

ISSUE NO 3

**IF PRISONS ARE A CAUSE OF CRIME,**

**WHY NOT REDUCE THE NUMBERS?**

**Changing Public Attitudes to Crime and Punishment**



A *SMART ON CRIME* PRINT AND E-PUB SERIES FROM **RETHINKING CRIME AND PUNISHMENT**



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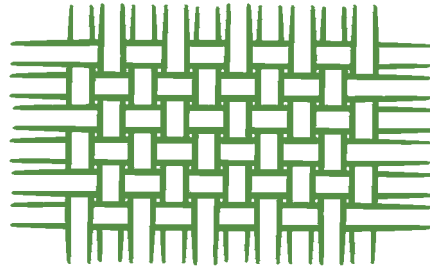
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## Preface

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In the first issue of the *Smart on Crime series*, we proposed a three-pronged criminal justice strategy which would (a) improve the operational effectiveness of the criminal justice system as it currently exists, (b) develop strategies to reduce the drivers and causes of crime, and (c) develop a justice system that reflects the collective values and attitudes of the nation.

In Issue two, *What Do I have to Do to Change Your Mind*, we looked closely at why we resist new ideas, and what it takes to bring about a change of thinking about current criminal justice policy and practice, in the face of clear evidence that it doesn't reduce crime and, in some cases, may increase it.

The standout example is the place that prisons have in our society. Despite the overwhelming evidence against their effectiveness in reducing reoffending, there is no government strategy or goal to limit their use, and reduce the prison population. This issue takes a closer look at why this is so, and considers strategies that other nations have used to limit the use of prisons and to reinvest resources in more effective ways of reducing crime and social harm. ■

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*Founder and Strategic Adviser*

*Rethinking Crime and Punishment*

## Changes in Penal Policy

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What motivated political and public thinking over the last 20 years, toward increasing punitiveness, and a belief that increasing the time offenders spend in prison would reduce offending and increase public safety?

Changes in public and political attitudes toward imprisonment can be traced back to the mid-1980s and, in the view of some experts, were triggered by the rise of neo-liberalism and market reforms. In a recent publication, John Pratt describes in detail the changes that occurred during this period and the rationale for them.<sup>1</sup> He contrasts the views held by the 1981 Penal Policy Review Committee<sup>2</sup> which, in its report to Parliament, had this to say:

*“one of [our] explicit aims is to consider the means by which the incidence of imprisonment can be **reduced** to the greatest degree consistent with the maintaining of public safety’ (my italics), citing amongst the reasons for this its ‘increasingly high cost, both in financial, human and social terms’.*

*“Instead of prison, ‘offenders ought as far as possible to be dealt with by community based measures which stand in their own right. Resort to imprisonment as a sanction ought only to be justified as a last resort’.”<sup>3</sup>*

The Penal Policy Review Committee was not a bunch of well-meaning do-gooders. It was made up of two judges, a member of the Parole Board, two leading civil servants, a voluntary social worker, a prominent university lecturer in law and a retired Assistant Commissioner of Police.

Fast forward to 2000 when a Citizen’s Initiated Referendum (CIR) signalled a change in attitudes toward penal policy in New Zealand which lasted for more than a decade. It arose after the mother of Mr Norm Withers was violently assaulted in 1997. He gathered the necessary 300,000 signatures together and presented the petition to Parliament.



1 Pratt, J. (2013). *A Punitive Society: Falling Crime and Rising Imprisonment in New Zealand*. Wellington, New Zealand: Bridget Williams Books.

2 *Report of the Penal Policy Review Committee*. (1981). Wellington, New Zealand: Government Printer.

3 *Ibid.*, p. 107.

The referendum asked the question:

*Should there be a reform of our criminal justice system, placing greater emphasis on the needs of victims, providing restitution, and compensation for them and imposing minimum sentences and hard labour for all serious offenders?*

There were major problems with the question: there was not one, but a series of questions that were at odds with one another. As Pratt points out:

*One could vote for restitution for victims of crime, for example, without supporting mandatory minimum sentences; and the 'hard labour' component would, if enacted, have meant that this country was in breach of UN conventions against the forced labour of prisoners to which it was a signatory.<sup>(2)</sup>*

The question had all the hallmarks of being written by an enthusiastic amateur. When parliamentary officials declined the opportunity they had been given under the 1993 electoral changes to request that the referendum 'question' be rephrased because of lack of clarity before it went to the voters, it became clear that the main political parties supported it, even though CIRs were non-binding on government at that time.

For Labour the CIR was "of great symbolic importance because it gave everyone in this House an idea of the level of concern about crime, our prison system, and the needs of victims".<sup>4</sup>

For National, "there has been a clarion call from the community for tougher law and order measures".<sup>5</sup>

The referendum, and the political support for it, was so influential that it negated the expert report of the 1981 Penal Policy Review Committee, which recommended inclusive social and welfare programmes, with more humane, penal measures.

