29 November 2017

THE IMPACT OF THE CRIMINAL JUSTICE ACT 2003 ON THE PRISON POPULATION

Summary

This analysis is about assessing the impact of the Criminal Justice Act 2003 on the prison population. This Act introduced preventative sentences such as the Indeterminate Sentence for Public Protection (IPP) and presaged a focus on law enforcement agencies to tackle serious offences, and longer custodial sentencing. The analysis uses a simulation engine to generate a scenario where these aspects of the Criminal Justice Act 2003 are not introduced, comparing that to the historical trajectory of the prison population.

Top Points:

It is estimated that if the sentencing changes in the CJ Act 2003 relating to serious offences were not implemented, the prison population in 2017 would have been around 70,000, compared to the June 2017 value of approx 86000.

Almost all of this change is due to the absence of IPP and fewer longer sentences on male offenders

The Simulation Engine

The approach adopted in simulating criminal justice dynamics is synthetic: what we see in the justice system is the result or confluence of a large number of factors including the size and age make-up of the general population from which offenders are drawn, and the range of criminal justice and other agencies whose work involves tackling crime.

The model establishes an *in-silico* virtual population of people with gender, age and offending risk profiles aimed at imitating the real population. Within this virtual environment, it is possible to identify those who have committed offences (as generated by the algorithms of the simulation) and to track what happens over time. A set of parameter controlled relationships is used to describe the response of the justice system in identifying, detecting, convicting, sentencing and rehabilitating offenders. Among the results of the simulation are estimates of the prison population, the number supervised in the community and many other outcomes reflecting the operation of the CJS.

The model necessarily incorporates many simplifications. However, crucially, it incorporates key variables and relationships, ones that capture the essence of the behaviour and dynamics of the various systems involved. This means that it is a powerful tool that can be used to explore and analyse the potential impact of policy or practice reforms. Such an analysis can be done retrospectively – e.g. what if some of the changes of the CJA 2003 were not introduced? - or prospectively – e.g. given where we are now, what would be the likely impact of reducing the use of short prison sentences from, say, 2018?

A reference scenario provides a baseline for comparison of the results to published custodial or other statistics, as well as of the potential impact of changes to policy and practice, such as sentence lengths or time served in custody. More detail and other examples can be found at www.justice-episteme.com

The results presented in this report are based on the November 2017 version of the simulation engine. This incorporates indictable and summary offences and covers male and female offenders. However, for a variety of practical and evidence related reasons it does not incorporate motoring offences. This does not materially affect a study of the prison population since very few driving related offences result in prison sentences. The scope and accuracy of the simulation engine continue to be developed and tested. The results may be refined as the algorithms are periodically reviewed for improvement.

Scenarios

The Criminal Justice Act 2003 introduced a range of changes to the operation of the criminal justice system, including provisions for dangerous offenders such as indeterminate sentences for public protection (IPP) and extended public protection determinate sentences. It also included suspended sentence orders (SSO) for offenders who would otherwise be sent to prison but where the court judged supervision in the community with rehabilitation requirements was a more appropriate response in the circumstances of the offence.

The Act presaged a climate (? codified through Sentencing Council guidelines) of longer prison sentences for indictable offences – see Annex A, figure 1 – where the average prison sentences increased from around 16 months in 2005 to a shade under 20 months in 2015. The published statistics for the average custodial sentence of summary offences, at 3 months, show no change over the same period.

The analysis below considers two simulation scenarios:

Scenario A – the CJA 2003 changes are implemented, along with other subsequent changes such as the CJA 2008/2012 which modified and then abolished IPPs and made certain other changes to extended sentences. This is the reference scenario which describes the historical trajectory.

Scenario B – the CJA 2003 changes for IPP and minimum sentences are not implemented, and the 2003 distribution of prison sentence lengths is applied to subsequent years. This also means that CJA 2008 & 2012 amendments to the CJA 2003 for IPPs in particular become irrelevant from the perspective of simulating this scenario.   Suspended sentences (SSOs) introduced by the CJA 2003 are however included.

A further consideration is the CJA 2014 which introduced supervision of those released from short (less than 12-month) sentences, with a taper arrangement for sentences of up to two years. The impact is that extending supervision to all short sentences will add to the prison population those recalled under the extended arrangements for breaches of their licence conditions. These changes are also absent from Scenario B.

As well as the top line aggregated figures for the custodial population the simulation is able to provide the occupancy trajectory for various components such as male or female, short, medium or long sentences, indeterminate sentences and remand. It is possible therefore to assess which components had the most impact in relation to the changes being considered.

Index to Figures

Results & Discussion

Figure 1 shows the estimated total prison population, comparing the historical trajectory with the case where the sentencing changes in CJA 2003 were not implemented as described in Scenario B. It covers the period 2000 to 2040 and therefore overlaps a period of 17 years of published MoJ data about the size of the prison population – which is also shown in more detail for the period up to 2022. The marked points show MoJ published custodial data.

Figures 2 & 3 decompose Figure 1, into the comparison for men and women offenders.

Figures 4 to 14 give a breakdown of the prison population by various sentencing or occupancy components. They do not include a separate comparison for juveniles in prison although they are included in the total figures. The size of the virtual population needed to try to resolve differences for the small numbers of juveniles in the prison system would be quite large, not easily doable in the time available. It can be looked at later, as a separate exercise. However, given the small numbers involved, differences in the juvenile group will not alter the overall picture or the scale of change.

