Reiner, 2007). However, crime rates, public levels of concern about crime, and politicians' perceptions of both these factors, are important factors shaping penal policy (Garland 2001). As a result, penal and incarceration policies have become a contentious topic of political debate that politicians use to sway undecided voters (Lacey and Soskice, 2013, p.9). Newburn (2007) describes a shift towards a more punitive and populist penal politics from the early 1990s in the UK which was accompanied by the main political parties engaging in a contest on who could be the toughest on law and order.

Incarceration rates vary substantially between countries, even between countries with similar crime rates. Trends in prison populations can reflect different historical patterns of crime, differences in the types of crimes committed and differences in sentencing policy. Although crime rates have been falling in the United States and the United Kingdom, incarceration rates have reached unprecedented levels. Statistics show that prison population rates in England and Wales, and in Scotland are considerably higher than those observed in many other Western European countries (Figure 3) – for example, nearly double the rate in Germany.

Figure 3: Prisoners per 100,000 head of population in 2015 – European countries



Data source: Eurostat, Prison capacity and number of persons held, 2015, last accessed on 19 November 2018

International evidence shows that across OECD countries, and in particular within English speaking countries, there has been a fairly dramatic increase in prison populations. For example, between 1980 and 2014, the number of people incarcerated in US prisons increased by 350 percent, totalling nearly 2.4 million inmates in 2014 (US Government, 2016, p.10). Although both the US incarceration rate and the total number of people incarcerated started to fall from 2009 and continued to fall in 2015 and 2016 both remaining historically high; in 2016 US Bureau of Justice statistics show that the incarceration rate was 660 per 100,000 population and the incarcerated total at the end of 2016 was 2,131,000 (Kaeble and Cowhig, 2018).

The prison population in England and Wales increased substantially between 1990 and 2016 (90%) with smaller, although still large, increases in Scotland over the same period (62%) (HoC, 2017, p.3). Statistics show both an increase in the number of prisoners and an increase in the prison population rate (HoC, 2017, p.3). This increase is part of a longer term upward trend in the size of the prison population since 1945⁶ but it also marks an acceleration in the average annual growth rate since 1993 (3.4% per year 1993-2016, up from 2.5% 1945-1992) (Figure 4). The

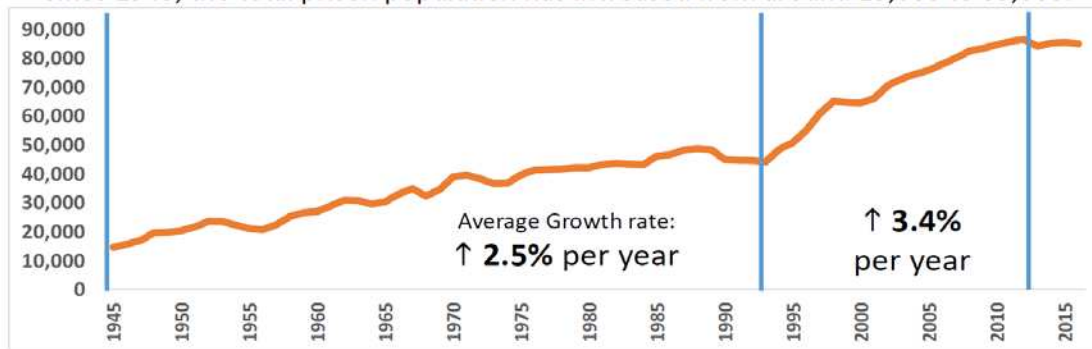
⁶ The prison population was relatively stable between 1915 and 1945 (House of Commons Library Briefing Paper Number SN/SG/04334, 20 April 2017).

acceleration after 1993 is in stark contrast to the falls in crime rates in England and Wales, shown in Figure 1 above, but followed a period of time when both income inequality and income poverty rates increased (McKnight, Duque and Rucci, 2017).

Figure 4: Trends in the UK prison population: 1945-2016

The prison population has been rising since the war...

Since 1945, the total prison population has increased from around 15,000 to 85,000.



The growth in the prison population started to pick up pace from 1993

...but the population has stabilised since 2012. Is this the start of a more stable trend?

Note:

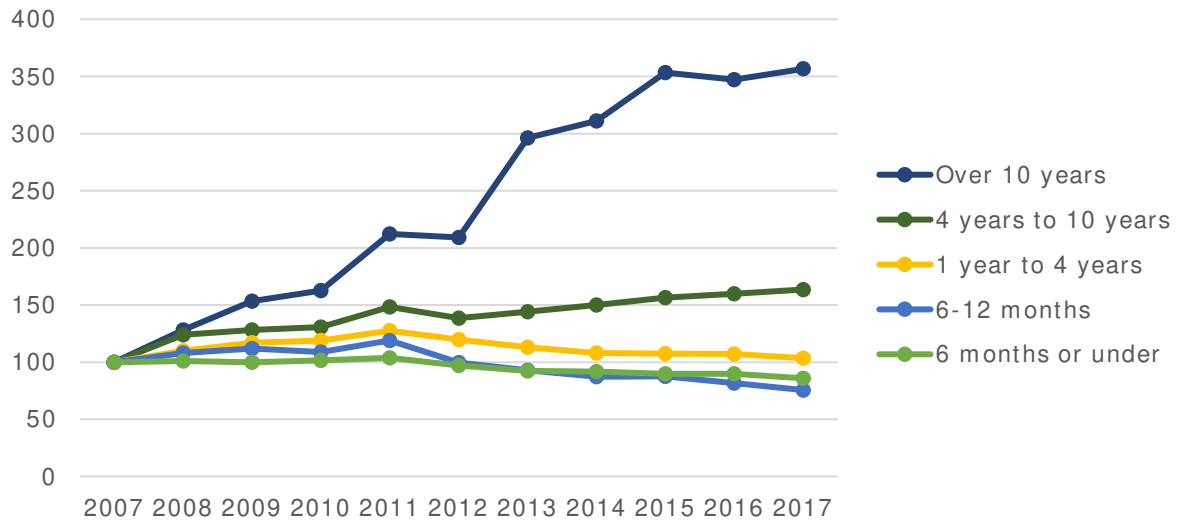
The above chart is based on prison population figures as at 30 June each year; as this represents the most stable time point. Unless otherwise stated, all prison population figures in this document are stated as at the 30 June.