Prior to the 2002 general election, the government started to interfere with the sentencing process. Judges were encouraged by the Labour Minister of Justice the Hon Phil Goff, to make use of *maximum* penalties, saying that "the current law relating to sentencing does not adequately ensure that...sentences reflect the seriousness of offending".<sup>6</sup>

The "hardening" accelerated as the two main political parties began outbidding one another in the "tough on crime" war. National complained that the prison numbers were not increasing quickly enough:

*"opposition politicians...question if the new laws are any tougher. They say the projected prison population increase is less than that expected before the law was changed."*<sup>7</sup>

4 Barnett, T. (2001, 14 August). *New Zealand Parliamentary Debates (NZPD)*, 594, 10916

5 Worth, R. (2002, 30 April). *New Zealand Parliamentary Debates (NZPD)*. 600, 15845

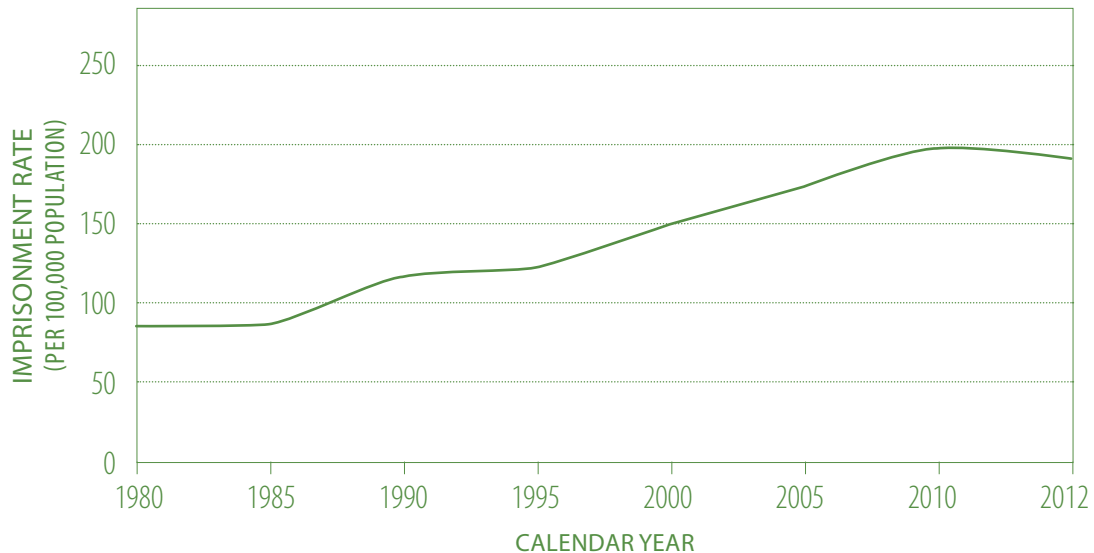
6 Sentencing and Parole Reform Details Released. (2001, March 15) *New Zealand Herald*. Retrieved from [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=177396](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=177396)

7 Tougher Laws to Raise Jail Numbers. (2004, March 10), *Dominion Post*, p. 3.

ACT argued that American penal arrangements should be the model for policy development in New Zealand, a country where imprisonment rates increased 700 per cent from 110 per 100,000 of population in 1975 to 764 in 2011. That ultimately led to the introduction of New Zealand’s own “three strikes” legislation (the Sentencing and Parole Reform Act 2010).

When the 1981 Penal Policy Committee came out with its findings, New Zealand had an imprisonment rate of 80 per 100,000, slightly higher than that of corresponding societies such as England (78) and Australia (72).

### New Zealand Prison Rate: 1980 – 2012



The impact of the CIR was significant. As can be seen in the above graph, and the table below, the imprisonment rate rose significantly. Take a look at the progressive increases from 2000 until 2012.

In its Briefing report to the incoming Minister, the department identifies three major influences between 2000 and 2010:

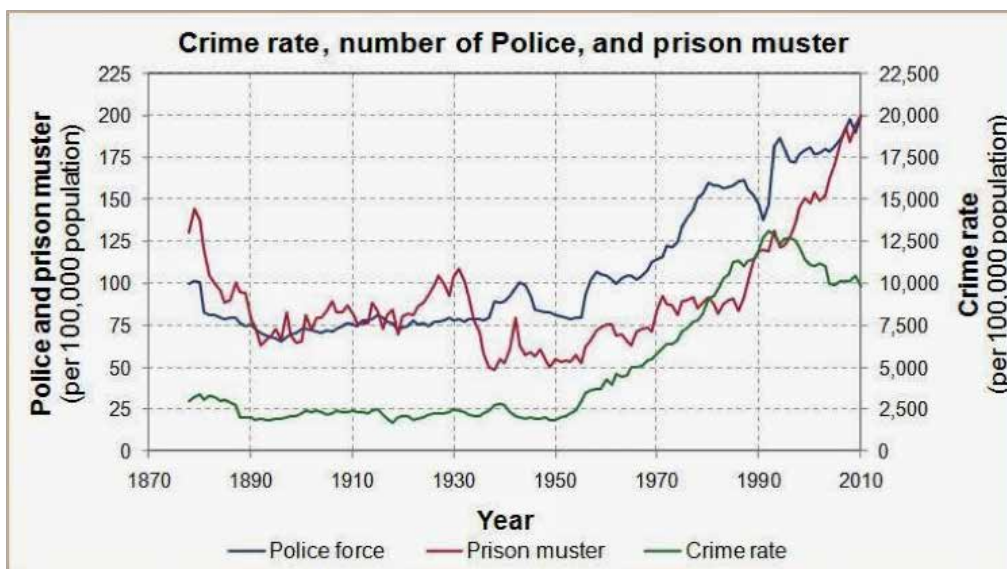
- the Bail Act 2000, which made it more difficult for offenders to get bail;
- the Sentencing Act 2002, which increased the length of sentences, and increased the likelihood of a prison sentence;
- the Parole Act 2002, which meant that prisoners serving more than two years were more likely to spend a greater proportion of that sentence in prison.



In addition, the age of eligibility for preventive detention was lowered from 25 years to 17 years – the number of such prisoners has increased from sixteen in 1981 to 300 in 2012.

While there has been similar upward trends in societies similar to New Zealand, the effect has not been as dramatic. In Australia, the rate of imprisonment increased from 89 per 100,000 of population in 1992 to 124 in 2012; in the UK from 90 to 149 from 1992 to 2013; in Canada, it actually declined from 123 per 100,000 of population in 1992 to 114 in 2010. In New Zealand, it increased from 119 in 1992 to 204 in 2010 (and now sits at 194).<sup>8</sup>

All this was happening in the face of a steadily declining crime rate.