The simulation projections show that, the absence of the CJA 2003, prison numbers would have been around 70,000 from about 2017. This is the result of a number of shifts in the various occupancy components:

a.   The IPP/EPP sentences are abolished. However, those who were given an IPP sentence would instead have received a determinate sentence. This also impacts on short, medium and long sentences. At one level this is of course relabelling, but the key point is that they are fixed length and prisoners are generally released midway through their sentence.

b.   The second change relates to the average length of determinate sentences which in 2005 was 16 months compared to 20 months in 2015. Applying 2003 lower rate in subsequent years will reduce the number in prison on fixed length sentences. It is particularly striking for long sentences, which for 2017 are down to around 23,000, down from around 32,000 (figure 4).

c.The trajectories for medium sentences (figure 5), short (figure 6) and remand (figure 7) remain largely unchanged.

d.   The trajectories for those on indeterminate sentences are in figure 8, where the IPP component, for the reference scenario A, reduces following the abolition of the IPP sentence in 2012.

e.   The sub components relating to female offenders in custody are shown in figures 10- 14. These are largely unchanged between Scenarios A & B.

The results exemplify well the time delays that operate in the prison system, particularly that some changes take a long time to work their way through the system. Also, it should be underlined that <u>changes are not generally additive or linear</u> – often resulting in the displacement of offenders from one category to another. There are many feedback loops operating, so a straightforward prediction is not possible.

This underlines the point that sentencing changes need to be considered within the context of a rounded whole system, analytical perspective – something which obviously was not done in 2003 for the then CJA, given the 'corrections' needed in CJA 2008 and 2012.

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Justice Episteme

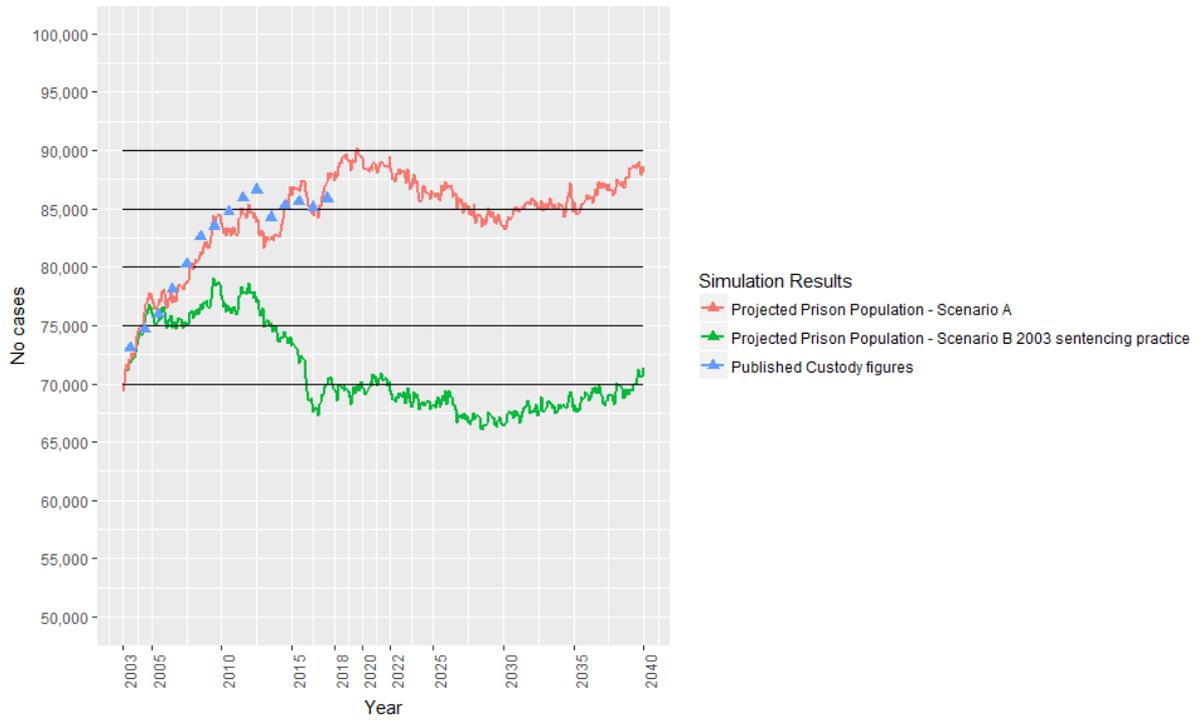Figure 1. Estimated impact of custody length inflation for serious offences

Simulation Results
- Projected Prison Population - Scenario A
- Projected Prison Population - Scenario B 2003 sentencing practice
- Published Custody figures