Source: Ministry of Justice ‘Story of the Prison Population: 1993 – 2016 England and Wales’ (June 2016)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541667/prison-population-story-1993-2016.pdf

Much of the increase in the prison population in the UK has been found to be due to longer determinate sentences being handed down by the courts. For example, official statistics show an increase in life sentences by 40 percent since 2002 (MoJ, 2016). The average length of custodial sentence increased from 16 months in 1993 to 18.8 months in 2015, resulting in longer prison stays (MoJ, 2016). Figure 5 shows how determinate sentences of 4-10 years and over 10 years (excluding life sentences) have increased substantially over the decade 2007 to 2017, with sentences of over 10 years increasing by over three-fold.

Figure 5: Changes in the length of determinate custodial sentences, relative to 2007



Source: Criminal Justice System Statistics publication: Sentencing: Pivot Table Analytical Tool for England and Wales (May 2018).

Around 45% of the sentenced population are serving over four years on determinate sentences, compared to around 25% serving sentences of between one and four years, under 10% serving less than one year and around 15% serving indeterminate sentences (MoJ, 2016). A recent report by the Prison Reform Trust found that the use of indeterminate sentences and the increased use of long determinate sentences are key drivers behind the near doubling of prison numbers in the past two decades (Prison Reform Trust, 2015).

Increases in custodial sentences are reflected in the change in the composition of the prison population, with an increase in the share of prisoners convicted of offences which carry longer sentences. In particular there has been an increase in the share of prisoners serving sentences for Violence Against the Person (VATP), Sexual Offences and Drug Offences which accounted for two in every five sentenced prisoners in 1993, but had increased to three in every five by 2016 (MoJ, 2016).

An important aspects that marked the turning point in 1993 was a strong political shift by the Conservative Home Secretary Michael Howard, who during his speech at the Conservative party conference in 1993 stated that: *“Prison works. It ensures that we are protected from murderers, muggers and rapists - and it makes many who are tempted to commit crime think twice ... This may mean that more people will go to prison. I do not flinch from that. We shall no longer judge the success of our system of justice by a fall in our prison population.”* Crucially, around this time Tony Blair became Shadow Home Secretary and it was his repositioning of Labour that

sought to challenge Tory dominance on law and order. In an article published in the *New Statesman* in March 1993, Tony Blair famously wrote “we should be tough on crime and tough on the underlying causes of crime”, and this marked a sea-change in New Labour’s approach to law and order. As we noted above, Newburn (2007) describes how this was the start of a new era in which the main political parties contested to convince the electorate that they would be the toughest on crime and order.

Many argue that falling crime rates and increasing incarceration rates is proof that ‘prison works’, but a vast amount of research evidence finds that incarceration only has a small impact on decreasing crime and this impact became less and less salient as incarceration rates continue to increase (U.S. Government, 2016, p.11). A recent large scale review examining the causes and consequences of the growth in incarceration rates in the US concluded that: “The increase in incarceration may have caused a decrease in crime, but the magnitude of the reduction is highly uncertain and the results of most studies suggest it was unlikely to have been large.” (Travis, Western and Redburn, 2014, p.4). A National Audit Office report found no systematic relationship between changes in crime rates and changes in prison populations between 2005 and 2009 across England and Wales, Scotland, Australia, Northern Ireland, United States, Netherlands, France, Finland, New Zealand and the Republic of Ireland (NAO, 2012).

While incarceration clearly limits the extent to which convicted criminals can commit crime in the community, there is little evidence that in the long-term it leads to a significant reduction in crime: According to crime and punishment scholar and philosopher Foucault, the institution of prisons:

“does not diminish the crime rate, it causes recidivism, it produces delinquents, it encourages loyalty between prisoners, it stigmatizes offenders and it differentially impacts on the families of prisoners through condemning them to living in poverty.”
(Foucault, 1979, p.264-268, cited in Sim, 2009, p. 155)

One of the major factors identified by those making the case that prison doesn’t work is evidence of high rates of reoffending. In April 2016, the overall proven reoffending rate⁷ for adult and juvenile offenders in England and Wales was 29.4% which had decreased slightly from around 31% in

⁷ The Proven Reoffending Statistics is the share of offenders (released from custody, received a non-custodial conviction at court or received a reprimand or warning in a three month period) who commit a proven reoffence over the following 12 months any offence committed in a one year follow-up period that leads to a court conviction, caution, reprimand or warning in the one year follow-up or within a further six month waiting period to allow the offence to be proven in court (MoJ, 2018a).

2005, with the highest point at 33% in 2013 (MoJ, 2018a, p.3). Reoffending rates for prison leavers are even higher. Recent statistics show that adults released from custody or starting court orders had a proven reoffending rate of 37.8%; considerably higher (48.9%), and increasing, for those leaving custody, lower (33.5%), and declining, for those starting a court order (Community sentence or Suspended Sentence Order). Furthermore, this rate varies according to length of time spent in prison with a reoffending rate of 63.8% for adults with sentences of less than 12 months and 28.8% for adults who served sentences of 12 months or more (MoJ, 2018a, p.7). These statistics relate to reoffending over a 12 month period and clearly reoffending rates will be even higher when measured over a longer period of time. These high reoffending rates are reflected in statistics on offending histories. In 2017, the MoJ, compute that over one-third (36%) of the offending population had a long criminal career (those with 15 or more previous cautions or convictions); an increase of eight percentage points since 2010 (MoJ, 2018a).

In the US, where a harsher sentencing regime exists, recidivism rates are equally high. Analysis of post release state prisoners in 30 US states over a five year period from their release from prison in 2005 found:

- About two-thirds (67.8%) of released prisoners were arrested for a new crime within 3 years, and three-quarters (76.6%) were arrested within 5 years.
- Within 5 years of release, 82.1% of property offenders were arrested for a new crime, compared to 76.9% of drug offenders, 73.6% of public order offenders, and 71.3% of violent offenders.
- More than a third (36.8%) of all prisoners who were arrested within 5 years of release were arrested within the first 6 months after release; with more than half (56.7%) arrested by the end of the first year.
- A sixth (16.1%) of released prisoners were responsible for almost half (48.4%) of the nearly 1.2 million arrests that occurred in the 5-year follow-up period.