The crime rate remained relatively static until 1950, when the crime rate began to rise, as did the imprisonment rate. That continued for 40 years until 1990, when New Zealand and similar western nations experienced a steady decline in the crime rate. In New Zealand however, the imprisonment rate continued to rise.

8 Roberts, J., Stalans, L., Indermaur, D., & Hough, M. (2002). *Penal Populism and Public Opinion: Lessons from Five Countries*. New York: Oxford University Press

## Myths About Prison

Issue two in the Smart on Crime Series, *What Do I have to Do to Change Your Mind*, explains the thought processes and shifts in values, that resulted in changing beliefs about the value of imprisonment.

Accompanying this shift, were a set of myths about the value of prison. The more common ones are explored below.

### ***Myth No 1: That longer and harsher sentences reduce crime.***

Throughout the world expert advisory committees or national commissions have time and again been told that there is no credible evidence that imprisonment reduces reoffending.<sup>9</sup> One major study, which analysed the findings from 50 prison effects studies dating from 1958 and involving over 300,000 prisoner subjects, concluded that there is no evidence that prison sentences reduce recidivism and some evidence that the relationship works the other way around.<sup>10</sup> In the best studies they could find, it appears that imprisonment is more likely to increase (rather than deter) criminal behaviour upon release and that the longer the sentence, the more likely prisoners are to reoffend on release. It is an expensive way of making bad people worse. Why sentence offenders to longer sentences, if they are more likely to reoffend?

### ***Myth No 2: Punishment is an effective deterrent, especially when it is harsh***

A large number of studies have found no clear correlation between sanction severity and levels of offending.<sup>11 12 13</sup> A recent study found that harsh prison sentences did not deter criminal offending, and may well increase it.<sup>14</sup>

David Brown, in a recent article, puts it this way:

*...research generally suggests that deterrence is, in any event, an overrated notion—largely assumed, rather than proven. The research suggests that the likelihood of getting caught is the primary deterrent; that there may be some deterrent effect of imprisonment in relation to instrumental property crimes, but little if any in expressive crimes such as assault and other violent crime; and that the severity of punishment has no deterrent effect<sup>15</sup>*

9 Tonry, M. (2008). Learning from the Limitations of Deterrence Research. *Crime and Justice: A Review of Research*, 37(1), 279-311. Chicago: University of Chicago Press.

10 Gendreau, P., Goggin, C., & Cullen, F.T. (1999). *The Effects of Prison Sentences on Recidivism*. Ottawa: Solicitor General of Canada.

11 Hogg, R. (1999). Mandatory sentencing laws and the symbolic politics of law and order. *University of New South Wales Law Journal*, 22(1), 263-79.

12 Zimring, F., & Hawkins, G. (1973). *Deterrence: The legal threat in crime control*. Chicago: University of Chicago Press.

13 Blumstein, A., Cohen, J., & D. Nagin. (1978). *Deterrence and Incapacitation: Estimating the effect of criminal sanctions on crime rates*. Washington DC: National Academy of Sciences.

14 Tonry, M. (2005). The functions of sentencing and sentencing reform. *Stanford Law Review*, 58, 52-3.

15 Brown, D. (2010). The limited benefit of prison in controlling crime. *Issues in Criminal Justice*, 22(1), 137-48.

A recent Canadian study, which reviewed empirical research on deterrence in several countries, urged its readers to conditionally accept the hypothesis that crime levels are not affected by the severity of sentences.<sup>(17)</sup>

### ***Myth No 3: Putting more people in prison means safer streets***

The “lock ‘em up” policies of the last 20 years have failed. It is worth considering that there would be no crime if everyone was in prison, and relatively little if all males aged 15 to 35 were incarcerated.

Under the “lock ‘em up” solution, societies were safer to the extent that the small numbers of dangerous people were incapacitated, but when offenders emerged from prison – with no job prospects, unresolved drug and mental health problems, and diminished connections to their families, whānau and communities – they often returned to crime. Those working in the criminal justice system know that such an approach does not work.

A recent benchmark study concluded that a 10 per cent increase in imprisonment will at the most produce a 2–4 per cent decrease in crime rates.<sup>16</sup> Closer to home, the New South Wales Bureau of Crime Statistics and Research (NSW BOCSAR) calculated that to achieve a 10 per cent reduction in burglary rates through imprisonment, they would need to increase the number of burglars imprisoned by 34 per cent, at a cost of A\$26 million per year.<sup>17</sup> The authors were careful to point out that they did not take into account the potential effect of imprisonment as a factor that might increase criminal behaviour *after* the offender was released.

It is widely accepted and established that any crime-reduction effects of imprisonment are soon subject to diminishing returns. High-rate serious offenders are more likely to have been arrested and imprisoned earlier on, so that as more people are sent to prison, they include increasing numbers of lower-rate offenders who have committed less serious offences.<sup>18</sup>



16 Spelman, W. (2006). The Limited Importance of Prison Expansion. In A. Blumstein and J. Wallman (Eds), *The Crime Drop in America* (2nd ed.). Cambridge: Cambridge University Press.

17 Weatherburn, D., Hua, J., & Moffatt, S. (2006a). How much crime does prison stop? The incapacitation effect of prison on burglary. *Crime and Justice Bulletin*, 93, Sydney: NSW BOCSAR.