Figure 1. Estimated impact of custody length inflation for serious offences

Simulation Results
- Projected Prison Population
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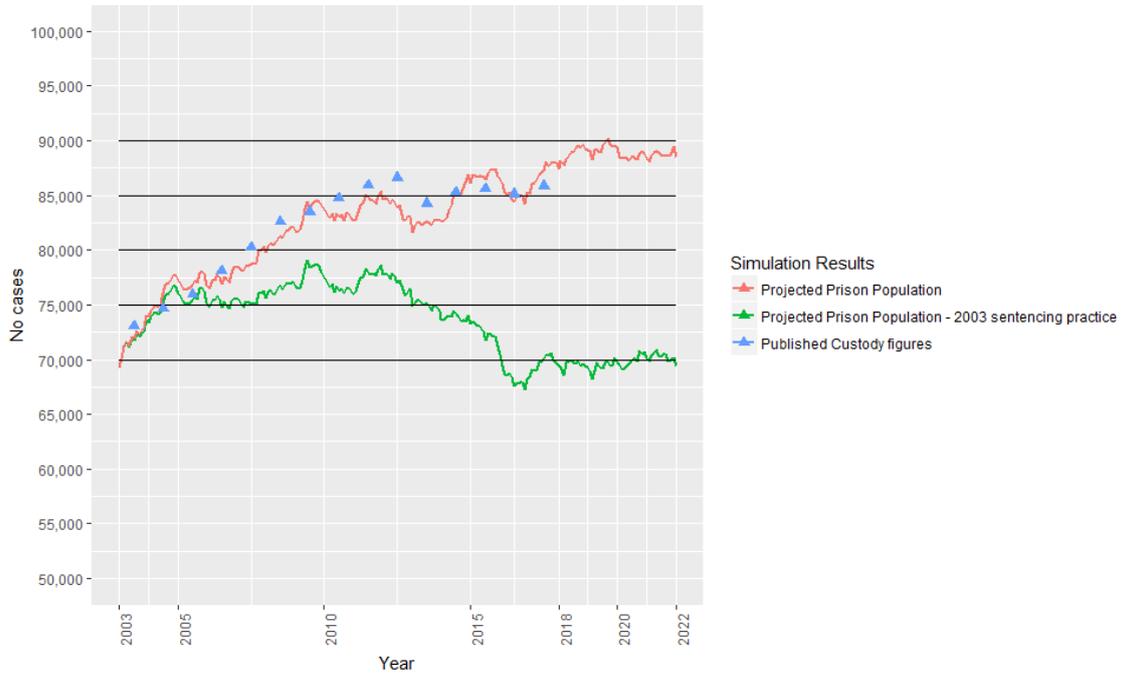
Figure 2. Scenario A & Scenario B - Males in custody

Simulation Results
- In Custody MALES
- Projected Prison Population MALES
- Projected Prison Population MALES - NO CJA

