



CUSTODY

In general terms, the Court must not pass a custodial sentence unless it is of the opinion that the offence or offences, are so serious that neither a fine nor a community sentence can be justified for the offence.

Where you have been remanded in custody before sentence, the Court must state the number of days you have been remanded in custody, and the period of time by which it is proposed that your sentence should be reduced.

Where you have been on bail subject to a curfew requiring you to remain no less than 9 hours at a specified address, some or all of this "credit period" can count as time served.

Imprisonment for less than 12 months

You will serve half of this period before being released. However release will not bring your sentence to an end. If after your release and before the end of the period covered by your sentence you commit any further offence, you may be ordered to return to custody to serve either a fixed default period of 28 days, or the balance of the sentence outstanding at the date of the further offence, as well as being punished for that new offence.

Should you commit any disciplinary offences whilst in prison, days can be added to your sentence.

Prisoners serving between 3 months and 4 years may be eligible to spend up to two months of their remaining sentence in the community, on licence, and under a curfew which is enforced by electronic monitoring (tagging). This is known as a Home Detention Curfew (HDC).

This means a prisoner sentenced to 3 months may need only to serve 30 days. However, HDC is not available for sentences under 3 months.

Some offences will always be deemed unsuitable for HDC release. These include violent and sex offenders currently serving an extended sentence; prisoners currently serving a sentence for failing to return to custody following a period of temporary release; prisoners currently subject to a hospital order or similar; prisoners who have at any time been recalled to prison from a home detention curfew; prisoners currently liable to removal from the UK; prisoners who have at any time returned to prison for committing an offence before the "at risk" period of a sentence had expired, and other exceptions which would be notified to you if appropriate.

Imprisonment – 12 months or more

You will serve half of this period before being released. You will then be released on licence for the remainder of your sentence. Whilst you are on licence you must comply with all its conditions which will be notified to you.

At any time during your licence, the Secretary of State may withdraw it and order your return to custody. It is therefore very important that you keep out of trouble.

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Extended sentence of imprisonment

You will serve at one half of this term in custody. You will then be released on licence.

When you are released on licence, that licence will have an extension period fixed by the court at the time of sentence.

Whilst you are on licence, you must comply with all its conditions. At any time during your licence the Secretary of State may withdraw it and order your return to custody.

Detention for Public Protection

Before being even eligible for release by the Parole Board, you must serve a period of custody that will be notified to you at the time of sentence.

Even when date has passed, only when the Parole Board is satisfied that you need no longer be confined in custody for the protection of the public, will it be able to direct your release. Until it is so satisfied, you will remain in custody.

If you are released, it will be on terms that you are subject to a licence for the rest of your life, unless the Secretary of State orders that your licence is to end, which it cannot do unless you have been on licence for at least 10 years.

Whilst you are on licence, you are liable to be recalled to custody at any time if your licence is revoked, either on the recommendation of the Parole Board or, if it is thought expedient in the public interest, by the Secretary of State.

It is extremely important that you complete any courses offered to you whilst you are detained, as this will be an important consideration when your release is being decided upon.

Life imprisonment

Before being eligible to apply for parole, you must serve a minimum of time in custody that will be notified to you at the time of sentence.

After that time, the Parole Board will be entitled to consider your release. When it is satisfied that you need no longer be kept in custody for the protection of the public, it will be able to recommend your release, but you will remain in custody until it is satisfied on this point. If you are released, you will be subject to a licence for the rest of your life and will be liable to be recalled to prison at any time if your licence is revoked, either on the recommendation of the Parole Board, or, if it is thought necessary in the public interest, by the Secretary of State.

It is extremely important that you complete any courses offered to you whilst you are detained, as this will be an important consideration when your release is being decided upon.

Suspended sentence of imprisonment

When the offence is thought to be so serious that it passes the custody threshold and a sentence of imprisonment is inevitable, the court does have a discretion to suspend that sentence of imprisonment.

The court will fix two periods of time

a) the period of imprisonment that you will serve in default

b) the period of time that you are at risk (which will be a much longer period of time)

A suspended sentence of imprisonment contains two elements:

You are ordered to comply during a period specified with certain requirements, and

The Court orders that the sentence of imprisonment is not to take effect unless either you fail to comply with a requirement during the supervision period or you commit another offence during the operation period.

If you reoffend or default in your requirements during the suspended sentence, the maximum term of imprisonment you can serve for the old offence is the “default” period. Any new offence would be sentenced separately and would probably add to any sentence.

If in future the Court is of the opinion that you have without reasonable excuse **failed to comply** with any community requirement of the order, the suspended sentence can be activated in full or in part, or the terms of the supervision made more onerous.

There are other options including extending the operational period.

If a **new offence** is committed by you within the operational period:

If it is of a less serious nature than the original offence, it may justify activating the sentence with a reduced term or amending the terms of the order.

It is expected that any activated suspended sentence will be consecutive to the sentence imposed for the new offence.

If the new offence is non imprisonable, the Court should consider whether it is appropriate to activate the suspended sentence at all.

Licence Conditions

Prisoners serving sentences over 12 months’ long, are released with continuing obligations to the Probation Service. This is known as being “released on licence”.

On release, you must :-

- report to your Case Manager / Supervisor on the day of your release
- keep all appointments and attend on time
- never turn up under the influence of drugs, alcohol or solvents
- not live anywhere other than with the permission of your Case Manager / Supervisor
- not go abroad unless with the consent of your Case Manager / Supervisor
- not
- reoffend
- obey any other specified conditions

Any breach of your licence conditions may result in

- a) a fine of up to £1,000
- b) imprisonment of up to 6 months

No more than 2 warnings are allowed during your licence.

If you cannot attend a meeting with your case manager / supervisor for any reason, you must contact them straight away to explain.

If you are ill, you must hand in a doctor's sick note (not a self-certificate) to your case manager / supervisor immediately.

You can be recalled to prison even if you have not committed a further offence, if

- you fail to keep to the conditions of parole
- your behaviour is giving cause for concern

If you are returned to prison, you can appeal against the decision.

Parole Board

You are allowed to attend the hearing of the parole board and you are entitled to legal representation.

You cannot appeal against the refusal of parole, but you can use the complaints procedure at prison, and in very limited circumstances apply for judicial review of the decision.

If parole is refused, you can reapply annually.

If you are recalled after release on parole, you have the right to make written representations to the parole board.

Should you require specialist assistance with prison law, we shall gladly refer you to an appropriate supplier.

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.