A. EXECUTIVE SUMMARY

1. We have undertaken an analysis of the historical determinants of the rise in the prison population examining who is in custody, future projections and the main offences they are in custody for. This analysis reveals some important insights about the make-up of the prison population. Our submission draws on findings from this analysis and Crest’s wider work on policing and criminal justice.

   a. The prison population has continued to rise despite reductions in the volume of people coming before the courts over the past 10 years. We assess that a principal cause of this has been sentence length inflation. However, this has not occurred evenly across the various offence categories and has been focused on specific offence types, specifically sexual offences, robbery and criminal damage which includes arson; there does not appear to have been a general ‘trickle-down’ effect on other offence types inducing up-tariffing;

   b. Violence offences - comprise the largest category of those who are in custody; whilst sentence inflation for this group is negligible overall, there is a distributional effect, with inflation having occurred for more serious offences and deflation at the less serious end;

   c. The mix of offenders receiving custodial sentences is now more “concentrated”, comprising offenders with a longer history of repeat offending. This is particularly the case for those receiving short sentences (less than 12 months). It may be due to a more focussed approach by the police on higher harm or repeat crime, against the background of pressure on police budgets and changing crime patterns.

   d. The proportion of first time offenders receiving a custodial sentence has remained broadly steady over the past decade;

   e. The remand population is comprised of offenders facing charges for violent, drugs and theft offences;

2. The Criminal Justice System as a whole is experiencing a change in those within it, with a move towards more serious offences and more prolific offenders. This is reflected in the current composition of the prison population serving longer sentences for serious offences and more extensive recidivist backgrounds. Whilst it does appear that custody is being used more proportionately, the system is also continuing to send a large proportion of people to prison for short periods, a majority of whom will reoffend within two years of being released. This is a waste of resources which should be spent looking at alternatives to both custody and to boosting non-custodial sentencing that also addresses non-criminogenic needs such as mental health, substance misuse services and housing.
B. INTRODUCTION

3. Crest Advisory are pleased to be able to provide a submission to the Justice Select Committee’s inquiry into the Prison Population. We are a team of communications specialists, policymakers, analysts and practitioners dedicated to a single goal: building a safer and more secure society. In recent years, we have worked with central government, combined authorities and elected Mayors, Police and Crime Commissioners, Community Rehabilitation Companies as well as various NGOs and private companies. Over recent months we’ve published reports on justice devolution, an analysis of changes in the use of community sentences and the effectiveness of the criminal justice system.

4. Crest have recently undertaken a project funded by Hadley Trust which analyses the historical determinants of the composition and size of the prison population in England and Wales. The report of this work was prepared by Justice Episteme using a variety of data analysis methods to examine statistics published by the Ministry of Justice, and simulation to explore a number of alternative sentencing scenarios. Much of our submission is drawn from that report.

5. We would be delighted to share the detail of our analysis should the Committee be interested in further information and analysis which we undertook for this project.

C. CONTEXT

6. The significant changes in the prison population should be seen in the context of what is happening in the rest of the criminal justice system, changing patterns of crime and the impact of austerity. The last decade has seen the number of offenders being formally dealt with by the criminal justice system fall by over a quarter (28%) and fewer offenders are coming in front of the courts. However, whilst there are fewer offenders being charged and sentenced, the severity and frequency of their offending is getting worse.

7. Partly this is a reflection of changing crime. Police recorded statistics show significant rises in violent offences and sexual offences - some of which reflects better recording and reporting, but some of which (e.g. knife crime) which reflects an underlying change in crime. As a result, police workloads are rising at a time when police officer numbers are at their lowest for 30 years, and complex, high-harm crimes (which are more costly to investigate and solve) make up a higher proportion of the workload.
8. It may also reflect changing behaviours. For example, recent years have shown a large decline in the use of **out of court disposals** (OOCD) by the police with the proportion of offenders who end up with a caution falling from 30% to 13% in the last 10 years. Today more than half of first time offenders end up in court rather than receive a caution, compared to one in five 10 years ago.

9. The graph below illustrates the changes in sentencing outcomes for offenders over the last 10 years. It shows significant falls in the numbers receiving non-custodial sanctions and modest reductions in the numbers going to custody. Conversely, there has been a big increase in the use of suspended sentences. The fall in the use of **community sentences** (their use has almost halved since 2011/2) has occurred despite an increase in alternative sentencing options (for example, alcohol monitoring requirements, banning orders) and conditional discharges and other disposals are down significantly.

