



COVID 19

CRIMINAL

JUSTICE

CAMPAIGN

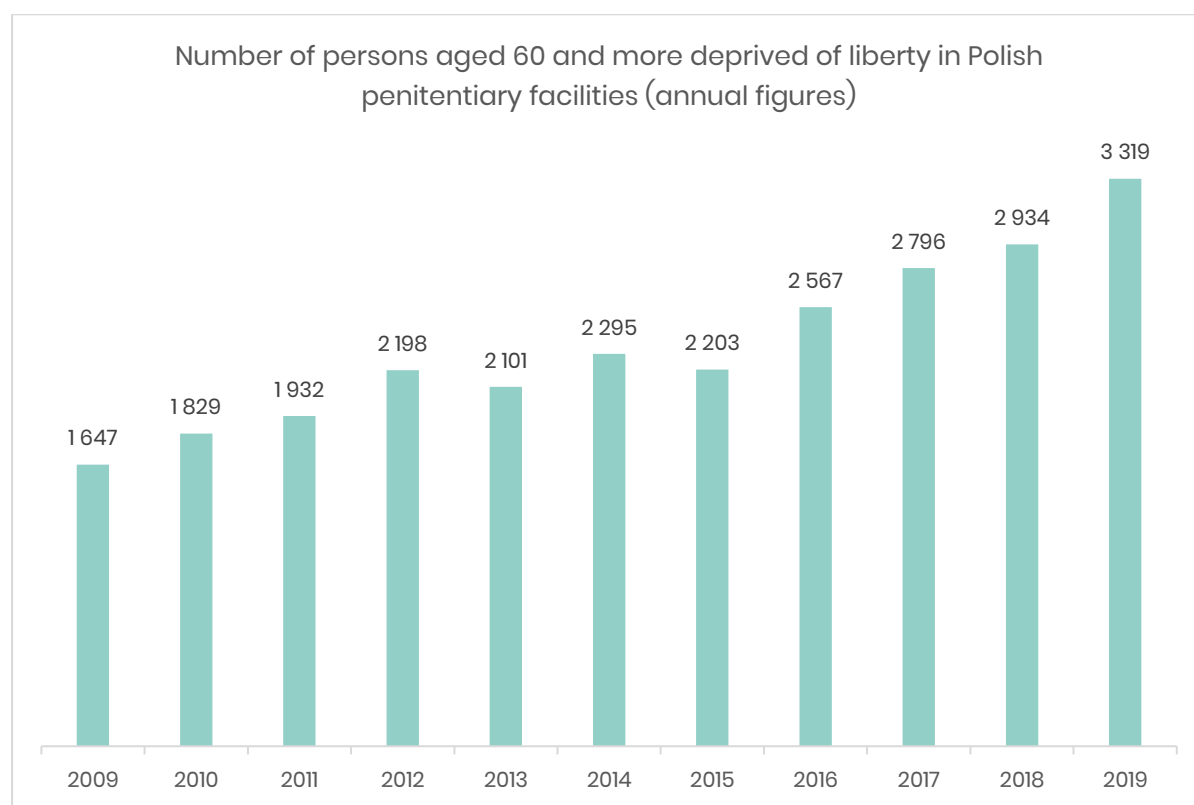
POLAND

**Impact of the coronavirus pandemic
on the criminal justice system**

1. Situation of inmates of Polish penitentiary facilities
during the pandemic

A total of 172 prisons, remand centres and external detention units operate in Poland. On the eve of the outbreak of the SARS-CoV-2 coronavirus pandemic, nearly 75,000 persons were deprived of liberty in Poland, and the occupancy rate at the facilities exceeded 91%.¹ Currently, there are 68,828 people in remand centres and prisons, and the occupancy rate at those facilities is 84.31%.²

Number of persons aged 60 and more deprived of liberty in Polish penitentiary facilities³



The SARS-CoV-2 coronavirus mostly affects persons over the age of 60. As the above chart suggests, the number of inmates aged 60+ has been steadily