(US Bureau of Justice, 2014).

There have been calls over many years to increase investment in rehabilitation. A Ministry of Justice consultation in 2013 (*Transforming Rehabilitation*) led to a number of recommendations in relation to how rehabilitation and sentencing should be reformed to reduce reoffending rates. In May 2019, the Justice Committee published a report looking at the future of prison policy, urging again the need for investment in rehabilitation:

“There is an urgent need for significant additional resources for cross-departmental provision to reduce reoffending. This would

save the Ministry money in the long-term and would reduce the cost to society of reoffending in the long-term.”

(Justice Committee, 2019)

Prisoners serving short sentences⁸ (around 60,000 adults per year) seem to be particularly affected by limited access to services that promote rehabilitation, despite high rates of reoffending. An NAO report in 2010 found that one half of short-sentenced prisoners were not involved in activities that could help with rehabilitation and spent almost all day confined to their cells (NAO, 2010). Although prisons were found to offer a range of courses and other activities to reduce re-offending, waiting lists were found to be too long for most prisoners serving short sentences to benefit from them. Short sentenced prisoners typically spend three months in prison with only around 10% serving six months or longer. On average, the NAO reports, short sentence prisoners have 16 previous convictions, which is more than any other group of offenders. The NAO found that only a small proportion of prison budgets was spent on activity intended to reduce re-offending by prisoners on short sentences, despite the fact that 60% of such prisoners are reconvicted within a year of release. The Home Office estimated that the economic and social cost of reoffending by short sentence prisoners was £7 - £10 billion a year in 2007/08, three-quarters of the total cost of all reoffending (NAO, 2010). In 2013 the Ministry of Justice published a response to a consultation on *Transforming Rehabilitation*, which recommended that prisoners serving short sentences of under 12 months and under should receive statutory rehabilitation to try and reduce reoffending rates (MoJ, 2013).

Other costs associated with short-sentencing are borne by the children of those serving the sentences. Two-thirds of women in England and Wales receiving custodial sentence are sentenced to six months or less. Many of these women have sole or primary care responsibilities for young children and for whom community-based non-custodial sentences would cause less distress and negative long term impact (Baldwin and Epstein, 2017). In the light of compelling evidence, the Justice Committee has recommended that the use of short sentences of less than six months be abolished and for the

⁸ “A prison sentence of less than 12 months differs from longer sentences because, by statute, prisoners, except those aged 18-21, are unconditionally released when they have served half their sentence without further supervision. In addition, while in prison, short-sentenced prisoners are not subject to Offender Management, where an offender manager formally assesses risk of harm and the factors underlying offending, and plans and supervises the sentence.” (NAO, 2010, p.10).

government to give serious consideration to phasing out the use of sentences less than 12 months.

“David Gauke, the Justice Secretary, set out in his speech on prisons in February 2019 that there is a very strong case to abolish sentences of six months or less altogether. We agree with him and recommend that the Government should introduce a presumption against sentences of less than six months. We believe that this approach will be more financially sustainable and will do more to reduce the cost of reoffending to society.”

(Justice Committee, 2019).

5. Relationship between trends in prison populations and economic inequality

Several studies have found a positive correlation between economic inequality and imprisonment rates. Kim (2015) conducted a time-series analysis of the relationship between income inequality and prison admission rates in the US covering the period 1950-2010, and found evidence of both short-term and long-term equilibrium relationships. Other research has found that the rates of imprisonment are higher in more unequal countries. In 2002, the top five countries, out of 23 OECD countries, with the highest levels of income inequality *and* high rates of imprisonment were the US, Singapore, Portugal, the UK and Australia (Wilkinson and Pickett, 2009).

In other research, Western et al. (2006) examined the relationship between the growth in men's prison admission rates and increasing economic inequality in the US from 1983 to 2001. They find a significant increase in educational inequality in imprisonment with nearly all the growth in the risk of imprisonment between 1983 and 1999 found among low educated men. Extrapolating from these findings, they suggest that low educated men's imprisonment rates would be 15-20% lower in the late 1990s if wage and employment levels had stayed constant at 1980 levels. Côté-Lussier (2016a, b) also finds a significant positive association between income inequality and the US federal incarceration rate over the period 1953 to 2008.

Another area of research has explored the role of the welfare state. In particular, considering the hypothesis that insufficient welfare support will affect the economic determinants of criminal activity and therefore imprisonment. A research study conducted by Downes and Hansen (2006, p.4) found a clear link between a country's welfare spending and subsequent incarceration rates. Amongst the 18 countries included in the study, the seven countries with the highest imprisonment rates, were all found to spend below average proportions of their GDP on welfare and the eight countries which all spend above average on welfare, excluding Japan, had the lowest imprisonment rates (Downes and Hansen, 2006). In the UK, a report by Police Scotland attributed some of the recent increase in robberies in Scotland, up 30%, to changes in welfare, in particular the operation of Universal Credit (Police Scotland, 2018). According to an analysis of state-level incarceration rates in the US between 1975 and 1995, there is a negative relationship between welfare and incarceration which grew over the two decades covered by this research, which the authors suggest is the emergence of a novel kind of penal-welfare regime in the late 1980s and 1990s (Beckett and Western, 2001, p.43). More recent research by Neil (2006), analyses US data from 2002 to 2007 across

several types of punishment practices between US states, shows that “states with more stringent welfare programs are likely to have harsher punishments that reflect the public discourse on such crime policies as the death penalty and “three strikes” laws.” An alternative interpretation is that states with larger welfare budgets spend less on the criminal justice system, which points to a “trade-off”, addressing inequality through allocating marginalized populations either to the criminal justice system or the welfare system (Neil, 2016).