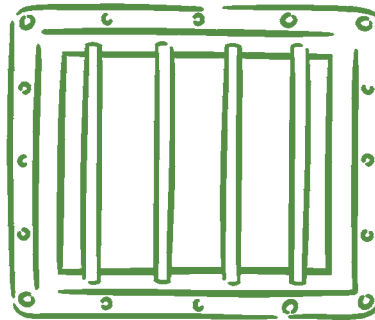
18 Donahue, J.J., & Siegelman, P. (1998). Allocating Resources among Prison and Social Programs in the Battle against Crime. *Journal of Legal Studies*, 27(1), 1–43.

### ***Myth No 4: Prisons work***

As long as prisons have been in existence, people have known they are one of the causes of crime. More than 200 years ago the English prison reformer John Howard called prisons “schools for crime”. Other effects include fracturing of family and community ties, hardening and brutalisation, and effects on mental health. As the British Home Office wrote in a 1991 white paper *Custody, Care and Justice*:

*Imprisonment breaks up families. It is hard for prisoners to retain or subsequently to secure law-abiding jobs. Imprisonment can lessen people’s sense of responsibility for their actions and reduce their self-respect, both of which are fundamental to law abiding citizenship. Some, often the young and less experienced, acquire in prisons a wider knowledge of criminal activity. Imprisonment is costly for the individual, for the prisoner’s family and for the community.<sup>19</sup>*

The combination of all those factors has led to a growth in recidivism. After remaining more or less the same year after year, 2009/10 rates of reoffending by released prisoners, and their re-imprisonment, worsened, with Māori recidivism rates consistently remaining around 10 per cent higher than those of the total prisoner population. In-prison and post-release programmes can sometimes work, but most in-prison rehabilitation is not resourced well enough, or for long enough, to make a difference.



19 Home Office. (1991). *Custody, Care and Justice*, London: HMSO.

20 Johnson, A. (2011). *Stalled: A state of the nation report from the Salvation Army*. Social Policy and Parliamentary Unit. Salvation Army of New Zealand, Fiji, and Tonga. p. 25

# The Government's Reducing Crime and Reoffending Strategy

The Government's Better Public Service Reducing Crime and Reoffending Strategy was introduced in July 2012, and set targets for both the overall reduction in crime and the reduction of reoffending.<sup>21</sup> Since then, the Government has issued regular progress updates, informing the public of its success.

The strategy has been successful on a number of fronts. First, it wrenched political parties and the punitive public away from the “tough on crime” rhetoric, the triennial bidding war, and the “rush to punish”. Second, it changed the nature of the debate from “What Should We Do?” to “How Should We Do it?” Third, it gave government agencies the opportunity to propose strategies based on their current understanding about “what works”. Finally, it presented justice sector agencies with a set of targets, which they were required to meet.

From the outset, government-generated publicity promised a major reduction in overall crime. In July 2012, Minister Judith Collins, announced the new strategy:

*2011 saw the lowest crime rate in thirty years. Resolution rates continue to increase, and even violent crime – which had been rising – has stabilised. But for a victim of crime, that one crime is too many. Even on top of recent gains, achieving these targets will mean 112,000 fewer crimes between now and 2017 – and thousands fewer victims.<sup>22</sup>*

Fast forward to March 2014, when Minister Anne Tolley in a media release referred to a drop of 17.4 per cent in *recorded* crime, and went on to say that the target of a 25 per cent reduction in reoffending by 2017, will not only result in huge benefits for communities and taxpayers, but also reduce prison numbers.

*It will mean safer streets, with 18,500 fewer victims of crime each year, as well as 4,000 fewer community offenders and **600 less prisoners in jails**<sup>23</sup>*

The following month, Minister Collins, in reporting on progress until December 2013, reported that:

*New Zealand now has the lowest crime rate since 1978 but most importantly, the results mean New Zealanders are experiencing around 56,000 fewer crimes a year, leading to fewer victims of crime.<sup>24</sup>*

21 Ministry of Justice. (ND). *Achieving Our Targets*. Retrieved from <http://www.justice.govt.nz/justice-sector/better-public-services-reducing-crime/achieving-our-targets>

22 Collins, J. (2012, July 3). *Action plan to keep crime falling*. Retrieved from <http://www.beehive.govt.nz/release/action-plan-keep-crime-falling>

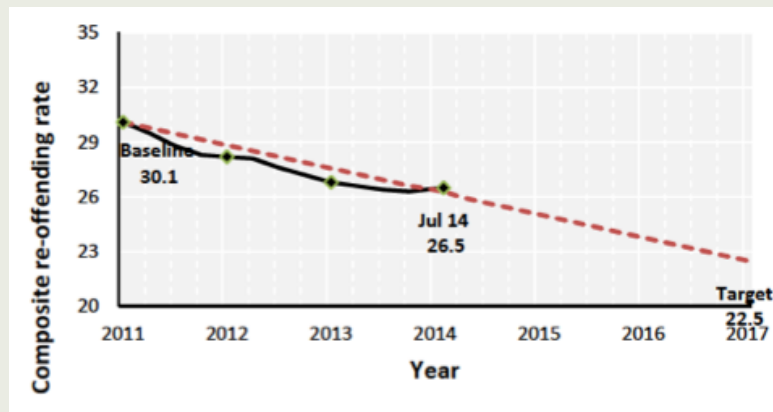
23 Tolley, A. (2014, March 24). *Excellent progress in reducing reoffending*. Retrieved from <https://www.national.org.nz/news/news/media-releases/detail/2014/03/23/excellent-progress-in-reducing-reoffending>

24 New Zealand Government. (2014, April 28). *Big strides in latest justice BPS results*. Retrieved from <http://www.scoop.co.nz/stories/PA1404/S00413/big-strides-in-latest-justice-bps-results.htm>

In October 2014, in its Brief to the Incoming Minister, the Department of Corrections reported a significant reduction in reoffending, and were confident that further increases will occur from an increase in rehabilitative interventions, and that as a result, prison numbers would plummet.<sup>25</sup>

### Rate of re-offending

In the three years from June 2011 we have already seen an 11.4 percent decrease in the rate of re-offending. We're on track to meet our target by 2017, with more of the benefits to come from our increase in interventions.



