

**Crime Inquiry 2014
Submission 051**

18 July 2014

Our ref 339/69

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email: lacsc@parliament.qld.gov.au

Dear Research Director

Inquiry on strategies to prevent and reduce criminal activity in Queensland

Thank you for inviting the Society to provide feedback for the Committee's inquiry on strategies to prevent and reduce criminal activity in Queensland.

We provide the following as preliminary comments on the terms of reference. This submission has been prepared with the assistance of the Society's Criminal Law and Children's Law Committees. We note that the submission is not exhaustive given the breadth of issues that can be canvassed in this Inquiry, and we reserve the right to provide further comments.

We request information from the Parliamentary Committee on whether the Parliamentary Committee will issue further documentation, such as an Issues Paper or interim Report, to elicit feedback from stakeholders on specific issues and recommendations which are being considered by the Parliamentary Committee. We suggest that this approach would be useful for stakeholders.

Please contact our policy solicitors for further inquiries.

Yours faithfully



Ian Brown
President



Submission

Inquiry on strategies to prevent and reduce criminal activity in Queensland

Queensland Parliamentary Legal Affairs and Community Safety Committee

A Submission of Queensland Law Society

18 July 2014

Table of Contents

1. The trends and type of criminal activity in Queensland, having regard to available crime statistics and issues in relation to unreported crime.....	4
2. The social and economic contributors to crime	7
3. The impacts of this criminal activity on the community and individuals, including the social and economic impacts	8
4. The effectiveness (including the cost effectiveness) of crime prevention strategies, including imprisonment, justice reinvestment, early intervention, alternative dispute resolution	8
5. Other models in national and international jurisdictions which could be implemented in Queensland.....	17
6. The experiences of Queenslanders with regard to the criminal justice system, including the experiences of victims of sexual violence and/or domestic violence including their interactions with the Queensland Police Service, the courts, prosecuting authorities, legal and support services and compensation processes.....	20
7. Possible strategies to increase collaboration and co-operation between various participants in the criminal justice system.....	22

1. The trends and type of criminal activity in Queensland, having regard to available crime statistics and issues in relation to unreported crime

The Society notes that information on crime can be found from various sources including:

- Queensland Government statistician's office crime and justice statistics¹
- Queensland Police Service Online crime data map² and
- Queensland Police Service Annual Report and (until recently) Annual Statistical Review.³

The Society is supportive of the public being well informed of trends and statistics on crime. We note that whilst reported offence statistics are important, providing information on conviction rates and sentencing is equally important to provide a holistic picture of crime.

Statistics alone without analysis or explanation can be misleading. For example, Professor Terry Goldsworthy published an article in January 2014 analysing the statistics on the effectiveness of Queensland's outlaw motorcycle gang laws introduced in October and November 2013.⁴ The analysis highlights anomalies with the statistics, including:

- Of the 817 charges brought between 6 October 2013 and 5 December 2013 deemed to be part of Operation Resolute, only 28 (3.4%) are considered "organised crime" charges such as drug trafficking and extortion
- *"In Queensland, 73,309 offences were reported in October and November 2013. Bikies accounted for only 1% of these offences"*
- *"The offences laid against bikies account for just 0.8% of total drug supply offences in Queensland. For trafficking in dangerous drugs they account for 5% of offences. For production of dangerous drugs they accounted for only 1.3% of total offences"*
- *"It is easy to claim someone is a participant in arrest figures and media releases. It is not so easy to do this when subject to the scrutiny of the criminal courts, where actual evidence is required to be proven to requisite standards. In a number of instances, claims of bikie gang membership evaporated when the courts required proof."⁵*

We suggest that measures must be taken to enhance reporting of statistics and information to provide the full picture of all stages of the interaction of offenders (alleged or otherwise) with the criminal justice system.