A number of theories have been put forward to explain why higher economic inequality or lower welfare support for the least advantaged is related to higher rates of imprisonment and growing prison populations. Some have suggested that increases in economic inequality led governments to enact harsher criminal laws and enforced them disproportionately against economically disadvantaged populations (see, for example, Black, 2010; Western, 2006). According to Lacey and Soskice (2013, p.26), the penal disparity between the US and other liberal market economies has increased starkly over the last thirty years. In particular, in liberal market economies such as in the United States and the United Kingdom, “under conditions of surplus unskilled labour [...] the costs of a harsh, exclusionary criminal justice system are less than they would be in a co-ordinated market economy,” such as the Nordic and northern European countries which are more likely to “opt for a relatively inclusionary criminal justice system” (Lacey and Soskice, 2013, p.8). Wacquant (2009) traces an historic evolution in the US from ‘welfare’ to ‘workfare’ (aimed in particular at economically disadvantaged single mothers) and ‘prisonfare’ (aimed in particular at economically disadvantaged men) as a means of social control. Miller and Haynes (2012, p. 234) suggest that criminology scholar Wacquant’s “call to relink theories of punishment with social welfare and economic policy” could better help our understanding of “the scope and reach of neoliberal penalty in the 21st century.”

6. Overcrowding, prison reform and financial pressures

One way in which UK governments have responded to increases in demand for prison places is through attracting funding in the form of private finance initiatives (PFIs) and contracting out the management of some prisons. The first UK prison whose management was contracted-out to a private company was Wolds Prison in 1992. This policy has been controversial but while the majority of prisons in England and Wales continue to be state run, by 2007 there were eleven privately managed prisons. This made the UK the “most privatized prison system in Western Europe with 10 percent of prisoners incarcerated in private institutions” (Prison Reform Trust, 2007 in Sim, 2009, p.121). In 2017 the number of privately managed prisons had increased to 14 (contracted to three private companies – G4S Justice Services, Sodexo Justice Services and Serco Custodial Services), housing around 17% of prisoners (MoJ, 2017). However, three have been taken back into public hands, the privatisation of three more has been shelved and in the 2018 Budget the Chancellor announced that there would be no more PFIs to fund any government projects.

While privatisation may appear attractive to governments seeking to secure private finance and outsource provision and service, a number of concerns have been raised in relation to prison privatisation. One of these relates to issues around the design of contracts. Contracts are long (around 25 years) and are seen to be highly lucrative and lack accountability (Prison Reform Trust, 2005, p.2). There are also perverse incentives. According to the US Department of Justice (2001, p.16-17), because “private prison operators are paid according to the number of inmates housed,” there is a greater financial incentive “to encourage lengthier sentences for inmates” through lobbying, in order to keep the prison filled to capacity. Likewise, there can also be a financial incentive against releasing prisoners. Performance related incentives, including ones which specifically reward low rehabilitation rates, could reduce these types of incentives.

In the UK, expanding prison populations have not been matched with an equal rise in the number of prison places and the result has been increases in overcrowding. At the end of 2016, 69% (80) of UK prison establishments were officially classified as overcrowded (MoJ, 2017). In the 12 months to March 2018, a total of 20,695 prisoners were held in crowded accommodation conditions; representing a crowding rate of 24.2% (MoJ, 2018b). Increases in overcrowding has been identified as a factor behind increases in prisoner assaults; in the year to September 2016 prisoner assaults were 68 percent higher compared to the figure in September 2006; and a 31 percent increase in the year to September 2015 (HoC, 2017). In the 12 months to December 2017, there were just under 29,400 assault

incidents in UK prisons; a 13% increase compared to December 2016 and a 44% increase from December 2015 (HoC, 2018). This represented an increase from 190 assaults per 1,000 prisoners in the twelve months ending in December 2007 to nearly 344 per 1,000 prisoners in the twelve months ending December 2017 (HoC, 2018). Prisoner assaults on staff were 139% higher in 2017 relative to 2007; more than doubling from 43 per 1,000 prisoners in 2007 to 98 per 1,000 prisoners in 2017 (HoC, 2018). More general outbreaks of disorder, which can result in riots is also an issue. It is difficult to get high quality time series data on prison riots but there is a perception that prison riots are on the increase.

In addition to overcrowding arising from increases in prison populations and insufficient expansion in prison places, the rise in incarceration rates puts a strain on public finances. It should not be overlooked just how expensive prison places are. The total average annual cost per prisoner in 2016/17 was £35,371 (HoC, 2018, p.27), in contrast contribution-based Jobseeker's Allowance for a single adult was £73.10 per week which equates to £3,801.20 per year. In the UK 2.2 percent of GDP was spent on the criminal justice system, well above the EU average of around 1.8 percent (Côté-Lussier, 2016a). Such high rates of expenditure are seen to be concerning given that "prison is already performing a huge disappearing trick, sweeping under the carpet huge swathes of the population," whom are thus removed from the systems of social security and welfare (Sim, 2009, p.118). In contrast, according to the Office for Budget Responsibility (OBR, 2014), in 2013-14 the UK government spent only 0.3% GDP on unemployment benefits (2.1 percent of total welfare expenditure). Considering the current reduction in welfare provisions, increased penalization and prison expansion has become seen by some as the new form of social "protection" by replacing community services such as mental health nurses, hostels and drug treatment programmes (Sim, 2009, p.118). In addition, cuts and financial pressures in other services, for example mental health services, can put additional pressure on prison services.

7. Profile of prisoners: evidence of discrimination and poverty traps

To understand how crime, imprisonment and the legal system may be one of the mechanisms behind the positive relationship between economic inequality and poverty we look beyond trends in aggregate rates of imprisonment and examine the characteristics of who is being imprisoned.