Figure 3. Scenario A and Scenario B - Females in prison

Simulation Results
- In Custody FEMALES
- Projected Prison Population FEMALES
- Projected Prison Population FEMALES - NO CJA
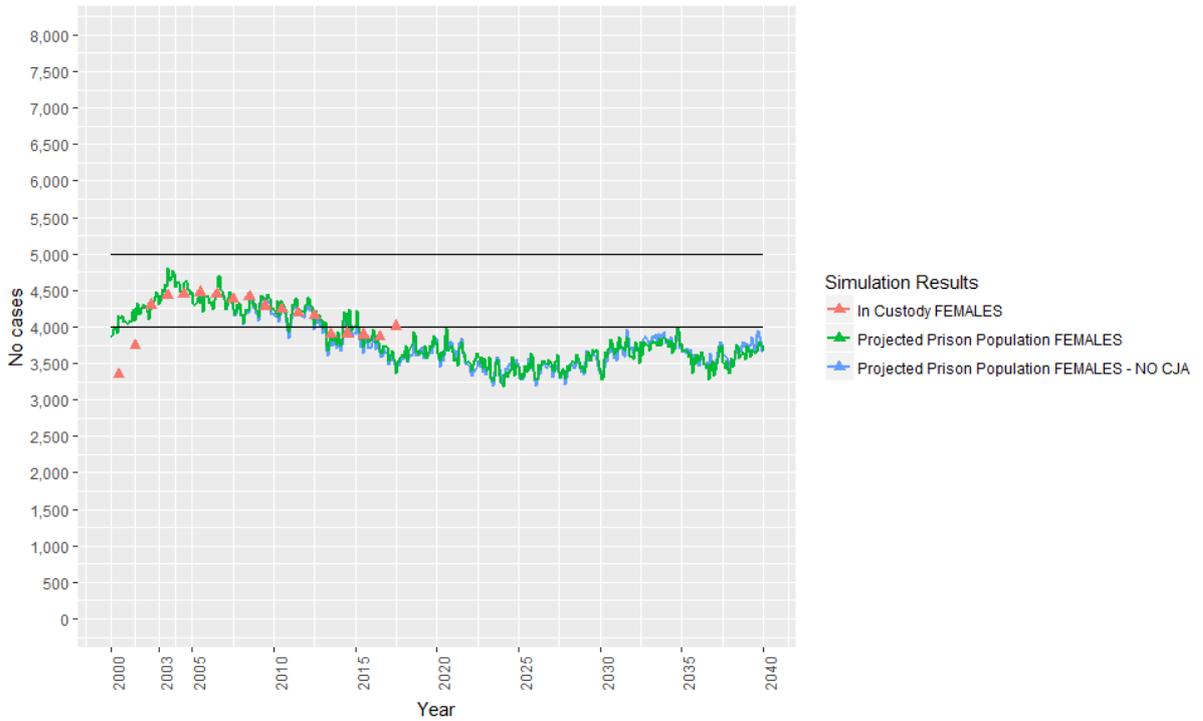
Figure 4. Prison population Long Sentences - No CJA 2003 comparison
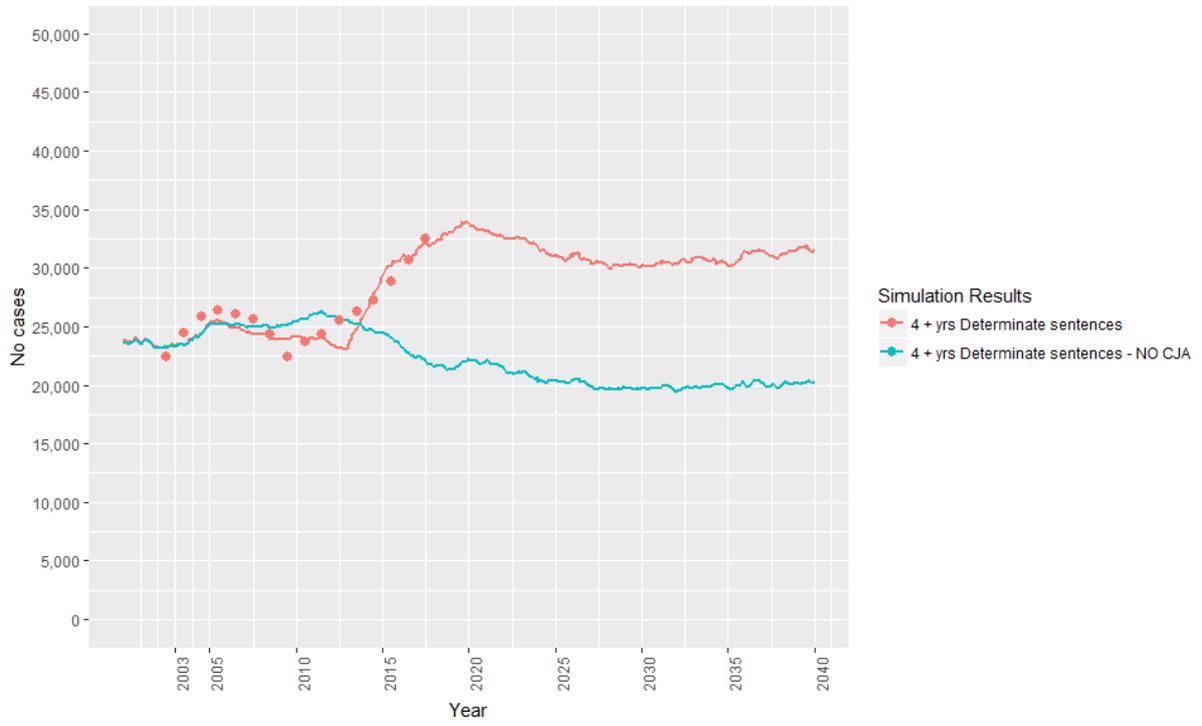
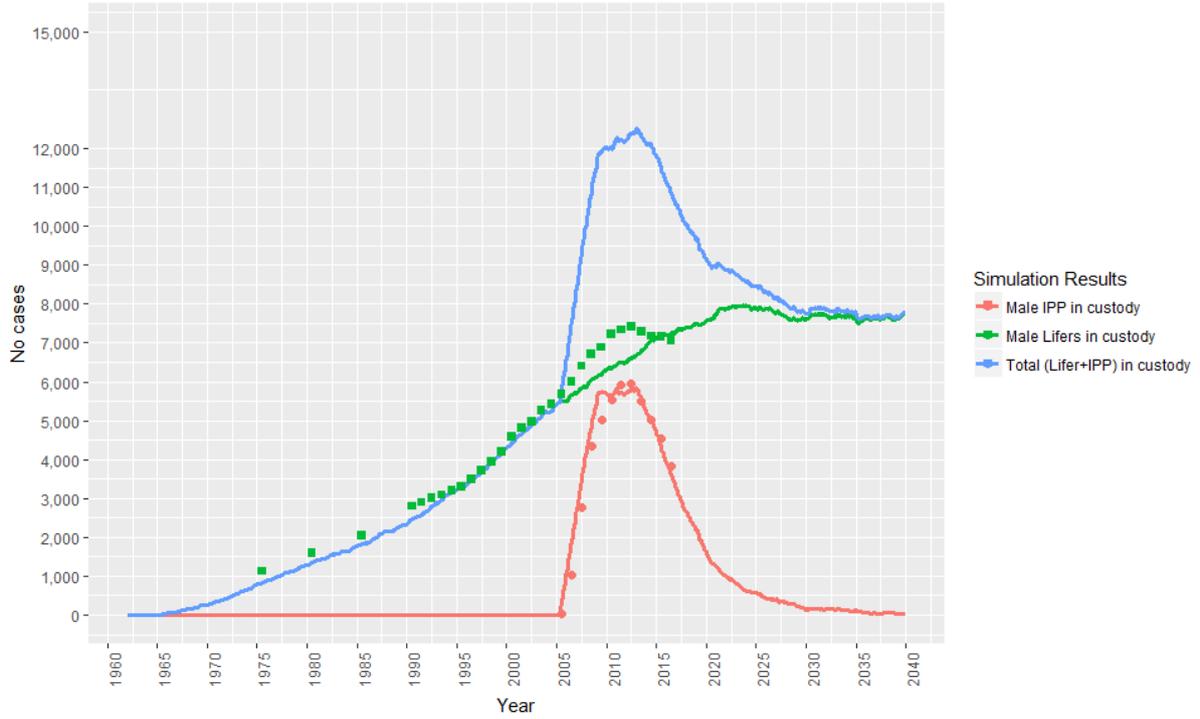## Figure 5. Prison population Medium length sentences - NO CJA comparison