Corrections' confidence in the potential of rehabilitation programmes to reduce offender and prison numbers was based on a prediction that the prison population would decline from 2010 onwards. But that has not happened.

<sup>25</sup> Department of Corrections. (2014, November 12). *Briefing to the Incoming Minister 2014*. Retrieved from [http://www.corrections.govt.nz/resources/briefing\\_to\\_the\\_incoming\\_minister\\_2014.html](http://www.corrections.govt.nz/resources/briefing_to_the_incoming_minister_2014.html)

## Prison Numbers are Increasing Again – while the Crime Rate is Going Down

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While the total prison population was predicted to decline from 2010 onwards, that has not happened. The Department of Corrections have now identified two factors: a small increase in drug offending and violent crime, and 2013 amendments to Bail Act which shifted the burden of proof that a person was fit for bail from the Police to the offender. At the same time, offenders had to meet tighter criteria to get legal aid, with the result that many now appear before the Court without legal representation, and without the means to argue a convincing case for release. This change in legislation is now expected to lead to 350 more people a year being refused bail.<sup>26</sup>

The earlier prediction that by 2017 there will be 600 less prisoners than in 2011, is not now achievable, *unless government develops a new strategy to reduce the prison population.*

There were 8,488 prisoners in the system as at September 2011, around 312 fewer than are currently in prison. The 2013 changes in the bail laws are expected to increase the number in remand by around 350 prisoners a year. A reduction of 600 less prisoners would require the government to reduce the prison population by at least 312 prisoners, without taking into account the increases predicted as a result of removing the burden of proof to establish whether an offender should be bailed from the Police and transferring it to the alleged offenders.



26 Tougher laws blamed for prisoner rise. (2014, November 14). *The New Zealand Herald*. Retrieved from [http://www.nzherald.co.nz/politics/news/article.cfm?c\\_id=280&objectid=11358182&ref=rss](http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=11358182&ref=rss)

## False Assumptions

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Confidence in the potential for the prison population to reduce is based on two mistaken assumptions:

- (a) that in-prison rehabilitation programmes have the potential to significantly reduce reoffending, and reduce the numbers re-entering prison
- (b) that there is a connection between crime reduction and imprisonment rates; i.e. that as reoffending rates come down, so will the prison numbers.





## Does prison-based rehabilitation reduce prison numbers?

It is difficult to get effective results from prison-based rehabilitation programmes, and it is unlikely that increased in-prison rehabilitation will bring about significant reductions in reoffending. Of the 11.8 per cent reported reduction in reoffending since 2011, the percentage of ex-prisoners who re-offended has reduced by 5.51 per cent between 2011 and 2014, an average reduction of 1.8 per cent each year. The larger reduction was in the area of community sentences, where reported reoffending reduced by 13.6 per cent, or 4.5 per cent per year.

Constant publicity about the success of prisons in reducing reoffending misleads the public, and can result in the misguided belief that prison-based rehabilitation is highly successful.

There is no compelling evidence for that. A recent report from the Washington State Institute of Public Policy, a world leader in assessing the cost/benefit of correctional programmes, found that while imprisoning high-risk offenders provides a marginally positive return, imprisoning low- and medium-risk people provides a negative benefit-cost ratio.<sup>27</sup> The Department's own literature review and meta-analysis confirms the view that community-based programmes generate better outcomes than custodial programmes,<sup>28</sup> with community programmes generating effect sizes ?? approximately double those of institutional programmes.<sup>29,30</sup> Over-hyping prisons as an ideal place to conduct rehabilitation can result in a culture developing in which prison staff and indeed politicians persuade themselves that "prisons work".

Publicity that over-sells the effectiveness of prisons could well result in the government over-investing in prison-based programmes, and under-investing in community-based rehabilitation, either within Corrections, or elsewhere.

27 Washington State Institute for Public Policy. (2013, November). *Prison, Police, and Programs: Evidence-based Options that Reduce Crime and Save Money*. Olympia, WA.

28 Department of Corrections. (2009, December). *What Works Now? A review and update of research evidence relevant to offender rehabilitation practices within the Department of Corrections*. p. 47.

29 Andrews, D. & Bonta, J. (2006). *The psychology of criminal conduct* (4th ed.). Cincinnati, OH: Anderson Publishing Co.

30 Parhar, K., Wormith, J., Derksen, D. & Beauregard, A. (2008). Offender coercion in treatment: A meta-analysis of effectiveness. *Criminal Justice and Behaviour*, 35(9), 1109-1135.

## The Correlation between the Crime Rate and the Imprisonment Rate

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There is no correlation anywhere in the world between the imprisonment rate and the crime rate. The imprisonment rate is not a measure of crime; it's a measure of the consumption of punishment.

The Salvation Army's pre-election campaign video on Crime and Justice<sup>31</sup> put the facts bluntly. Of the 9,000 prisoners released annually, 4000 commit another crime within 12 months, and 3000 return to prison within 2 years. Prisons Don't Work.

