



Alternatives to custody

Do Fuller Prisons Mean Fewer Crimes?

Many Australians, spurred on by the media and politicians' 'sound-bites,' think that having more people in prison means that the criminal justice system is working more efficiently. In New South Wales, if this *were* the case this would mean that the huge increase in the prisoner population between 1995 and 2001 of 20.9%, and the current use of 98.9% of the state's prison beds would mean that there are lower crime rates and lower re-offending rates on the outside.

This is not the case. Average crime levels have remained relatively constant. Levels of recidivism (re-offending) have also not fallen. Around 62% of NSW prisoners have already been in gaol on at least one previous occasion. There are *no* studies in Australia that prove a causal relationship between high incarceration levels and reduced crime or prevented recidivism.

Prisons in NSW are full, not because the criminal justice system is functioning better, or because there are more crimes and criminals out there to avert, but because prison is being used *excessively* and often too flippantly. Prison should only ever be used as a means of 'last resort.' Unfortunately, in NSW, prison is frequently used *instead* of alternatives to custody. The Select Committee on the Increase in the Prisoner Population noted;

'the prison population could be substantially reduced if greater use was made of alternatives and diversionary programs'

(Select Committee 2001, p.107)

Would non-prison sentences work any better?

There are many alternatives to prison that are not used as often as they could be. This is partly due to political fears that they may be publicly interpreted as being *soft* on crime and criminals or somehow 'endangering society.' However alternatives to custody are often not seen by those who experience them as 'soft'. They carry with them their own sets of difficulties and challenges.

There is also plenty of research to suggest that alternatives to custody are much more successful than prison at enabling people to address their offending behaviour. Not only are there many benefits that are involved in keeping people out of prison in terms of avoiding the damaging influence of imprisonment, but community alternatives are also much cheaper, and more effective at reducing offending behaviour. By directing offenders to non-custodial sentences the cost to the taxpayer is much lower.

When compared to the many additional costs of imprisonment - inter-generational crime, homelessness, the perpetuation of poverty cycles, separation of families, unemployment, the damage of institutional violence, the exacerbation of mental illness, drug abuse, and related ill health problems - community corrections are much, much cheaper. A good proportion of the **half a billion dollars** currently spent on the NSW prison system would be much better directed to non-custodial options, which



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NSW Council of Social Service * Conference of Leaders of Religious Institutes (NSW) * Catholics in Coalition for Justice and Peace * Guthrie House * NSW MRC Forum * CRC Justice Support * Shopfront Youth Legal Centre * Youth Justice Coalition * Justice Action * ACTCOSS * Hepatitis C Council of NSW * Indigenous Social Justice Association * NSW Council for Civil Liberties * Youth Action & Policy Association * Intellectual Disability Rights Service * Prison Reform Council * No New Women's Prison Campaign * Blackheath Area Neighbourhood Centre * Men's Health & Wellbeing Association (NSW) * JewishCare * Eileen Baldry (UNSW) * Russell Hogg (UWS) * Chris Cunneen (USYD) * Julie Stubbs (USYD) * Ann Symonds * Tony Trimmingham (Family Drug Support) * Tim Anderson * Cleonie Quayle * Melinda Smith

have the potential to generate socially and economically beneficial outcomes also.

What is really needed is a **whole of government approach** to crime control. This approach would include the departments responsible for education, health, housing, social services, employment, as well as policing and corrections, so that crime is addressed as the *social* problem it is, not just something that requires criminal justice system intervention. This approach is much more achievable in the community than it is in prison.

What are the alternatives to incarceration?

In some instances full-time prison may be the best option for a certain offender or crime, but in many cases prison is not necessary. The appropriate type of non-custodial sentence depends on the characteristics of the offender and their crime, the existing legislation and the awareness and appreciation by the magistracy and judiciary of these alternative sentences.

1) Home Detention confines offenders to their place of residence continuously or during specified hours. People on home detention can still work and care for their families, but they are tied to their telephones through an electronic monitoring system that can call them at any time. If they are not where they are supposed to be, then they face penalties, including a possible prison sentence.

Home detainees find that the procedure is hard on them and on their families, but according to some questioned in a survey, it both served as a serious punishment and assisted them in re-organising their lives to avoid further brushes with the law. Since its introduction to NSW in 1996 roughly 79% of home detention orders have been successfully completed. A Briefing Paper for the State Parliament described some of its many advantages over imprisonment:

It costs less for the government to operate; it is more humane for offenders as it avoids the destructiveness of prison; it prevents minor offenders coming into contact with more hardened criminals; it provides an alternative to prison for offenders to remain in the community and seek to retain or seek employment; it prevents families from being split up [and] it allows offenders to undertake rehabilitation.

2) Periodic Detention is a little bit like part time prison. It is generally undertaken in two stages, a residential and non-residential component, with an offender becoming eligible for the second non-residential stage after serving three months or one-third of the sentence, whichever is the greater. In requiring attendance for the person's whole weekend (or other days off), periodic detention allows offenders to continue working and contributing to their family's care, while restricting their liberty during what would otherwise be leisure time. The program requires people to perform appropriate community service and can work both as a punishment and as a tool for rehabilitation. Community work and attendance at training or counselling sessions may also be required. The utilisation of this method in NSW has fallen from 60.5% in 1996/6 to 46.6% in 2000-1

3) A Drug Court was established at Parramatta in 1999 to divert drug dependent offenders from prisons and into detoxification, counselling and reintegration services. Although it is very new, early research indicates that it is more effective at preventing recidivism than imprisonment.