The former Sentencing Advisory Council was tasked with providing information to the community to enhance knowledge and understanding of matters relating to sentencing, and to publish information relating to sentencing.⁴ We are supportive of such functions to ensure that all relevant information, from police data to court outcomes, can be compiled and shared with

¹ Queensland Government statistician's office, found at: <http://www.qgso.qld.gov.au/subjects/society/crime-justice/index.php>

² Queensland Police Service, found at: <http://www.police.qld.gov.au/forms/crimestatsdesktop.asp>

³ Queensland Police Service, found at <http://www.police.qld.gov.au/services/reportsPublications/>

⁴ Terry J. Goldsworthy Dr. "The end justifies the means: why Queensland is losing the bikie war" *The Conversation* (2014) found at: <https://theconversation.com/the-end-justifies-the-means-why-queensland-is-losing-the-bikie-war-21948>

⁵ Ibid.

the public to enhance knowledge of crime. We submit that the Parliamentary Committee recommend that these functions should continue to be carried out, noting that the Society did not support the disbanding of the Sentencing Advisory Council in 2012.

The Society has long advocated that changes to the criminal law need to be based on empirical evidence and objective data, rather than anecdotal evidence, uninformed community perceptions or broad claims about 'what the public want'.

We suggest that the Parliamentary Committee should consider whether there would be benefit in establishing an independent body (or a partnership with an existing body, such as a university⁶) to regularly publish analysis of Queensland crime & sentencing data (not just raw data from various sources), with a view to reducing crime and recidivism.

For example, the NSW Bureau of Crime Statistics and Research aim is to:

- *identify factors that affect the distribution and frequency of crime;*
- *identify factors that affect the effectiveness, efficiency or equity of the NSW criminal justice system;*
- *ensure that information on these factors and on crime and justice trends is available and accessible to our clients.*⁷

The main activities are:

- *developing and maintaining statistical databases on crime and criminal justice in NSW;*
- *conducting research on crime and criminal justice issues and problems;*
- *monitoring trends in crime and criminal justice;*
- *providing information and advice on crime and criminal justice in NSW.*⁸

As has been noted, the formulation of policy and legislation in the area of criminal justice is often claimed by government to be a response to community values or perceptions. Concepts such as values and perceptions are nebulous however in the context of criminal justice the main issues can probably be distilled as follows:

- a perception that criminal offending is increasing
- a perception that courts when dealing with offenders:
 - do not appropriately apply the law to ensure that offenders are adequately punished
 - encourage repeat or other offending behaviour through lenient sentencing
 - do not reflect community values in imposing sentences seen as inadequate.

Are community perceptions appropriately informed and accurate? There is cogent evidence to suggest that such is not the case. This is demonstrated by Australian and overseas research. A study published by Professor Kate Warner from the University of Tasmania asked jurors

⁶ Such as the Crime Research Centre at the University of Western Australia, found here: <http://www.law.uwa.edu.au/research/crc>

⁷ About us webpage, NSW Bureau of Crime Statistics and Research, http://www.bocsar.nsw.gov.au/bocsar/bocsar_aboutus.html

⁸ Ibid.

(who were fully informed about the facts of the case) to assess the appropriateness of the judge's sentence. More than half the jurors surveyed would have imposed a more lenient sentence than the trial judge imposed. When the jurors were informed of the actual sentence, 90% said that the judge's sentence was (very or fairly) appropriate.⁹

The NSW Parliamentary Research Service published a study in June 2014 "Public opinion on sentencing: recent research in Australia."¹⁰ Some of the key findings of that study include:

- a discussion of research from Victoria that when given more information relevant to the sentencing process, people become less punitive
- a discussion of research from New South Wales indicating that between 2007 and 2012, the number of people who thought that sentences were *too lenient* reduced from 66% to 59% and those who thought that sentences were *much too lenient* reduced from 37% to 29% with evidence to suggest that people were becoming more knowledgeable about criminal offending trends and rates of imprisonment
- a discussion of a national study which found that public opinion on sentencing "*is more diverse and complex than simple opinion polls would suggest... The nuanced opinions expressed... highlights the problematic nature of gauging public opinion using top-of-the-head style opinion polls... It has been suggested that alternative methodologies are needed that tap into informed judgements as opposed to top-of-the-head opinions.*"
- A finding that when asked to deliberate on cases, a majority of people (56%) select a sentence that is the same or more lenient than the judge's sentence, and
- A conclusion that:
 - it is important for policy makers to be aware of the nuances of public opinion on sentencing and of the difference between informed and uninformed opinion, and
 - there is an identified need to better educate the public and the media on sentencing and the criminal justice system.