According to a recent UK National Audit Office Report<sup>32</sup> countries fall into four categories:

- *Countries where crime has gone down, as the prison population has increased* – namely, England and Wales, Scotland, Northern Ireland, United States, Australia, Canada, France and, more recently, New Zealand
- *Countries where crime has increased, as the prison population has increased* – the Republic of Ireland
- *States where crime has gone down as the incarceration rate has gone down* – the Netherlands and California, and
- *Finland, where crime is up but the incarceration rate is down.*

Perhaps the clearest examples are nations that share a similar crime rate but have significant differences in imprisonment levels. In North America, both the USA and Canada have had a falling crime rate for the last twenty years. The USA has an imprisonment rate of 715 per 100,000, and Canada is currently at 111 per 100,000, just under a sixth of the US rate.<sup>33</sup>

New Zealand imprisons at a rate higher than comparable Western democratic nations. At the present time, Germany has 83 per 100,000, France has 102, Australia has 130, Scotland has 151, and England has 154 (the top of Western European league.) Over the past 20 years we have moved out of that league into a different league. Last year New Zealand was in the Eastern European league – joining the former Soviet bloc countries. We were sandwiched between Moldova at 183, and Slovakia at 203. The recent decline from 197 to 194 per 100,000 now puts us into the West African bloc, between Gabon and Namibia.

31 The Salvation Army NZFT. (2014, August 5). *Election Series E6 – Crime & Punishment*. Retrieved from [https://www.youtube.com/watch?feature=player\\_embedded&v=aTzUgPMX-74](https://www.youtube.com/watch?feature=player_embedded&v=aTzUgPMX-74)

32 UK National Audit Office. (2012, February). *Comparing Internal Criminal Justice Systems: Briefing for the House of Commons Justice Committee*.

33 Zimring, F. E. (2006). *The Great American Crime Decline*. Oxford University Press.

## The Fiscal Impact

Over the last 20 years Corrections and Justice spending have become one of the fastest growing areas of state spending. From 1994 to 2009 spending in the justice sector doubled in inflation-adjusted term. That increase has not, however, been linked to recorded crime rates, which have been broadly stable over the same period<sup>34</sup> and have declined dramatically in the last five years. Currently it costs \$1 billion a year to run Corrections. That cost has risen from a modest 1.1 per cent of the government's spending on core public services in 2004/05 to 1.4 per cent in 2009/10. Since 2005 the average cost of locking up a sentenced prisoner has grown by 38 per cent in real terms.<sup>35</sup>

In August the Justice Sector Briefing to the Incoming Minister noted that “despite significant progress within flat baselines, under the existing operating model and without new resource, the sector's ability to continue improving performance is constrained”. It went on:

*The current operating model (with fixed numbers of police, and a nation-wide network of courts and prisons) is likely to cost at least \$140 million more than current baselines by 2017/18. Sustaining an effective and trusted justice system requires a level of baseline funding that is now under considerable pressure.*<sup>36</sup>

This contrasts with a recent statement by the Minister of Corrections, the Hon Sam Lotu-Iiga, who was quoted as saying that the recent growth in prisoner numbers was not a cause for concern “at this stage” and was unlikely to affect planning or policy.<sup>37</sup>

At around that time Treasury issued a public request for information on how government could get better results for children and their families *at most risk of poor education, criminal justice and employment outcomes*.<sup>38</sup> The multiple risk factors Treasury identified included children being in families with gang and prison connections, and violent families. The connection is fairly obvious: one of the key strategies to reduce the number of children with connections to prisons is to reduce the number of prisoners.

34 Treasury. (2009). *Challenges and Choices: New Zealand's Long Term Statement of Fiscal Position*. Retrieved from <http://www.treasury.govt.nz/government/longterm/fiscalposition/2009>

35 Johnson, A. (2011). *Stalled – A State of the Nation Report from the Salvation Army*, Social Policy and Parliamentary Unit. Salvation Army of New Zealand, Fiji, and Tonga. p. 25.

36 Justice Ministry's briefing botch-up. (2014, November 14). *The New Zealand Herald*. Retrieved from [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11358630&ref=rss](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11358630&ref=rss)

37 Tougher laws blamed for prisoner rise. (2014, November 14). *The New Zealand Herald*. Retrieved from [http://www.nzherald.co.nz/politics/news/article.cfm?c\\_id=280&objectid=11358182&ref=rss](http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=11358182&ref=rss)

38 Treasury (2014, December 5). *Social Investment*. Retrieved from <http://www.treasury.govt.nz/budget/socialinvestment>

## Why Not Reduce the Prison Population?

The Government does not have, within its BPS Reducing Crime and Reoffending Plan, a goal or a strategy to reduce imprisonment – despite the Hon Bill English's 2009 declaration that “prisons are a fiscal and moral failure”.

To date, the Government has resisted the development of a strategy to reduce imprisonment, even though it is clear that reliance on a reduction in reoffending will influence that outcome.

In the meantime external and international agencies are increasingly critical of New Zealand's inability to reduce the prison population in the face of a rapidly declining crime rate.

The 2012 UK National Audit Office, in its comparative study of nations,<sup>39</sup> concluded that with the exception of the US, New Zealand compared unfavourably with similar nations for the following reasons.

- We imprison offenders at a rate 25 per cent higher than England and Wales, and 33 per cent higher than Australia.
- In NZ, between 2005 and 2009, and in the face of a stable crime rate, the rate of imprisonment rose by 15 per cent, while the percentage rate of people sent to prison increased by 25 per cent.
- Offenders were sent to prison for very short sentences; currently 70 per cent of all offenders in prison will be out in six months.
- We remand offenders in custody at a rate of 43 per 100,000, compared to 30 per 100,000 in Australia, and 25 per 100,000 in the UK.
- Māori are six times more likely to be imprisoned than non-Māori, and 11 times more likely to be remanded in custody.
- We imprison people of non-majority ethnicity more disproportionately than almost anywhere in the world.