4) A Youth Drug Court and the **MERIT** (Magistrates Early Referral into Treatment) program are also recent initiatives which operate in NSW as alternatives to imprisonment.



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5) Parole and Probation uses various reintegration programs to ease the transition of prisoners into the community, and also as an alternative to prison. This has been shown to reduce re-conviction rates especially for serious offenders and those on longer sentences

6) Bail Hostels are secure units where people who have difficulty meeting the requirements for bail can stay instead of being remanded to custody. These can be very effective at preventing the social dislocation caused by incarceration, and are particularly useful for groups that are suffering severe disadvantage, and are likely to have high levels of homelessness. Although a Select Committee of the Upper House recommended in 2000 that the Government fund two bail hostels in New South Wales for women, including one specifically for Indigenous women, the Government has so far refused to pilot these suggestions and there are presently no bail hostels for adults in the State.

7) Community Service Orders require an offender to perform up to 500 hours of community service work or to participate in a development program at an attendance centre

8) Fines can be served for minor offences, the payment of which negates the threat of civil action and further punishment.

What types of offenders are best suited to non-custodial sentencing?

There are many people who are particularly suited to non-custodial sentences. This includes people who have important family and community responsibilities and those who have conditions which would be aggravated by imprisonment. It also includes those for whom the *causes* of their criminal behaviour may be

best remedied outside of prison. In many cases prison only creates problems and additional pressures for offenders rather than resolving or reducing them.

People Given Short Term Sentences

Those convicted of less serious crimes who have sentences of six months or less do not have the opportunity when they are in prison to access the rehabilitation and training services that do exist. Also, short term sentences are generally not covered by the Probation and Parole Service's post-release supervision programs. According to the Bureau of Crime Statistics and Research the most serious offence for 90% of these prisoners is a theft, a breach of justice order, a minor assault or a driving/traffic offence. It also estimates that:

'If all those who currently receive sentences of six months or less were instead given non-custodial penalties, the number of new prisoners received in NSW prisons would drop from about 150 per week to about 90 per week, the NSW prison population would be reduced by about 10%, and there would be savings of between \$33-47 million per year [excluding the one-off "admission costs" for newly arrived prisoners] in the recurrent cost of housing prisoners.' (Lind, B. & Eyland, S. 2002. *The Impact of Abolishing Short Prison Sentences*. Bureau of Crime Statistics and Research, B73.)

The Select Committee on the Increase in the Prison Population recommended to the NSW Government that it emulate the policy of Western Australia and abolish these short term sentences. It also suggested that the rehabilitation of many first-time offenders is best served within the community (2001, p.107.)

People on Remand



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Remand prisoners awaiting trial constitute one-fifth (at 30 June 2001) of those in prison serving short term sentences. In the vast majority of cases there is little justification for imprisonment. The majority of people who are held in custody whilst they wait for their court cases are not given prison sentences.

Aboriginal People

Aboriginal people are particularly likely to be remanded to custody whilst awaiting a court appearance as they are most likely not to live in secure formal accommodation and to lack the personal or family assets to fund bail sureties. Aboriginal people are vastly over represented in the prison system, yet are under-represented in many community alternatives. The obstacles that prevent access to community sentences for Indigenous populations require immediate redress. With home detention, for example, schemes need to be run in rural communities and assistance needs to be given towards Aboriginal housing and basic requirements like telephone connection services.

Women

Around 60% of women in prison are parents, with 30-40% being sole carers. The majority of women in prison have some form of problematic relationship with drugs and/or alcohol. Drug-related problems are very difficult to resolve in the prison environment. In some cases the availability of drugs in gaol and the feelings of complete isolation and disconnection from their family and friends can compound the problems. Due to the statistical dominance of women as primary carers, alternatives to custody which allow for families to stay together, would be beneficial for children of prisoners, as well as for those attempting to address their offending behaviour.

People with a mental illness or an intellectual disability

Offenders with mental health needs (around 30%) and intellectual disabilities (around 13%) are much more likely to have their needs

effectively met in the community environment. The experience of imprisonment, not surprisingly can often worsen existing mental health conditions. People with intellectual disabilities and people with a mental illness are especially vulnerable in the prison environment.

But doesn't prison protect us from hardened criminals?

The reality is that the vast majority of people in NSW prisons are the poorest, most dislocated and marginalised people in our communities.

1. 60% of inmates are functionally illiterate
 - 44% are long term unemployed
 - 64% have no stable family
 - 13% have an intellectual disability
 - 1/4 of male prisoners and 1/3 of female prisoners have had some sort of mental health problem
 - 73% of women in prison have at some point been admitted to a psychiatric institution
 - 80% of inmates are in prison for offences related to alcohol and other drugs
 - 1/3 of men and 2/3 of women in prison are Hepatitis C positive

Alternatives to imprisonment provide people with real opportunities to address the factors that impact on their offending behaviour, in the community in which their offending occurs. The damaging aspects of prison – the isolation from family and support networks, the violence, the risk of institutionalisation, the health risks, and the frequently devastating process of 'dehumanisation' - make 'rehabilitation' and any reparation almost impossible inside the prison environment.

If we are to commit seriously to the idea that offending behaviour can be reduced as a result of a court ordered sanction, than we need to take a more serious approach to those alternatives to custody which would allow this process a chance.



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