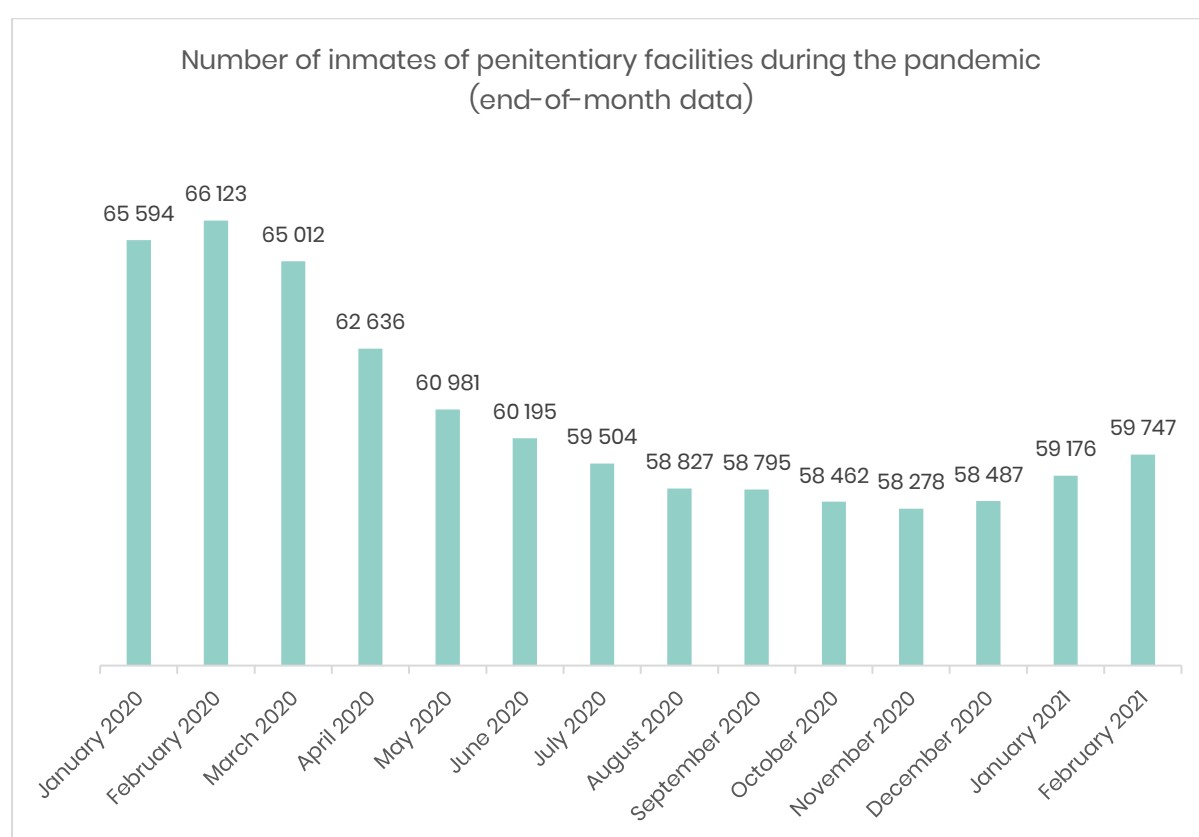
¹ HFHR, *Prawa człowieka w dobie pandemii. 10 miesięcy, 10 praw, 10 ograniczeń, 10 rekomendacji na przyszłość...* (Human Rights in the times of a pandemic. 10 months, 10 rights, 10 restrictions, 10 recommendations for the future...), Warszawa 2021, p. 53, <https://www.hfhr.pl/wp-content/uploads/2021/01/Prawa-czlowieka-w-dobie-pandemii.pdf>.

² Statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>.

³ The chart is based on the statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>.

increasing since 2015, from 2,203 (2015) to 3,319 (2019), which translates into an increase of over 50% (1,000 prisoners and persons held on remand). Notably, the number of inmates of penitentiary facilities aged 60+ increased also over an earlier period (since 2009).