The 2014 United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment visited New Zealand in April and May 2013. Its subsequent report was highly critical of the New Zealand's overuse of imprisonment, the New Zealand prison system, and its treatment of prisoners:

*Significant declines in the overall numbers of recorded offences and prosecutions has not led to a reduction in the prison population. More needs to be done if the ambitious governmental plan to reduce reoffending by 25 per cent by 2017 is to be achieved. There must be a great focus on programmes of social reintegration, as well as more active involvement with the Māori community.<sup>40</sup>*

39 UK National Audit Office. (2012, February). *Comparing Internal Criminal Justice Systems: Briefing for the House of Commons Justice Committee*.

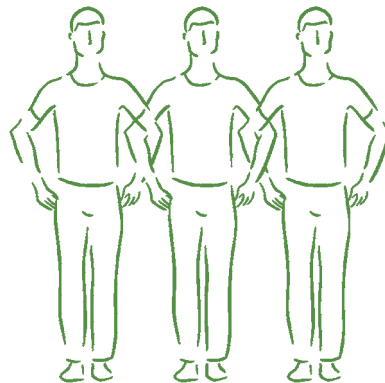
40 Subcommittee on Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. (2014, August 25). *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand*. (CAT/OP/NZL/ 1). Retrieved from [http://tbinternet.ohchr.org/Treaties/CAT-OP/Shared%20Documents/NZL/CAT\\_OP\\_NZL\\_1\\_7242\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT-OP/Shared%20Documents/NZL/CAT_OP_NZL_1_7242_E.pdf)

## The Public Will for Change

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There is growing evidence that the punitive attitudes that determined the course of a very punitive criminal justice system have run their course. What evidence there is suggests that public attitudes were never as punitive as politicians imagined. A 2013 Colmar Brunton Survey commissioned by the Ministry of Justice into Public Perceptions of Crime<sup>41</sup> showed that only five per cent of respondents agreed that prisons deterred people from committing crime, with the same number advocating for harsher treatment, mostly in the form of longer sentences. Only six per cent considered that increasing rehabilitation in prisons would increase their confidence in the justice system, while twice that number (11 per cent) favoured community-based rehabilitation.

Public opinion has a major role to play in the way in which policymakers decide on how to respond to crime. Politicians often refer to the need to respond to public demand for harsher penalties to justify punitive criminal justice policies. However the public is not a uniform entity with one single, static viewpoint. It is made up of many differing and changing opinions. A number of commentators have pointed out that, whilst a majority of people may think that the courts are generally too soft, they also tend to recognise that prison is expensive and damaging.<sup>42</sup> If given the opportunity in surveys, people tend to support alternative, non-punitive responses, particularly when questions provide sufficient details about individual cases, rather than being of a general nature.



41 Ministry of Justice. (2013). *Public perception of crime – survey report*. Retrieved from <http://www.justice.govt.nz/publications/global-publications/p/public-perceptions-of-crime-survey-report>

42 Lappi-Seppala, T. (ND). *Enhancing the Community Alternatives – Getting the Measures Accepted and Implemented*, pp. 94, 95. Retrieved from [http://www.unafei.or.jp/english/pdf/RS\\_No61/No61\\_11VE\\_Seppala3.pdf](http://www.unafei.or.jp/english/pdf/RS_No61/No61_11VE_Seppala3.pdf)

## Comment

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The purpose of the *Smart on Crime* series is to consider ways in which we can develop a more effective criminal justice system. At present, one of the major impediments is that despite a rapidly-declining crime rate New Zealand's imprisonment rate is unacceptably high in comparison with similar Western democracies. In the absence of a government strategy to reduce the level of imprisonment, we are increasingly the subject of international criticism.

This issue traverses the reasons why prison is limited in its effectiveness, and when used inappropriately and in excess, becomes a major contributor to the increase of crime. Excessive imprisonment is a major cost driver, and ties up funding that could be released, to greater effect, for primary crime prevention,

If the government chose to do so, it could **reduce** the level of imprisonment by a substantial percentage (say 15 per cent) within five years; and do so in such a way that would reduce criminal offending. In recent years, criminologists and economists have been attempting to peer inside the policy "black box" to identify how specific sentencing policies affect crime.<sup>43 44</sup> Recent research at the Washington State Institute for Public Policy, examined the benefits and costs of policies that would lower the length of stay by three months for lower, moderate, and high risk-to-reoffend inmates, and would result in a decrease by 250 of the state prison population. For low-risk offenders, the benefits of the fiscal savings outweigh the increased costs of new crimes from the policy. As a result, the benefit-to-cost ratio was \$4.34 of benefits per dollar of costs for lower risk offenders, and the measure of investment risk indicates that this strategy would pay off in about 98 per cent of the time. In other words, releasing low risk prisoners three months early would result in a reduction in crime, and a significant return on investment.

It is not however our view that a **short term** strategy to reduce imprisonment, along the lines of the government's reducing crime and reoffending strategy, is the ideal response. New Zealand has not had a comprehensive penal policy review since 1981, and we have got into this current situation through piecemeal legislation, often developed in a response to a single sentinel event, such as the Graeme Burton parole incident, or as a political gesture toward being "tough on crime".

43 Nagin, D. (2013). Deterrence in the twenty-first century: A review of the evidence. *Crime and Justice: A Review of Research*. Chicago, IL: University of Chicago Press.

44 Durlauf, S. N., & Nagin, D. S. (2010). The deterrent effect of imprisonment. In P. Cook, J. Ludwig, J. & J. McCrary (Eds.), *Controlling crime: Strategies and tradeoffs* (pp. 43-94). Chicago, IL: University of Chicago Press.