Simulation Results
- 1 yr to <4 yrs Determinate sentences
- 1 yr to <4 yrs Determinate sentences - NO CJA
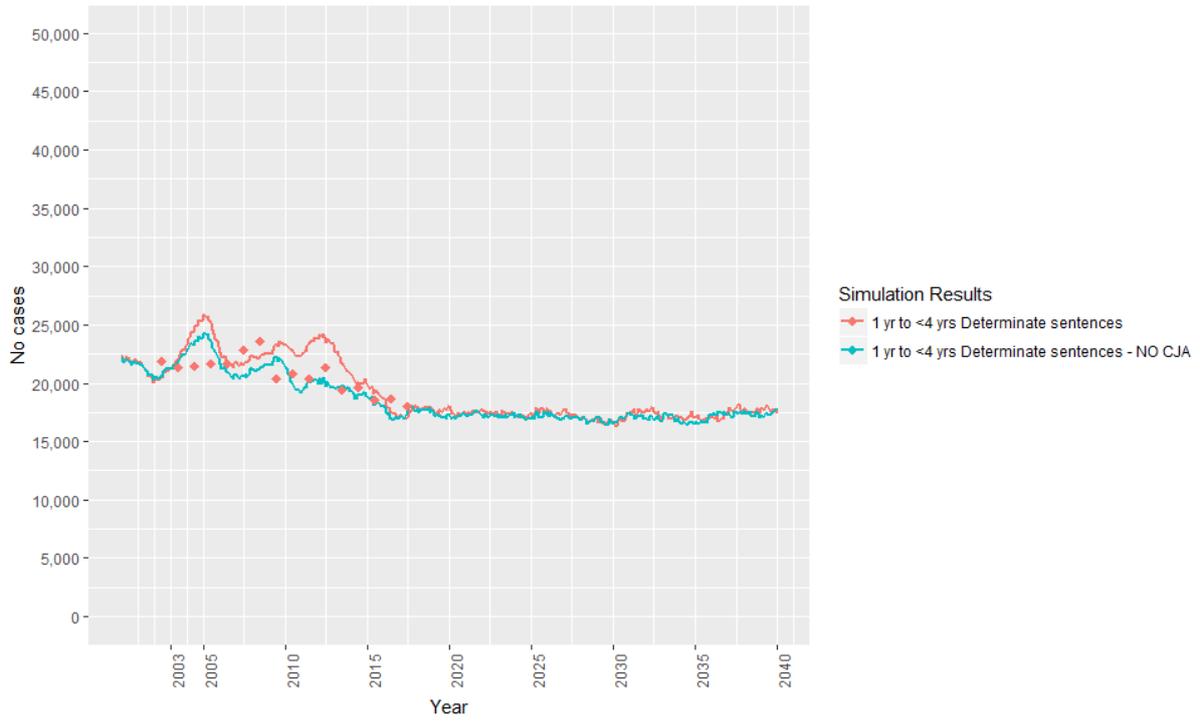
Figure 6. Prison population short sentences - NO CJA comparison

Simulation Results
- <12 months Determinate sentences
- <12 months Determinate sentences - NO CJA

Figure 7. Prison population Remand No CJA 2003 Comparison

Simulation Results
- Remand
- Remand - NO CJA
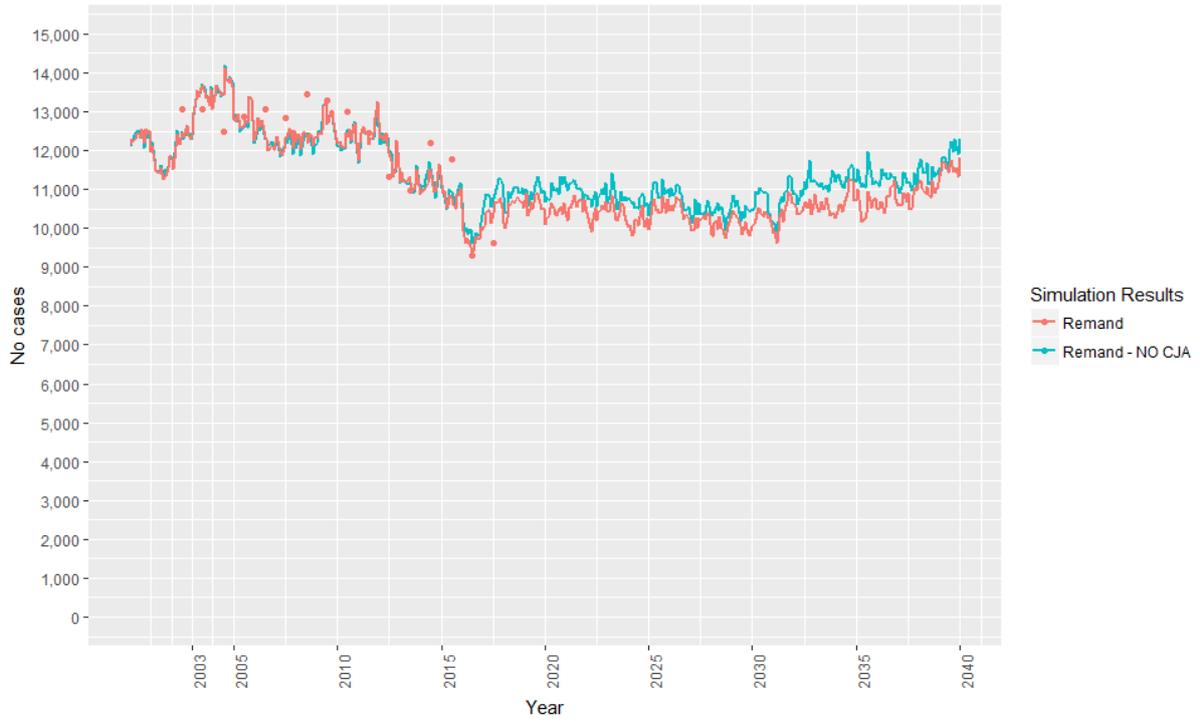
Figure 8. Prison population Indeterminate sentences - No CJA 2003 Comparison