Number of convicted persons serving custodial sentences during the pandemic (end-of-month data)⁴



In the SARS-CoV-2 coronavirus pandemic-stricken Poland, we have observed a systematic decrease in the number of convicted persons serving custodial sentences. Between February and December 2020, the number of inmates in

⁴ The chart is based on the statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>. The figures for January 2021, given as of 29 January 2021, are published in *Informacja o zaludnieniu jednostek penitencjarnych* (Information on the penitentiary facilities occupancy rates), letter ref. BIS.0335.5.2021.SG. The figures for February 2021, given as of 12 February 2021, were published in a report entitled *Informacja o zaludnieniu jednostek penitencjarnych* (Population of the penitentiary facilities), letter ref. BIS.0335.7.2021.SG.

penitentiary facilities was steadily decreasing, from 66,123 to 58,278. This represents a decrease of almost 8,000, or 12%.⁵ However, since December 2020, a certain upward trend has been visible. At this stage, it is too early to predict how this trend will develop.

Number of convicted persons serving a custodial sentence in the electronic monitoring system during the pandemic

The decrease in the population of penitentiary facilities is certainly an outcome of many factors, one of them being the wider availability of the electronic monitoring system. A law which entered into force on 31 March 2020 allows convicted persons to apply for the permission for serving their custodial sentences (up to 18 months) in the electronic monitoring system (under the “old” law, only convicted persons sentenced to a prison term of no more than 12 months were able to apply for serving their sentences in the electronic monitoring scheme).⁶

Practice!

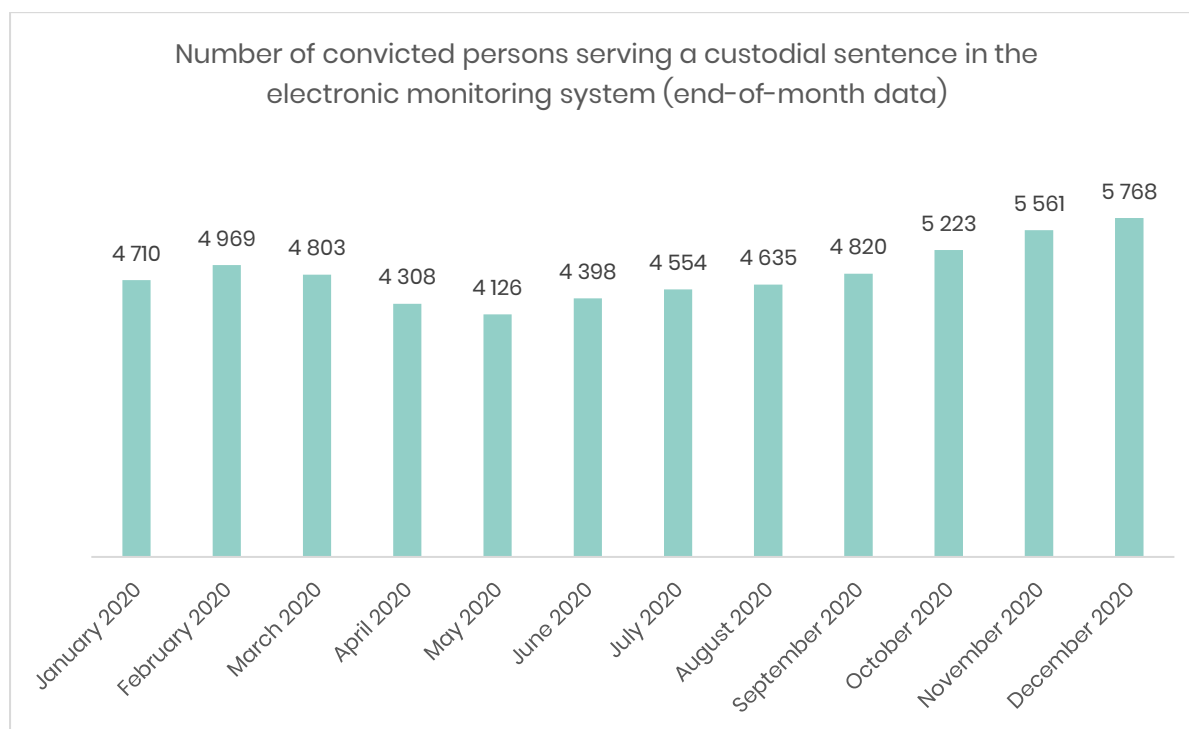
Notably, it was not until the period of June–November 2020 when the scheme became more and more frequently used. In May 2020, 4,126 persons were serving their sentences in the electronic monitoring system. In December, the figure rose to 5,768.⁷

⁵ *Prawa człowieka w dobie pandemii...*, p. 53.