As the economic determinants of crime model predicts, it is those with least economically advantaged backgrounds who are most likely to be incarcerated: “Those with no capital get the punishment” (Sim, 2009). In this regard, prisons have become in charge of the “penal management of poverty and inequality” and there have been calls for the so-called “war on crime” to be replaced with a “war on poverty” (Sim, 2009, p.118). According to Sim, prisons are filled with “the unemployed, the homeless, the mentally distressed, the institutionally brutalized, the sexually traumatized and the substance dependent” in addition to the racially and economically marginalized BME (Black and Minority Ethnic) groups (Sim, 2009). Prisons have become “the big house for the poor and the powerless,” regardless of crime committed or illegal activity engaged in by the non-minority, well-off and more powerful part of the population (Sim, 2009, p.14- footnote 8).

International evidence shows that ethnic minorities are more likely to have contact with the criminal justice system than majority groups (Tonry, 1999). There is now substantial evidence that ethnic minority groups in the US and the UK form a disproportionate share of prison populations. For African American males, the rate of imprisonment is seven times higher than that for White American males and the rate for African American women is three times higher than those of White American women (Foster and Hagan, 2015, p.138). A recent review on the causes and consequences of the growth in incarceration rates in the US concluded that: “People who live in poor and minority communities have always had substantially higher rates of incarceration than other groups. As a consequence, the effects of harsh penal policies in the past 40 years have fallen most heavily on blacks and Hispanics, especially the poorest.” (Travis, Western and Redburn (eds), 2014, p.5).

Some experts see harsh penal policies being upheld by a history of systematic structure of oppression and disenfranchisement interacted with economic developments during the 1970s and 1980s as African-Americans and Hispanics were granted equal entry into the education system and labour market (Lacey, Soskice, and Hope, 2017, p.22). In practice, economic and educational disparities continue to be exacerbated by residential segregation and educational inequalities which undermines the

sorts of social capital that can help to prevent crime (Petersen and Krivo 2010; Sampson 2012).

Similar to the US and other Western European countries, the UK prison population remains disproportionately racialised (Sim, 2009, p.104). Research by Goodman and Ruggiero (2008, p.57), shows that individuals from BME groups form at least 25 percent of the prison population in England and Wales. A situation that appears to be worsening with evidence showing that while the prison population grew by 12 percent between 1999 and 2002, the number of black prisoners increased by 51 percent (Sim, 2009, p.104).

Evidence shows that throughout the criminal justice system in England and Wales, people from BME groups are overrepresented (Goodman and Ruggiero, 2008). For instance, sentencing for BME groups in 2010 was longer on average compare to their white counterparts, with the former serving 19.7-20.8 months compared to only 14.9 for the latter group (Judicial College, 2013, p.12). Many factors can help explain racial disproportionality in the prison system. The first and most salient, is that criminal conduct in the UK has been linked to the declining social and economic conditions among working class and second- and third-generation minorities (Goodman and Ruggiero, 2008, p.61). Such deprivation correlates with the prevalence and degree of criminality. For instance, areas with high levels of concentrated poverty, unstable housing and highly transient populations, are often found to be associated with more serious criminal behaviour (Goodman and Ruggiero, 2008, p.61). Yet, the links between the associations of race, poverty and crime have not had as much attention in the UK debate as compared to the US. According to Goodman and Ruggiero (2008, p.60), this may be due to sensitivity and issues clouding and limiting the debate in the UK, yet it warrants an important investigation in order to add to the predominant existing literature on relative deprivation and disadvantage as a factor in criminality. This situation changed when in 2016 the government commissioned David Lammy MP to conduct an independent review to consider the treatment of, and outcomes for, BAME (Black, Asian and Minority Ethnic) individuals within the criminal justice system in England and Wales: *The Lammy Review*. The results were published in September 2017 with an extensive report highlighting striking disparities, information gaps, and providing a series of recommendations (Lammy, 2017).

The Lammy Review found that despite the fact that BAME men and women make up just 14% of the population in England and Wales, 25% of prisoners, and over 40% of young people in custody are from BAME backgrounds. Over-representation varied across groups: Black people made up around 3% of the general population but accounted for 12% of

adult prisoners in 2015/16 and more than 20% of children in custody (Lammy, 2017, p.3). The Review estimated that if the prison population reflected the population make-up of England and Wales, there would be over 9,000 fewer people in prison, which is the equivalent of 12 average-sized prisons. It concluded that there is greater disproportionality in the number of Black people in prisons in England and Wales than in the United States (Lammy, 2017, p.3).

Despite general improvements for young people, the Lammy Review reports that over the last ten years: first offending rates increased among the BAME young population (from 11% in March 2016 to 19% in March 2016); BAME reoffending rates increased; and, the BAME proportion of youth prisoners increased from 25% in 2006 to 41% in 2016 (Lammy, 2017). The Review concludes that although arrests are disproportionate this does not fully explain the make-up of the youth custody population.

A number of factors in the Criminal Justice System were identified as contributing to these disparities. These are: (1) BAME defendants are consistently more likely than White defendants to plead not guilty in court or to plead guilty at a late stage, reducing the chance of community punishment rather than custody; (2) BAME defendants are more likely to elect for a jury trial at the Crown Court, rather than be tried in a Magistrates' court, despite the higher sentencing powers available at the Crown Court; (3) BAME defendants were more likely than White defendants to receive prison sentences for drug offences, even when factors such as past convictions are taken into account.

Although a number of flaws in the CJS were found to affect disparities, the Review concludes that many of the causes of BAME over-representation lie outside the CJS, as do many of the solutions (Lammy, 2017, p.4). Factors highlighted in the Review included: the higher rates of poverty experienced by black families, the higher rates of permanent exclusion from school and the higher rates of arrest among teenagers.

