

Ending short prison sentences - a misguided endeavour?

Many penal reform charities and agencies have welcomed recent suggestions by the Ministry of Justice that short prison terms of 6 months or less are to be abolished.

While I sympathise with the sentiment that in many cases such sentences do more harm than good, the proposal seems likely to give rise to a number of practical problems.

Firstly, and rather perversely, it seems to me that the proposal may lead to lengthier sentences for relatively petty offences.

Harsh as it may seem, there are likely to be cases where there is no viable alternative to a prison sentence, e.g. a persistent repeat petty shoplifter where Probation can offer no community disposal on account of previous failures to comply, but where on the face of it the offending does not justify a lengthier sentence.

Keeping in mind that Magistrates may not currently sentence to longer than 6 months custody (unless dealing with two or more either way offences), it seems that we may see a rise in committals for sentence in relatively minor cases, or perhaps the bringing into force of provisions increasing the sentencing powers of Magistrates courts (as CFS would not in event be an option for summary matters).

Another angle which must be considered is the potential impact upon legal aid.

It is extremely difficult (many would say rightly, given pressure on resources) for an adult defendant not facing the prospect of custody to qualify for legal aid. The removal of short custodial sentences will, absent a change to Magistrates sentencing powers, make it near impossible to obtain legal aid for summary only matters and likely also less serious either way matters that are retained at the magistrates court.

While unrepresented defendants in such circumstances would no longer face custodial sentences, those concerned with justice will be deeply uneasy at the risk of wrongful convictions.

In short, this author believes the government would do better to properly fund probation so that appropriate intervention is available to divert petty offenders away from criminal lifestyles, while not fettering the ability of magistrates to impose the most appropriate sentences.