⁶ Art. 15 (1) of the Act of 31 March 2020 amending the Act on special measures related to preventing, counteracting and combating COVID-19, other infectious diseases and the ensuing emergencies and certain other acts (Journal of Laws of 2020, item 568, as amended) amending Art. 431a § 1 (1) of the Code of Execution of Criminal Sentences, *Prawa człowieka w dobie pandemii...*, p. 54.

⁷ *Prawa człowieka w dobie pandemii...*, p. 54.

Number of convicted persons serving a custodial sentence in the electronic monitoring system (end-of-month data)⁸



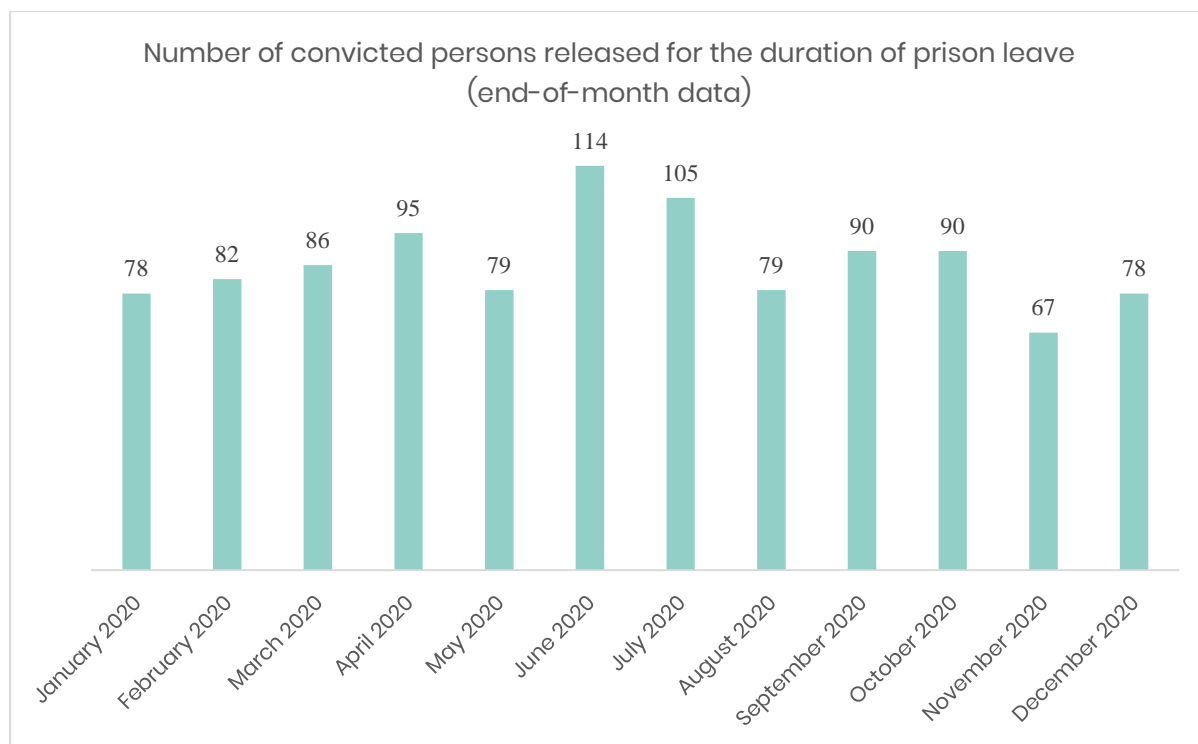
On the other hand, a measure adopted specifically to combat the coronavirus, namely an additional option for heads of penitentiary facilities to apply for a break in the execution of imprisonment (prison leave) in a situation where such a break would contribute, among other things, to a reduction or elimination of a risk associated with the pandemic, has so far not proven to be effective.⁹ According to the information provided by the Prison Service, as of 15 January 2021, none of the prison chiefs has made use of this option.¹⁰

⁸ The chart is based on the statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>.

⁹ Art. 14c of the Act of 2 March 2020 on special measures related to preventing, counteracting and combating COVID-19, other infectious diseases and the ensuing emergencies (consolidated text: Journal of Laws of 2020, item 1842, as amended); *Prawa człowieka w dobie pandemii...*, pp. 54-55.