Simulation Results
- Indeterminate sentences
- Indeterminate sentences - NO CJA
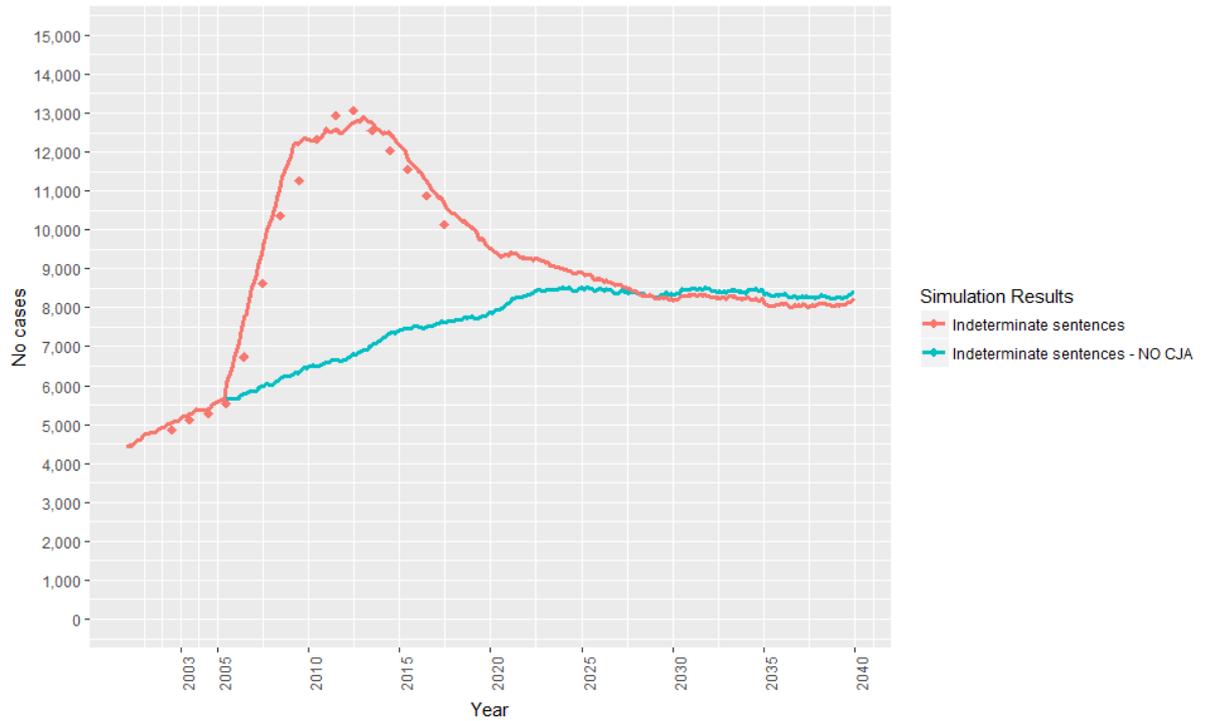
Figure 9- Breakdown of Indeterminate sentences - Male Offenders

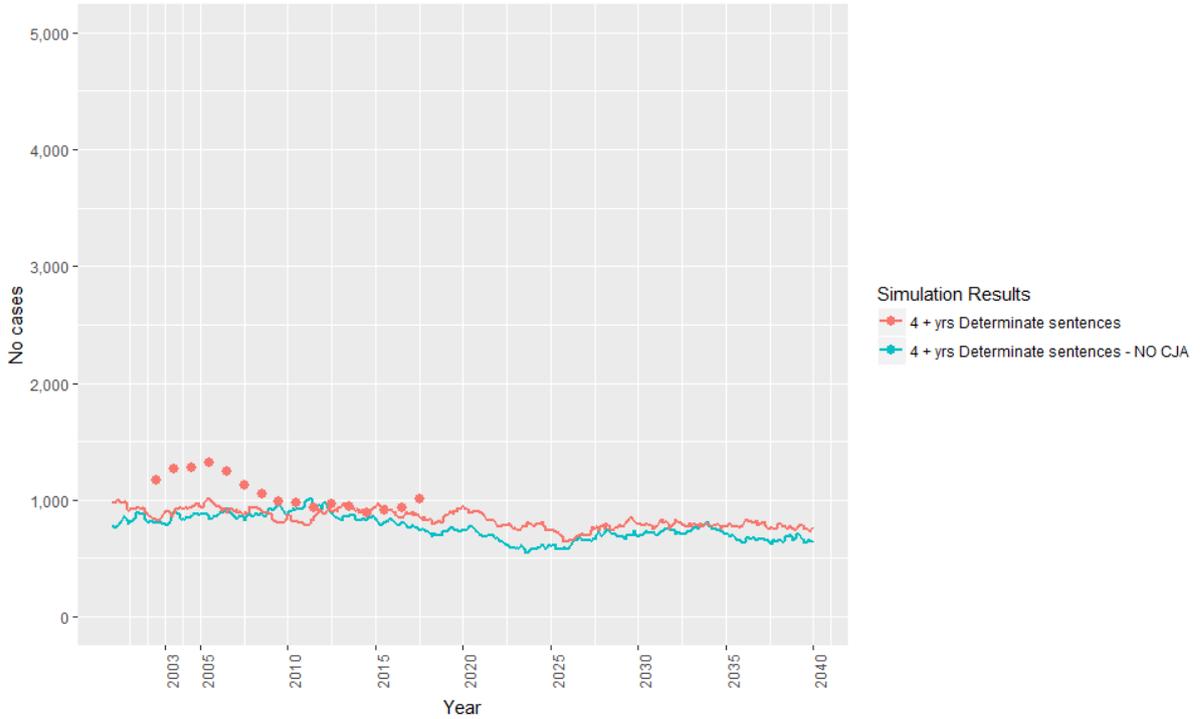Figure 10. Women's Prison population Long Sentences - No CJA 2003 comparison