These findings highlight a two-way relationship between race and crime. On the one hand statistics show how the criminal justice system is racialised and disproportionately incarcerates BME populations compared to their white counterparts. On the other hand, it gives cause for public opinion to promote negative associations between BME populations and crime, further increasing chances of discrimination in the justice system. According to a race equality thinktank, The Runnymede Trust, in 2007 there was a notable increase in media interest in a “‘culture’ of violent criminality” in poor BME areas compared to the predominant trend of erasure in the media (Sveinsson, 2008, p.17). For instance, after the murder of PC Sharon Beshenivsky, Patrick O’Flynn (UK Independence Party, Member of the

European Parliament for the East of England region) writing in the Express newspaper stated “youths from countries where life is cheap are devaluing the worth of a life on Britain’s streets” (quoted in Sveinsson, 2008, p.16). Such comments play into the stereotypical narrative that immigrants are “from backward, uncivilised countries” and are therefore, the cause of the explosion of gang crime in Britain (quoted in Sveinsson, 2008, p.16). In the 2007 Home Affairs Committee report titled “Young Black People and the Criminal Justice System,” Tony Blair blamed a “distinctive black culture” as the cause for “the recent spate of murders in black communities” (Sveinsson, 2008, p.20). These quotes highlight how perception of the relationship between race, ethnicity and crime can be misconstrued and can have wider consequences as there seems to be a clear link between media furore on crime and, often quite drastic, policy making (Sveinsson, 2008, p.32).

There has also been a rise in both the count and proportion of Muslim prisoners in England and Wales from 5,502 (7.7%) to 12,225 (14.4%) in 2014, a far greater rise than the increase in the Muslim population (Shaw, 2015). The Review suggests that government reforms need to identify and address the needs of BAME Muslim offenders to ensure equitable outcomes (Lammy, 2017, p.58).

The rise in incarceration numbers for Muslims appears to be correlated with rising anti-Muslim sentiments. According to the British Social Attitudes Survey in 2010, 55% of respondents reported that they would be concerned with a large mosque in their community in contrast to just 15% who reported that they would feel concerned with a large church (Judicial College, 2013, p.3). A recent report by the Runnymede Trust quotes statistics from NGOs, of a 300% increase in the number of Islamophobic incidents in London after the November 2015 terrorist attacks in Paris, with a total of 76 Islamophobic incidents reported to the police in the week following the attacks compared to the previous week (Runnymede, 2016, p.30)

8. Criminal Justice Policies, Legal Aid, and Reforms

In this section we explore how a selection of policies and policy reforms may play a role in shaping the relationship between crime, economic inequality and poverty.

Since the late 20th century, increasing incarceration rates have reflected an upward trend in increasingly harsh criminal justice policies. Changes in sentencing policies have occurred alongside cuts to Legal Aid which has left some populations at greater risk of being unable to secure justice.

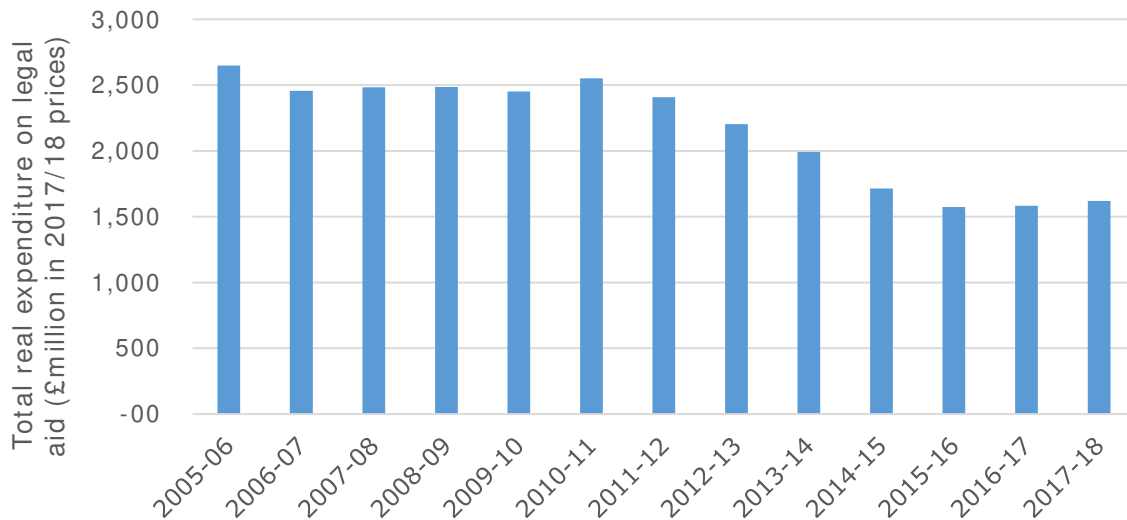
Despite a growing prison population in the UK and longer average sentences being served, there is evidence of widespread dissatisfaction with the severity of sentencing. For instance, 79 percent of the population in 1996, and 74 percent in 2010 held the view that sentencing was too lenient, reflecting an inverse in public opinion with regard to increasing incarceration (Côté-Lussier, 2016a). In fact, trends towards punitive policies could be explained by people's attitudes toward criminals, their crime and their perceived low social status according to research by Côté-Lussier (2016a, b), which suggests that criminals are stereotyped as poor and uneducated, which was equated with being callous and untrustworthy.

In the early 1990s, some claim that UK criminal justice policy moved away from legal perspectives as outlined in the Criminal Justice Act 1991 "towards increasingly populist punitive policies" (Jones and Newburn, 2006, p.785). In 2010, according to Sato and Hough (2013), the UK was among the European countries with the highest levels of public punitiveness. An example of such punitive policies is the increase in harsher sentencing for violent and serious offenders, who are now significantly more likely to get a custodial sentence and serve a longer prison term than in 1997 (Sim, 2009, p.103). As highlighted earlier, from the early 1990s there was a marked shift in political approach to 'tackling crime' by both the Conservative and Labour parties, and while this may have fed off public anxiety about crime, political rhetoric is likely to have fuelled preferences for harsh sentencing regimes. The Conservative party have long promoted themselves as the party for 'law and order' so it was more a shift in emphasis and approach rather than focus. The Labour Government (1997-2010) contributed to the trend of harsher punishment with a 'tough on crime' approach through "the threat of detention and the unrelenting use of confinement," such as "proposals to establish 'sin bins' for problem families, [...] [and] 'retail jails' in shopping malls and on high streets" for instance (Sim, 2009, p. 103). Although in reality many of these were not put into practice, they signalled a shift in opinion and approach with harsh criminal policies effectively having the largest impact on the most marginalized populations of society (Côté-Lussier, 2016a, p.53).