The NSW government has pursued initiatives to educate the public as outlined above. The NSW Department of Justice and Attorney General has published a Sentencing Information Package which outlines:

- the purpose of sentencing
- the process of the sentencing hearing
- sentencing options
- explaining parole, and
- the appeals process.¹¹

⁹ [1] Warner K, public judgement on sentencing: final result from the Tasmanian Jury Sentencing Study. Trends and issues in crime and criminal justice, Australian Institute of Criminology, February 2011.

¹⁰ Public opinion on sentencing: recent research in Australia, Lenny Roth, NSW Parliamentary Research Service, 2014, found: [https://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/Publicopiniononsentencing:recentresearchinAustralia/\\$File/public%20opinion%20on%20sentencing.pdf](https://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/Publicopiniononsentencing:recentresearchinAustralia/$File/public%20opinion%20on%20sentencing.pdf)

¹¹ Sentencing Information Package, found here: http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/sentencing/documents/pdf/01_sentencinginfopackmay2011.pdf

The Queensland Government website also provides some information in relation to sentencing, however not as comprehensively nor as easily accessible as the NSW resource. The Queensland Government website also contains a link to “A comprehensive sentencing profile developed in 2011 covers Queensland Court Outcomes 2006-10” however the link cannot be accessed.

In the view of the Society, any discussion of strategies to prevent and reduce criminal activity must involve consideration of:

- whether and to what extent community attitudes are evidence based, and
- steps to educate the community and those participating in the criminal justice system as to:
 - the incidence of crime and criminal offending trends
 - criminal offending behaviours particularly by reference to demography e.g. indigenous offending, juvenile offending etc. and
 - the purpose and process of sentencing and sentencing outcomes.

2. The social and economic contributors to crime

The Society considers that understanding the social and economic contributors to crime, and then initiating targeted strategies that focus on addressing these contributors, is important. We note research which may assist in consideration of these issues:

- What Causes Crime?, NSW Bureau of Crime Statistics and Research, February 2001¹²
- Understanding and preventing Indigenous offending, Indigenous Justice Clearinghouse, 2010¹³
- New Zealand Ministry of Justice project on addressing the drivers of crime,¹⁴ and
- Youth Justice: Criminal Trajectories, Australian Institute of Criminology, 2003.¹⁵

Our legal practitioner members, who interact on a daily basis with the criminal justice system, have identified some factors which they see as contributing to crime including: family factors including exposure to domestic and sexual violence, mental health issues, socioeconomic status, disengagement from education, unemployment and drug and alcohol abuse. We also highlight significant concerns with the overrepresentation of Aboriginal and Torres Strait Islander peoples in the justice system.

Addressing factors that contribute to crime (such as addressing drug and alcohol abuse issues through rehabilitation) requires an early intervention approach, which focuses not just on legislative responses and dealing with offending behaviour, but on assistance to keep people out of the justice system. In this regard we note the work of the New Zealand Ministry of Justice on addressing drivers of crime, which we will discuss further.

¹² Don Weatherburn, Paper found at: <http://www.olsc.nsw.gov.au/agdbasev7wr/bocsar/documents/pdf/cjb54.pdf>

¹³ Indigenous Justice Clearinghouse, Troy Allard, paper found at: <http://www.indigenousjustice.gov.au/briefs/brief009.pdf>

¹⁴ NZ Ministry of Justice webpage found at: <http://www.justice.govt.nz/justice-sector/drivers-of-crime>

¹⁵ Mark Lynch, Julianne Buckman and Leigh Krenske, paper found at: <http://www.aic.gov.au/publications/current%20series/tandi/261-280/tandi265.html>

Put another way, the resources being invested into the criminal justice system need to be targeted at the 'front end' of criminal behaviour (ie the causes), rather than the back end (ie the consequences). This has been the consistent view of practitioners, academics and sociologists for many years. The difficulty with ensuring this type of focus appears to be largely a political one. The rewards are real, and lasting, but they are subtle, and often times run counter to the 'tough on crime' mantra that has become commonplace in political dialogue. In reality, the community would benefit enormously from programs which address social and economic contributors to crime, thereby stopping or reducing crime, rather than a focus on only dealing with crime once it has occurred.