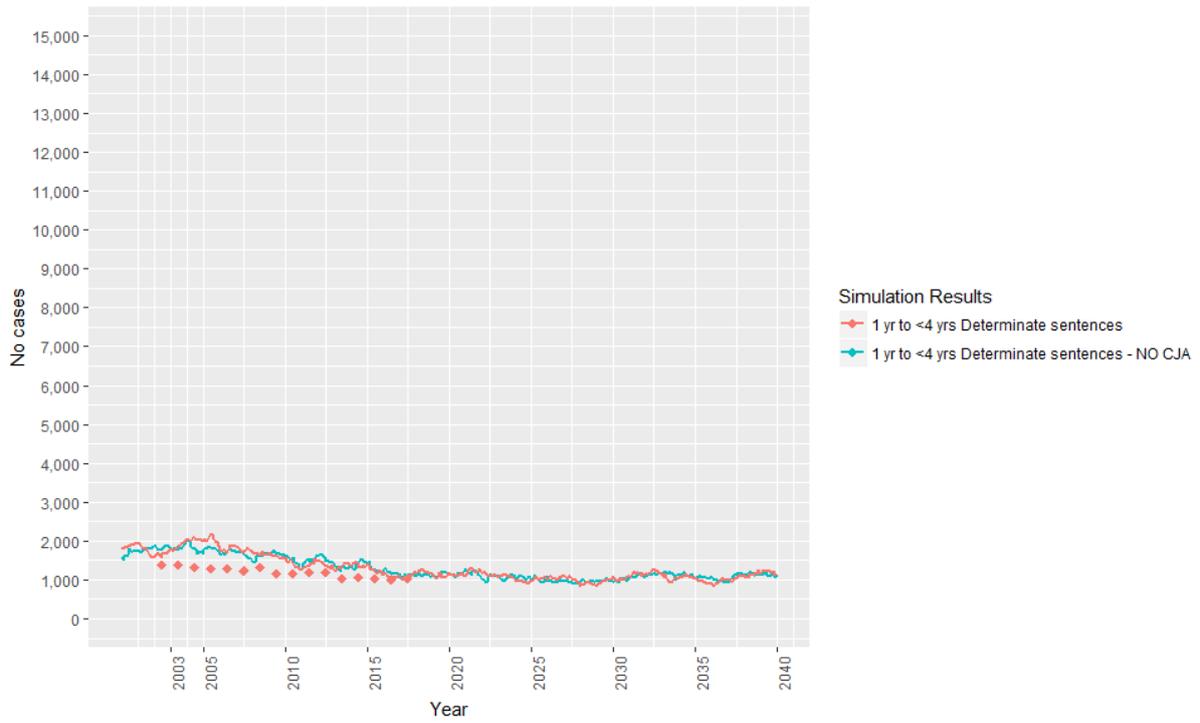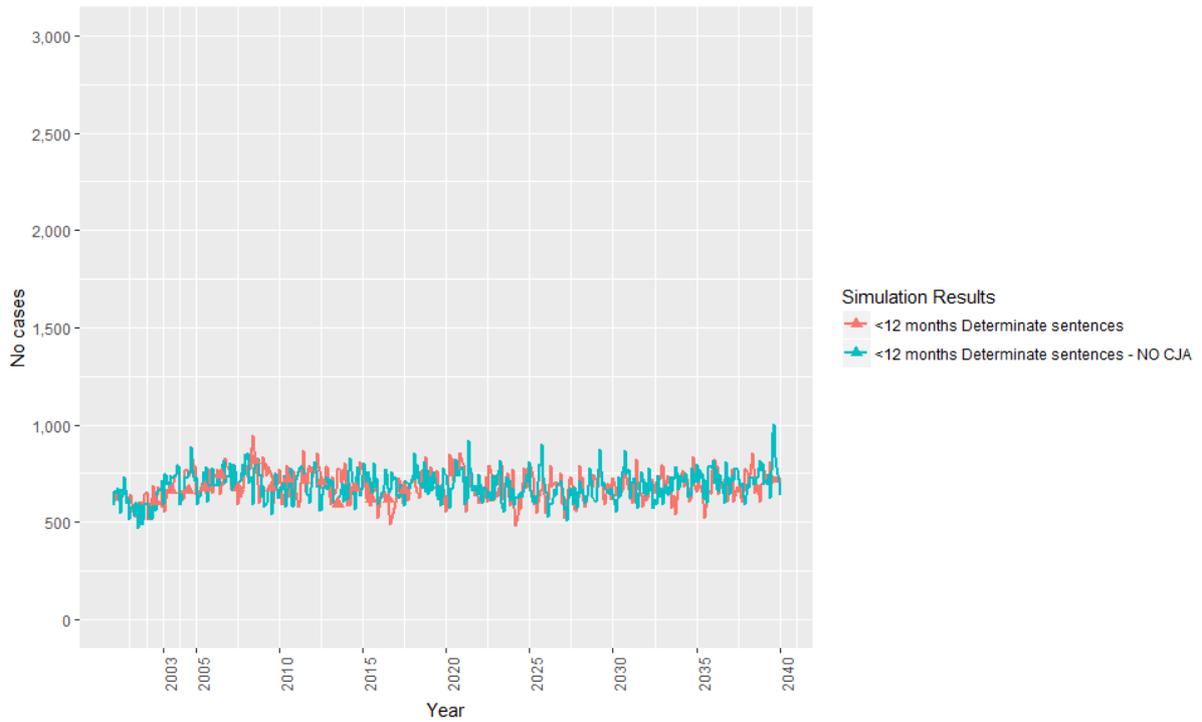Figure 11. Women's Prison population Medium length sentences - NO CJA comparison

Simulation Results
1 yr to <4 yrs Determinate sentences
1 yr to <4 yrs Determinate sentences - NO CJA

Figure 12. Women's Prison population short sentences - NO CJA comparison

Simulation Results
<12 months Determinate sentences
<12 months Determinate sentences - NO CJA