One policy reform which has contributed to the rise in prison populations over the last few decades is the Habitual Offenders Law (commonly known as the “Three Strikes Law”) introduced in the US in 1994. As its name suggests, anyone found guilty of committing a serious violent crime who has two previous convictions will serve a mandatory life sentence in prison. While originating in the US, and enforced particularly strongly in California, in 1999 a version of the ‘three strikes and you’re out’ approach was adopted in the UK: burglars convicted of breaking into private homes three times faced a minimum sentence of three years in jail and similarly repeat offences for rape and drug trafficking resulted in minimum jail terms. In the UK, this policy came under judicial attack when the Human Rights Act of 1998 came into force in October 2000 (Jones and Newburn, 2006, p.787). However, although there is little evidence that such a sentencing approach reduce rates of reoffending (Worrall, 2004), the concept continues to appeal to politicians with the UK Home Secretary Sajid Javid announcing in June 2018 a “three strikes” law for people caught repeatedly viewing or streaming terrorist content was included in the Counter-Terrorism and Border Security Bill 2018.

Recent legal reforms and budget cuts, in particular with regard to access and funding of legal aid have contributed to shaping unequal access to justice. In 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was implemented which removed financial support for most cases involving housing, welfare, medical negligence, employment, debt and immigration and for most private family law cases, other than in situations involving domestic abuse allegations. The effect was an immediate large fall in the number of civil cases granted funding for representation and/or legal advice (cases dropped by 62%). Some areas were particularly affected, such as social welfare and family law for which affected cases dropped 80% and 60% respectively (Howard, 2014). As a result of the 2012 Act, entire categories of law were removed from the scope for legal aid and others only qualify if they meet certain criteria (Howard, 2014). In April 2014, the government budget for criminal legal aid was cut by £215 million, which prompted barristers to withdraw their labour for the first time in history (Howard, 2014). Across the wider Criminal Justice System from 2008 to 2013, workload in all areas fell with the largest reduction in overall workload within criminal legal aid in the magistrates’ court area with a drop of 21% in completed proceedings (MoJ, 2014). According to the Ministry of Justice (2014), between 2008-09 and 2012-13 acts of assistance reached their peak in 2009-10, then volume fell dramatically by nearly 40%, and in particular, criminal legal aid area decreased by almost 14% (MoJ, 2014). The decline in legal aid expenditure, shown in Figure 6, highlights the dramatic fall in real expenditure in England and Wales.

Figure 6: Total real expenditure on legal aid (£million in 2017/ 18 prices) – 2005/ 06- 2017/ 18



Notes: Total legal aid expenditure includes criminal legal aid, civil legal aid and central funds. The figures show current expenditure from within the annual Departmental Expenditure Limits (RDEL).

Source: Ministry of Justice (2019a) Legal Aid Statistics quarterly, England and Wales, January to March 2019

The significance of these cuts should not be underestimated because they not only fall heavily on the least advantaged, who are seeking legal aid and cannot afford to pay for legal assistance, but they particularly affect certain populations such as children and women. This is reflected in the fact that in 2014 for the first time, mothers made up more than half (53%) of all unrepresented parents coming to family court (Tickle, The Guardian, 2014). Additionally the cuts have impacted domestic abuse victims' eligibility for legal aid, as evidence suggests that the majority of women (60%) who are not eligible for legal aid take no further action, according to Women's Aid, Rights of Women and Welsh Women's Aid (cited in Tickle, The Guardian, 2014), this is cause for concern. While the extent of the disproportionate effect of budget cuts on women and children has yet to be fully evaluated, such effects and potential consequences for aggravating income inequality and poverty and highlight the relationship between legal and economic inequality. The government is undertaking a series of post-implementation reviews of LASPO and has recently published a legal support action plan (MoJ, 2019b).

For many years, experts have raised concerns about sentencing disparities that result in more disadvantaged offenders receiving harsher sentences than more advantaged offenders when the same crime has been committed. One way in which sentencing disparities emerge is through the use of risk assessment tools in sentencing decisions: for example, in the

UK the use of the Offender Assessment System (OASys) (for more information see MoJ, 2015). Socio-economic status (information on offenders' educational attainment, employment, financial situation and housing) contributes to the computation of a risk score, with a lower socio-economic status resulting in a higher risk score. The score is meant to provide an assessment of offenders' risk of reoffending and their danger to the public. Offenders with a high risk score are more likely to receive a custodial sentence and receive longer prison sentences. Experts have highlighted the fact that such a system discriminates against the poor, reproducing and exacerbating existing social inequalities (van Eijk, 2017; Goddard and Myers, 2016; Tonry, 2014b). Not only do these systems lead to sentencing disparities but the fact that evidence shows that serving custodial sentences have a negative effect on future education, employment and income outcomes, these disparities are likely to have a long term impact on inequalities and the risk of poverty (van Eijk, 2017).

Critics have raised concerns that these tools reinforce the view that economic disadvantage and poverty are the fault of individuals rather than structural and societal problems, despite evidence that education, employment, income and health are still heavily influenced by family background. The tools risk reproducing social inequalities as sentencing disparities contribute to reoffending disparities and reoffending further contributes to future risk assessment, and further sentencing leaving individuals caught up under the system in a vicious circle with risk assessment becomes a self-fulfilling prophecy. Van Eijk (2017) highlights the problem that an emphasis on validity through evaluation of risk assessment (higher rates of offending and reoffending among the most disadvantaged) rather than an ethical and social criteria for including and excluding various socio-economic factors will result in these tools exacerbating social inequalities.

Some legal changes have specifically tried to address discrimination. In 2010, the UK enacted The Equality Act, a major development in equality law for 40 years, which not only provides a consolidated framework for anti-discrimination legislation, it also provides a clear direction and standard for addressing discrimination beyond employment law (Judicial College, 2013, p.1). An important aspect of this act is the responsibility the equality duty clause (s.149) places on public authorities to "eliminate prohibited discrimination, harassment and victimisation" while on duty, to "advance equality of opportunity," and to foster intergroup relations (Judicial College, 2013, p.1). However, while this legislation had been in place for over eight years at the time of the Lammy Review, the Review highlighted that there is still a significant and growing disparity affecting minority ethnic groups and the economically disadvantaged in the justice system.