¹⁰ Letter from the Central Prison Service Authority dated 15 January 2021 ref. BDG.0143.325.2020.KS.

Number of convicted persons released for the duration of prison leave (end-of-month data)¹¹



The data presented in the above graph show only a slight increase in the number of prison leaves granted during the pandemic. Over the last 10 months, the monthly number of granted prison leaves only twice exceeded 100 (in June and July 2020, respectively 114 and 105 leaves were granted).¹²

The pandemic has not caused any legislative changes that would lead to the relaxation of conditions for the conditional early release (parole) or introduce additional procedures for the application of parole.¹³

¹¹ The chart is based on the statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>.

¹² *Prawa człowieka w dobie pandemii...*, p. 55.

¹³ *Prawa człowieka w dobie pandemii...*, p. 55.

Number of convicted persons conditionally released from serving the remainder of their prison sentence (end-of-month data)¹⁴



Practice!

Still, the statistics show that the number of prisoners released on parole increased from 443 to 683, already in April 2020. However, the practice of the following months did not confirm an upward trend.¹⁵

¹⁴ The chart is based on the statistics published by the Prison Service at <https://www.sw.gov.pl/dzial/statystyka>.

¹⁵ *Prawa człowieka w dobie pandemii...*, p. 55.

PANDEMIC IN PENITENTIARY FACILITIES

Number of tests and infections among officers and civilian employees of the Prison Service

The Prison Service employs 28,813 officers and civilian workers.¹⁶ From 1 March to 3 December 2020, 6,881 tests for SARS-CoV-2 were performed in the above group, and 3,199 of these were positive.¹⁷ This means that approximately 11% of the officers and civilian employees of the Prison Service have been infected with the coronavirus.¹⁸

Number of tests and infections among the inmates of Polish penitentiary facilities

In 2020, the average number of persons imprisoned and detained on remand in Polish penitentiary facilities was 69,936. Between 1 March and 3 December 2020, 2,952 persons deprived of liberty were tested for the coronavirus.¹⁹

From 1 March to 15 October 2020, 56 persons deprived of liberty were infected with the SARS-CoV-2 virus.²⁰ Between 1 March and 3 December 2020, 400 inmates were infected with the coronavirus²¹, which means that additional 344 persons

¹⁶ Ministry of Justice, Central Prison Service Authority, *Roczna informacja statystyczna za rok 2019* (Annual statistical information for 2019), letter ref. BIS.0332.17.2019.AP, p. 40, <https://www.sw.gov.pl/assets/95/70/75/c1cee7d03200820a03cdaa2c6afe897c482422ca.pdf>.

¹⁷ The above data were obtained from a letter from the Central Prison Service Authority dated 8 December 2020, ref. BDG.0143.303.2020.KS.

¹⁸ *Prawa człowieka w dobie pandemii...*, pp. 56–57.

¹⁹ The above data were obtained from a letter from the Central Prison Service Authority dated 8 December 2020, ref. BDG.0143.303.2020.KS; *Prawa człowieka w dobie pandemii...*, p. 56.

²⁰ The above data were obtained from a letter from the Central Prison Service Authority dated 16 December 2020, ref. BDG.0143.266.2020.ASD.

²¹ The above data were obtained from a letter from the Central Prison Service Authority dated 8 December 2020, ref. BDG.0143.303.2020.KS.

contracted the virus between 15 October and 3 December 2020. This increase was probably caused by the second wave of the pandemic that affected Poland during this period.

Notably, as of 3 December 2020, 123 inmates were infected with the coronavirus and isolated and further 249 were quarantined.²²

Medical treatment offered to the inmates infected with the SARS-CoV-2 coronavirus

According to the information provided by the Prison Service, isolation facilities were created in the Bytom Remand Centre (capacity of 76 beds) and the Potulice Prison (22 beds) for asymptomatic or mildly symptomatic inmates infected with the coronavirus. At the same time, a unit or several cells at each penitentiary facility located under the jurisdiction of a district inspectorate of the Prison Service have been designated to accommodate asymptomatic or mildly symptomatic patients in the event of increased coronavirus incidence and the exhaustion of the capacity of the currently functioning isolation facilities and medical facilities. Any coronavirus-infected inmate who requires hospitalization is to be immediately transferred to the local non-penitentiary hospital providing treatment and care of coronavirus patients.²³ Quarantine may be imposed in all penitentiary facilities.²⁴

²² *Ibid.*; *Prawa człowieka w dobie pandemii...*, p. 57; The HFHR's statement sent to the Minister of Justice dated 29 January 2021, https://www.hfhr.pl/wp-content/uploads/2021/01/wystapienie-HFCC_pandemia-jednostki-penitencjarne_fin.pdf.