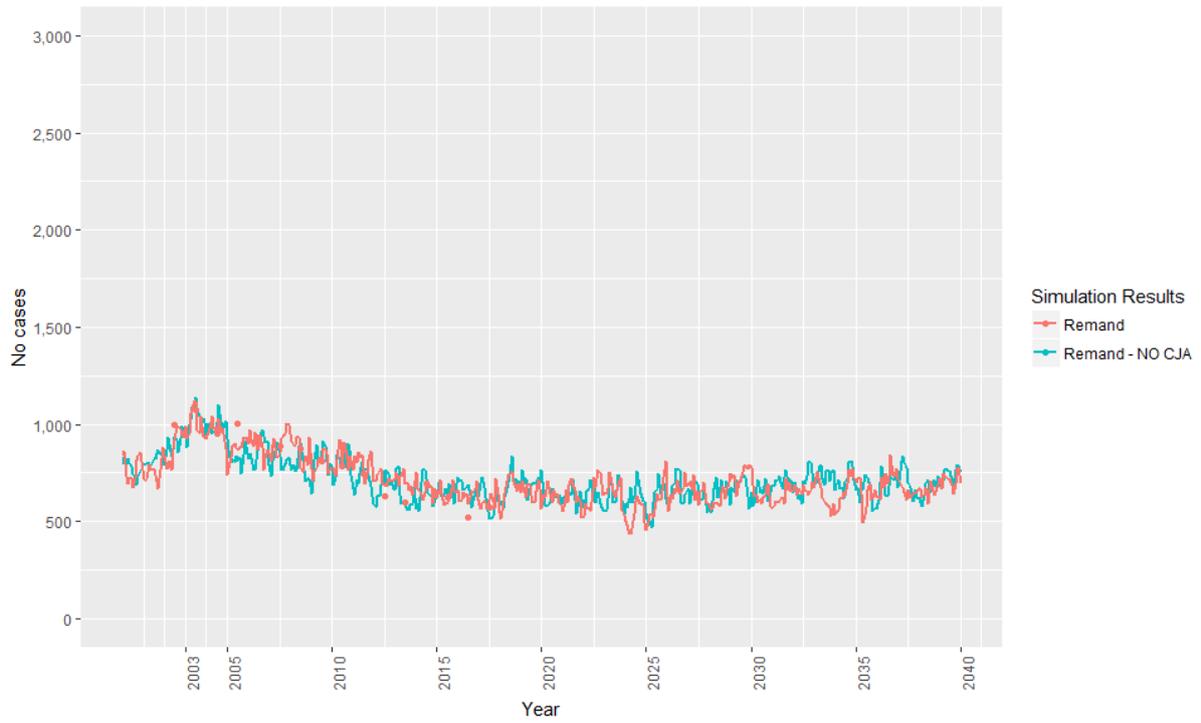Figure 13. Women's Prison population - Remand No CJA 2003 Comparison
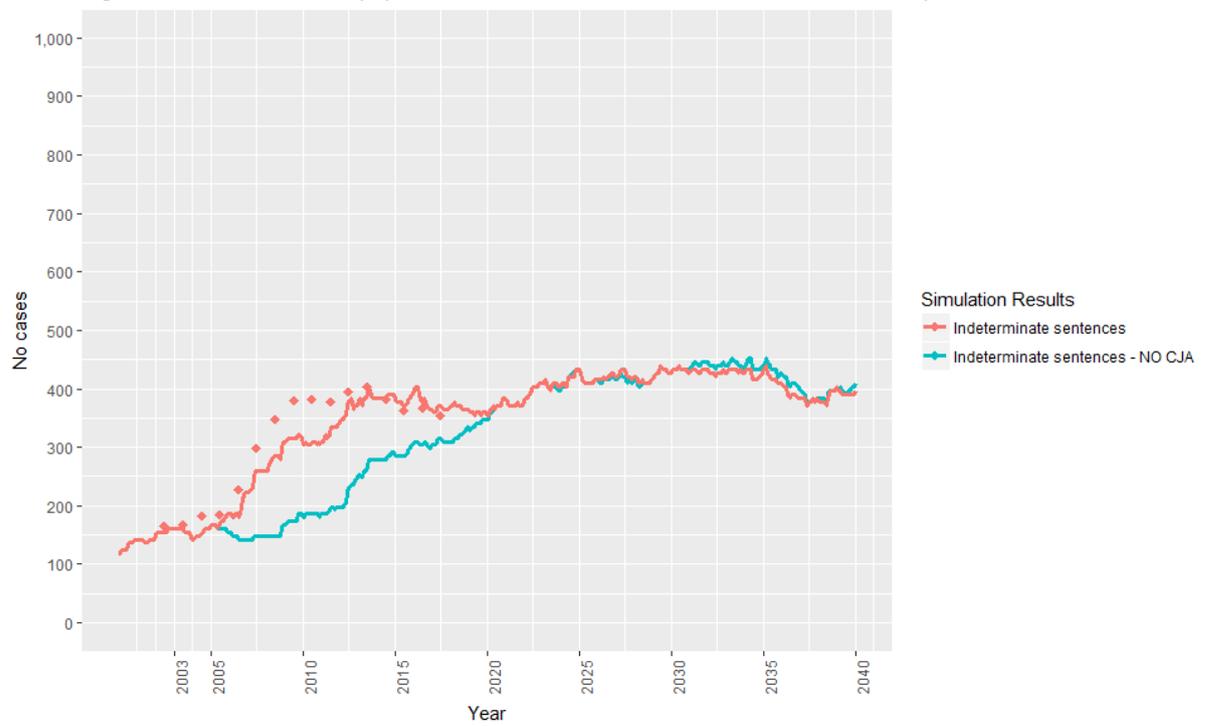

Figure 14. Women's Prison population Indeterminate sentences - No CJA 2003 Comparison

Figure 1: Distribution of male