Further work is required to explore efforts to reduce crime and the 'Poverty-to-Prison Pipeline', as well as improve legal services for the poor and disenfranchised, in an effort to break the link between economic disadvantage and criminal activity and more punitive punishment. Due to the structural nature of many of the social and economic inequalities that appear to be related to crime, it seems crucial that policymakers re-evaluate the current trend of harsher punishment policies and rising prison population rates, in order to address what appear to be embedded links between poverty, inequality and crime in the UK. As Côté-Lussier notes, "policies that reduce social structural inequalities (e.g., improving educational attainment) [...] could ultimately decrease public demands for harsh criminal justice policies" and "social-structural policy interventions could also have the added benefit of reducing crime [...] and the victimization of largely vulnerable populations." (Côté-Lussier, 2016b, p.54).

Despite some positive developments, Cooper and Lacey conclude that this is in the context of:

"...polarising dynamics of a criminal justice system in which the disadvantaged are disproportionately on the receiving end of state control, as well as receiving lower quality protective services in terms of goods such as policing, access to refuges, mental health provision or access to justice."

Cooper and Lacey (2019)

Structurally, the trend towards harsher penal systems has proven to be ineffective and does not appear to help address the root causes of crime. There is potential for rehabilitative policies to be more effective. In fact, in Autumn 2015, the UK Ministry of Justice declared that it will spend £1.3 billion of capital investment over the next five years to transform the prison estate to better support rehabilitation, by building more efficient and safer prisons to reduce reoffending, and eventually to reduce running costs (Côté-Lussier, 2016a). Recent reports from the Justice Committee show that much more needs to be done.

9. Summary

In this review we have looked at the evidence behind the question of whether crime, the legal system and punitive sanctions are potential mechanisms linking economic inequality with poverty. We observe that overall crime rates in the UK have followed a downward trend since the early 1990s but prison populations have increased dramatically. Research by criminologists suggests that a range of factors have been responsible for the recent overall downward trend: advances in security technology, car immobilisers, security guards, marked money, alarms, DNA databases and the use of CCTV. Economic theory on the determinants of criminal behaviour predicts that increases in economic inequality will lead to an increase in crime, particularly crimes that have the potential for economic gain (burglary, robbery, theft, etc.) and while there is evidence to support this theory, there is little direct evidence that inequality is linked to overall rates of criminal activity reflecting the fact that other factors have a stronger influence on crime rates.

However, increases in economic inequality appear to have been linked with preferences for greater punitive sanctions for those found guilty of committing a crime. This hardening of preferences accompanied a change in UK government policy towards a stiffer sentencing regime starting from the early 1990s. The result has been increases in the use of custodial sentences and the use of longer custodial sentences, and the UK having one of the highest rates of imprisonment across high income countries.

A recent review commissioned by the government (The Lammy Review) demonstrated that sentencing inequalities negatively affect Black, Asian and Minority Ethnic people in the UK. Some of these inequalities have been attributed to the higher exposure to poverty and economic disadvantage, and cannot be solved by solely focusing on reforming the criminal justice system. Having a criminal record then places these individuals at an even greater risk of economic disadvantage in the future due to its impact on employment prospects, putting them at high risk of poverty and no doubt contributing to high rates of recidivism: around 30% reoffend within one year and nearly 50% of those completing a custodial sentence.

Prisoner profiling and studies of criminal behaviour highlight the link between poverty and criminal activity. Added to this is evidence of discrimination, with some groups much more likely than others to receive custodial sentences and longer prison sentences. Sentencing disparities can arise from risk assessment tools which are used to predict the likelihood of offenders reoffending and their danger to the public.

It is not only the case that poverty can increase the incentive for some to engage in criminal activity but also through being drawn into crime, criminal conviction and incarceration effects can be long-lasting. The link to poverty is exacerbated not just through the poorer longer-term economic prospects for those drawn into criminal activity or high rates of recidivism, but intergenerational effects mean that offenders' children are at greater risk of poverty. Another factor is that rehabilitation services are limited particularly for those serving short prison sentences among whom recidivism rates are very high. Reoffending not only means that offenders stuck in a cycle of crime and punishment, but it clearly also has negative consequences for victims of crime. With victimisation and re-victimisation unequally distributed this could be a contributory factor to the relationship between inequality and poverty,

Overall we conclude that the evidence suggests that crime, the legal system and punitive sanctions is one of the mechanisms that contribute to the positive link between economic inequality and poverty. Although we do not find consistent evidence that a rise in economic inequality leads directly to an overall increase in crime rates (most likely due to other stronger forces shaping crime trends), a deteriorating relative position of the least advantaged increases their incentives to commit crimes which involve an economic gain. Once drawn into a crime, these individuals fall into a cycle of disadvantage from which it is difficult to escape. Evidence of discrimination in the criminal justice system and sentencing disparities means that social and economic inequalities are further exacerbated. What is clear is that increasing inequality is linked with a preference for greater punitive sanctions. This has meant that even though crime rates have fallen since the 1990s, prison populations have soared. Increases in the use of custodial sentences and longer sentences are the main contributory factors. In an environment with limited effective rehabilitation and very high rates of re-offending a 'prison-to-poverty' pipeline contributes further to the inequality-poverty relationship.

The cycle between poverty, inequality and crime is possibly one of the most challenging to break. In reviewing this literature, a number of policy options have emerged:

- Addressing structural causes of poverty and ensuring that there is adequate financial support for the least advantaged through the welfare system.
- Better informing the public of what prison can and cannot do and the effectiveness of non-custodial sentences through a 'national conversation'. This could help reduce public demand for tougher sentencing and increase demand for effective rehabilitation.

- Abolition of short sentences of less than six months and review of effectiveness of short sentences of less than 12 months (particularly an assessment of the impact on children).
- Reduce discrimination within the legal system, including reviewing the impact of algorithms used in sentencing tools.
- Improve mental health services in general but also with a focus on services for those serving a custodial sentence and prison leavers.
- Improve support services for prison leavers, especially young prison leavers.

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