### ***Toward a Planned Strategy to Reduce Imprisonment***

Any strategy to reduce Imprisonment should be based on identified challenges and opportunities, with a thorough assessment of the situation. Such an assessment would include a review of the following:

- (a) current sentencing legislation
- (b) the operation of the criminal justice system
- (c) use of pre-trial detention
- (d) implementation of legislation in practice
- (e) sentencing policies and trends
- (f) implementation of non-custodial measures and sanctions
- (g) profiles of prisoners, and demographic trends
- (h) trends in imprisonment rates
- (i) Parole Board policy and practice
- (j) cooperation between services in the community and criminal justice authorities
- (k) access to legal aid.

### ***Gaining Public Support***

Data generated to develop strategies and policies should also be used to raise the awareness of politicians and the public and to stimulate a public debate on:

- (a) the use of imprisonment
- (b) the cost and impact of imprisonment on individuals, families and communities
- (c) achieving a balance between custodial and non-custodial measures
- (d) the role of the community in the implementation of strategies to reduce overcrowding in prisons
- (e) establishing mechanisms for media cooperation.

### ***Let's Focus on Principles***

Current policy debates about sentencing and the use and appropriateness of imprisonment tend to evade questions of principle. Yet questions of principle, whether articulated or implied, imbue penal matters. In a definitive report,<sup>45</sup> the Scottish Consortium on Crime and Criminal Justice identified three principles as appropriate to guide future sentencing policies and practices: parsimony, inclusion and rehabilitation.

45 Scottish Consortium on Crime and Criminal Justice. (2005). *Reducing the Prison Population: Penal Policy and Social Choices*. Retrieved from [http://www.scccj.org.uk/wp-content/uploads/2011/08/Reducing\\_Prison\\_Population\\_.pdf](http://www.scccj.org.uk/wp-content/uploads/2011/08/Reducing_Prison_Population_.pdf)

### **Parsimony**

The principle of parsimony suggests using the least intrusive, oppressive or costly sanction that will serve the aims of sentencing. A key implication of this principle is that if an offence is currently punished by a severe sanction, notably by imprisonment, we should ask whether it is clear that a lighter sanction, notably in the community, would be less effective.

### **Inclusion**

Offenders are, and must be treated as, citizens – as members of the political community. If the principle of inclusion is followed through then we would favour modes of sentencing that sustain, or at the very least do not appear to deny, that membership.

### **Rehabilitation**

Punishment must come to an end for all, or at least almost all, offenders. At a minimum, sentences should not detract from an offender's ability to integrate into ordinary life and should if possible assist in that process.

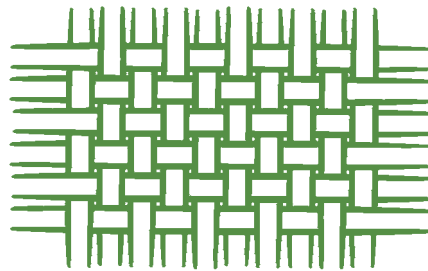


## Conclusion

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In the 1970s New Zealand was considered an international leader in criminal justice reform. Through the leadership of the Hon Ralph Hanan, and Secretary for Justice, John Robson, we articulated a thoughtful, humane and principled criminal justice system. We no longer hold or have that reputation, but it is not too late to reclaim our position within western democracies.

We have been working hard to improve the operational effectiveness of the criminal justice system. We are paying some attention to reduce the drivers and causes of crime. What we have failed to do is to develop a justice system that reflects the collective values and attitudes of the nation – a strategy to reduce the current level of imprisonment, is a fundamental step in that direction – and clarifying our values and principles are very much part of that.



## Recommended Reading

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Justspeak. (2014). *Unlocking Prisons*. A comprehensive report on how we can improve New Zealand's prison system. Retrieved from <http://justspeak.org.nz/announcing-unlocking-prisons-report/>

Pratt, J. (2013). *A Punitive Society: Falling Crime and Rising Imprisonment in New Zealand*. Wellington, New Zealand: Bridget Williams Books.

Working Group. (2014, July). *Strategic Review of Penal Policy: a report by a Working Group to the Minister of Justice and Equality*. Ireland. Retrieved from <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf/Files/Strategic%20Review%20of%20Penal%20Policy.pdf>

Report of the Scottish Consortium on Crime and Criminal Justice. (2005). *Reducing the Prison Population: Penal Policy and Social Choices*. Retrieved from [http://www.scccj.org.uk/wp-content/uploads/2011/08/Reducing\\_Prison\\_Population\\_.pdf](http://www.scccj.org.uk/wp-content/uploads/2011/08/Reducing_Prison_Population_.pdf)

Report of the Scottish Prisons Commission. (2008). *Scotland's Choice: Rethinking Imprisonment*.

United Nations Office on Drugs and Crime. (2007). *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*.

United Nations Office on Drugs and Crime. (2013). *Handbook on Strategies to reduce overcrowding in prisons*.

Allen, R. (2007). Excessive Imprisonment Does nothing to Improve Public Safety. *International Centre for Prison Studies*.

The Pew Center. (2008). *One in One Hundred in Prison in the USA*.

Prison Reform International. (2013). *The Use and Practice of Imprisonment: Current Trends and Future Challenges*.

The JFA Institute. (2008). *Unlocking America: Why and How to Reduce Imprisonment in America*.





*What Do I Have To Do To Change Your Mind?* is the second in a series of contributions to encourage public discussion on criminal justice issues.

An ePub version of this document is available [www.rethinking.org.nz](http://www.rethinking.org.nz)



*The Robson Hanan Trust administers the Rethinking Crime and Punishment project, and Justspeak, a non-partisan network of young people who want change in our criminal justice system.*

*It seeks a tolerant, inclusive and safe society, marked by respect for the inherent dignity of all of its members, community safety, and the absence of violence.*

*Its focus is on promoting a sustainable, effective, and humane criminal justice system.*