²³ The above data were obtained from a letter from the Central Prison Service Authority dated 8 December 2020, ref. BDG.0143.303.2020.KS.

²⁴ *Ibid.*; *Prawa człowieka w dobie pandemii...*, p. 57.

Protective measures against SARS-CoV-2 in Polish penitentiary facilities

In its position statements, the Prison Service indicates that the Director General of the Prison Service has been issuing recommendations and guidelines since the beginning of the pandemic to ensure the safety of inmates, Prison Service officers and civilian employees of the Prison Service.

Since 12 March, all persons entering the premises of penitentiary facilities must have their temperature checked. Officers working in direct contact with inmates use personal protective equipment (masks, gloves, visors). Outside residential cells, inmates wear protective masks. All prisons and remand centres are stocked with anti-viral disinfectants, hygienic and medical supplies, including protective masks, suits and gloves. The facilities used by prisoners, including handles, handrails, bars and doors, are disinfected, several times a day. Mist makers and other devices are used to disinfect rooms in residential units. In consultation with penitentiary judges, visits have been suspended and prisoners' employment outside the penitentiary facilities has been reduced to the necessary minimum. Several arrangements were put in place to compensate the inmates for the measures employed to prevent the spread of the pandemic such as additional access to virtual visits via Skype, more time for telephone calls or additional shower time.²⁵

²⁵ Statement of the Press Team of the Central Prison Service Authority on a publication of *Dziennik Gazeta Prawna*, <https://sw.gov.pl/aktualnosc/centralny-zarzad-sluzby-wieziennej-oswiadczenie-w-sprawie-publicacji-dziennika-gazeta-prawna?fbclid=IwAR0Wkg7WkLikZAJcBwtRJ-ZdGvLvxFcHfhR8wTR2jAL5a-3ylwF6CF2biQ8>.

HFHR RECOMMENDATIONS

- A policy of further reduction of the prison population should be pursued, in particular through the more frequent use of parole.
- Also, the grounds for the application of the measures introduced in the Act on special measures related to preventing, counteracting and combating COVID-19, other infectious diseases and the ensuing emergencies should be relaxed to increase the availability of the measures in question. Article 14c of the Act establishes a special procedure for granting prison leave. Under that procedure, the penitentiary court, at the request of the head of the prison approved by the Director General of the Prison Service, may grant a convicted person a break in the execution of their custodial sentence, unless there is a reasonable suspicion that the convicted person may not abide by the rules of law, and in particular may commit an offence, during their stay outside the prisons, or may not comply with the guidelines, orders or decisions of the competent authorities related to the prevention of COVID-19 or the treatment of SARS-CoV-2 infections. However, the prison leave is not available to the perpetrators of offences punishable by a custodial sentence exceeding 3 years of imprisonment, perpetrators of unintentional offences sentenced to a term of imprisonment longer than 3, as well as the perpetrators sentenced in conditions described in Article 64 §§ 1 and 2 or Article 65 § 1 of the Criminal Code of 6 June 1997. In particular, it is necessary to reconsider the restrictions related to the applicability of the measure in question, which are based solely on the maximum length of the penalty of imprisonment that may be imposed under provisions of the Criminal Code. The existing rules restrict access to prison leave for the perpetrators of

relatively minor offences, such as forest theft, intentionally handling stolen goods or the seizure of a vehicle for short-term use. In the case of such offences, the legislator should introduce less strict formal eligibility requirements, focusing primarily on the positive criminological prognosis.

- The progressing pandemic threat should persuade the legislator to introduce further mechanisms allowing for the postponement of execution of a prison sentence, suspension of its course, its conversion to a non-custodial penalty, and even enable the remission of criminal sentences, especially those for offences presenting relatively low social harm.