10. The overall picture suggests the police (and therefore the CJS) are focussing on more serious cases. It is not clear how much of this shift is due to austerity, changing expectations about who should be brought to justice and/ or genuine shifts in crime patterns, and may indeed reflect a combination of these.
D. THE PRISON POPULATION

11. Despite falling crime and fewer offenders coming to court, the prison population has remained broadly steady in the past five years at around 86,000 (albeit with some proportionately small rises whose impact has been challenging for a system operating at critical capacity). There is general consensus that a key driver has been longer sentences. However, our analysis suggests a more nuanced picture, with some policy changes having driven up the prison population, but others having pushed the population downwards.

12. The introduction of the Criminal Justice Act 2003 and subsequent changes to sentencing practice have led to longer sentences, particularly for high-harm crimes. IPP sentences have also increased the prison population, keeping in prison for indefinite periods those who would otherwise have served determinate sentences. Suspended custodial sentences, on the other hand, which were also introduced by the 2003 Act, look like they have reduced pressure on prisons (though they may also have drawn in offenders who may otherwise have received community sentences).

13. More recently, the introduction of post-licence supervision for short sentence prisoners in 2014 has increased the size of the pool of those under supervision on licence, from which recalls to prison are drawn.

14. The impact of these changes has been that those on long sentences represent the largest groups in prison:
   - 43% of male offenders are serving sentences of over four years.
   - 14% of prisoners are on indeterminate sentences;
   - Around 25% are serving sentences of 12 months to 4 years
   - Around 8% are serving short sentences of less than 12 months.
   - 9% are offenders recalled from supervision in the community.

Population by Offence category

15. As the chart below sets out, violent offenders make up the largest group of male prisoners at around 28%. This has risen from around 11,000 to c. 19,000 over the period 2002 to 2010 and has remained broadly steady since then. The number of sexual offenders in custody has also grown very substantially from around 5000 in 2002 to approximately 12,000 in 2015.
Population of persistent offenders

16. Persistent offenders make up a very large proportion of almost all male sentence categories. This is particularly true for short custodial sentences and for those recalled back to prison. For those on sentences of less than six months, 61% have more than 15 convictions and for those recalled, the figure is 52%. Unsurprisingly, repeat offenders are much more likely to be recalled to prison.

17. First time offenders generally make a small contribution to the total prison population, although this does increase for the longer length sentences - reflecting that a proportion of serious offences are committed by those without a criminal history.
18. While those on short term sentences account for only 8% of the prison population at any one time, the total number of offenders passing through the system for short periods (which has been in the region of 60,000 per year until more recently when it fell to around 51,000) creates a disproportionate pressure on prisons (the costs of managing ‘churn’ extend beyond the individual prisoners themselves).

19. The high levels of persistent offenders being recycled through custody points to a lack of effective alternatives to incarceration. This may be driven, in part, by the lack of confidence in community sentences reported in research previously carried out by Crest. It may also be a reflection on the probation system’s performance, and the challenges associated with securing housing, jobs, skills and social support that are known to drive down reoffending.

20. There is some evidence that sentencers are making more use of suspended sentences. However, in part recipients will have been drawn from those previously given community sentences. There is limited evidence on the effectiveness of suspended sentences at this stage.

21. Given what we know about the lack of effectiveness in rehabilitating those on short custodial sentences, these data suggest the need to think about a new approach to managing life-course persistent prolific offenders. Crest will be publishing a new policy report on this in the next few months.
Population by Age

22. Overall, the male prison population in 2017 is much older than that in 2002. The chart below shows that the 30-39 age band comprises the largest component of those sentenced to custody. While this has remained broadly stable between 2002 and 2017, the proportion of those aged 40+ has increased while those younger than 30 has declined.

23. The change in profile of offenders to an older cohort raises questions about current provision in prisons (including the kind of skills and education training available) as well as the range of social care and health provision for which most would agree the current prison estate is not suited. Those in prison with long term or previous addictions, are also likely to have a complex health profile with substantial comorbidity.

![Figure 5.2.1. Change in custodial age distribution 2002 to 2017](image)

The impact of increasing sentence lengths

24. Our assessment is that increasing sentence lengths have had a major impact on the size and composition of the prison population. However, this has largely occurred at the more serious end of offending, rather than as a result of general up-tariffing across the board.
25. Over the period 2006 to 2016, for male offenders, the largest increases in the average prison sentence length, show that:

- sexual offences increased from 42 months to 62 months (+50%);
- robbery, increased from 33 months to 45 months (+30%),
- criminal damage and arson, increased from 12 months to 27 months (+100%)

26. Increases in sentence length in other offence types have been generally of a lesser scale. For example, sentences for violent offences have not increased by a substantial margin. There is a "tipping point" at 48 months where sentences above that have become longer in 2016 relative to 2006, and the reverse for shorter sentences. This suggests that more serious offences are treated more punitively and conversely less serious offences receive lighter prison sentences.

27. These changes have obviously contributed significantly to the prison population and have not been offset by the decline in numbers coming before the courts. In particular the number of those coming into prison on first offence has been broadly the same, at around 7500 per year

28. There is a significant challenge here for policymakers: the concentration of offenders with long criminal histories who have been convicted of serious offences is in keeping with the notion that prison is reserved for the most serious and or prolific offenders, leaving little scope for any more general reduction of the number before the courts to have an impact. Moreover, it is unlikely to be politically palatable to argue for a reduction in sentence lengths for those committing sexual and violent offences, as the recent case of John Worboys has shown.
29. In terms of reversing the increase in the prison population, our view is that the best hope lies in stemming this flow at an earlier point with greater investment in prevention/ early intervention.

30. For females serving prison sentences there has been some change in the profile of prisoners. The largest group switched from drugs offences to those whose principal offence has been violent. That apart, the number of female prisoners has not been significantly impacted by sentencing inflation or the introduction of the IPP. It is, however, notable that a higher proportion of female offenders in custody are sentenced to short custodial sentences (less than 12 months) than men (around double), suggesting scope for greater diversion and alternatives to custody.

31. Using different simulation scenarios, we were able to model the size of the prison population making different assumptions about the length of sentences over the past 15 years, including the impact of the IPP sentence.

32. Our estimates show that sentence length inflation (as a result of the 2003 Criminal Justice Act) accounts for around 12,500 male prisoners; and the introduction of IPP sentences,
on its own, has added around 4,000 to the prison population. Combining these two changes (they do not simply add up due to the reoffending feedbacks in the system, as well the fact that those receiving an IPP sentence would otherwise have got a determinate sentence) would account for around 15,000 male offenders in prison.

33. We have also looked at the potential effect of suspended sentences on the prison system. We estimate, again using simulation, that the prison population would have been 10,000 higher for males than current levels without the suspended sentence provisions of the Criminal Justice Act 2003 (all other factors remaining the same).

E. CONCLUSIONS AND RECOMMENDATIONS

34. The analysis we have undertaken suggests that the composition of the prison population has become more serious and prolific. In some respects then, custody is being used appropriately - reserved either for those who pose a danger to the public, including those convicted of violent and sexual offences, or whose offending history warrants a custodial sentence.

35. However, the system continues to send a large proportion of people to prison for short sentences. In 2016, 51,300 males and 5600 females were sentenced to such sentences. There is therefore an urgent need to examine alternatives for this group to keep as many as possible out of custody. Equally important is the need for better provision of the kinds of non-criminogenic services (drug treatment, housing, education, social and mental health support) that are known to help desistance.

36. In order to reduce the pressure on our prisons, serious efforts need to be made to tackle the underlying causes of violence, most of which require long-term solutions that lie outside of the criminal justice system. Parenting interventions targeted at the most chaotic families; a step-change in the quality of support to children in care; better access to drug treatment; and continuity of education provision between prison and in the community.

37. The system itself remains both siloed and over centralised and therefore unable to respond effectively to the changing needs and circumstances of those in the criminal justice system and their victims.

38. We recommend:

- an urgent review of alternatives to custody for short sentenced offenders;
- devolution of custody budgets attached to short sentenced offenders to elected Mayors and PCCs, creating a financial incentive for local areas to fund better diversion and alternatives to custody;
• greater investment in early intervention to stem the flow of those vulnerable to criminal behaviour and future offending. This should include a more systematic approach to working with those at risk such as the children of offenders where the evidence shows them to be unequivocally at risk. Whole family approaches, including Troubled Families and related programmes provide local infrastructure and joint working arrangements that could facilitate targeting of services on this group;
• a review of the role of the probation and the police in managing the most prolific offenders;
• investing in the staffing, skills and infrastructure necessary for a changing prison population. This should include an assessment of the health and social care needs of a larger group of older prisoners, how to safely accommodate more violent offenders, along with reforms to ensure better continuity between provision in custody and the community.

February 2018
I - APPENDIX - Sources

- Analysis of the determinants of the composition and size of the prison population in England and Wales: Savas Hadjipavlou (Crest Advisory forthcoming)