We also particularly note the brief prepared by the NSW Bureau of Crime Statistics and Research which provides a snapshot of various causes of crime. We agree that crime is "opportunistic", and occurs where a range of factors are present which incentivise crime. The factors identified in the paper include:

*lax physical security, lax personal security, lax law enforcement or a low perceived risk of apprehension, high levels of alcohol consumption, open illicit drug markets, attractive commercial or residential targets and easy opportunities for selling or disposing of stolen goods.*¹⁶ [references omitted]

The opportunities that incentivise crime must also be addressed, particularly in terms of ensuring strong policing to prevent crime from taking place. There is a need to ensure proper resourcing for all aspects of the justice system - police enforcement, prosecutions and the courts - to ensure that crime is prevented and, where it occurs, dealt with appropriately.

3. The impacts of this criminal activity on the community and individuals, including the social and economic impacts

The Australian Institute of Criminology collects information regarding the major costs of crime on the community.¹⁷ We also note a 2013 study, "The monetary cost of offender trajectories: Findings from Queensland (Australia)",¹⁸ which is relevant to this question (and which we have referred to in later sections of this submission).

4. The effectiveness (including the cost effectiveness) of crime prevention strategies, including imprisonment, justice reinvestment, early intervention, alternative dispute resolution

The Society provides views in relation to each strategy outlined in the terms of reference.

a) Imprisonment

Imprisonment is an important aspect of the criminal justice system, acting as a deterrent for criminal behaviour and reflecting the community's denunciation of the offending behaviour. Imprisonment represents the most severe form of criminal penalty in our society.

¹⁶ NSW Bureau of Crime Statistics and Research, What Causes Crime, 2001, found at:

<http://www.bocsar.nsw.gov.au/agdbasev7wr/bocsar/documents/pdf/cjb54.pdf>

¹⁷ Costs of crime webpage found at: <http://www.aic.gov.au/publications/current%20series/cfi/161-180/cfi169.html>

¹⁸ Troy Allard et al, Griffith University, 2013, found at: <http://www98.griffith.edu.au/dspace/handle/10072/57216>

Having noted this, we highlight that research shows that imprisonment is not a strong deterrent for future criminal behaviour and has little to no impact on re-offending rates. The effectiveness of imprisonment as a crime prevention strategy must therefore be considered. The Victorian Sentencing Advisory Council in 2011 undertook significant research, 'Does Imprisonment Deter? A Review of the Evidence.'¹⁹ Among its findings were that:

- *The evidence from empirical studies suggests that the threat of imprisonment generates a small general deterrent effect. However, the research also indicates that increases in the severity of penalties, such as increasing the length of imprisonment, do not produce a corresponding increase in the general deterrent effect.*
- *The research shows that imprisonment has, at best, no effect on the rate of reoffending and is often criminogenic, resulting in a greater rate of recidivism by imprisoned offenders compared with offenders who received a different sentencing outcome. Possible explanations for this include: prison is a learning environment for crime, prison reinforces criminal identity and may diminish or sever social ties that encourage lawful behaviour and imprisonment is not an appropriate response to the needs of many offenders who require treatment for the underlying causes of their criminality (such as drug, alcohol and mental health issues). Harsh prison conditions do not generate a greater deterrent effect, and the evidence shows that such conditions may be criminogenic.²⁰*

These are significant issues which must be considered, particularly noting that imprisonment can result in greater rates of recidivism. We submit that these findings should be considered to ensure that the use of imprisonment is targeted, and is not used as a "one size fits all" approach to deterrence.

In this context we note that there have been a number of mandatory minimum legislative penalty regimes introduced in recent years, some of which have attracted mandatory imprisonment terms. The Society's long-held position is that the current sentencing regime in Queensland, having at its core a system of judicial discretion exercised within the bounds of precedent, is the most appropriate means by which justice can be attained on a case by case basis. We **enclose** Society's position on mandatory sentencing for your reference. We submit that a "one size fits all" approach to justice will not achieve reductions in crime and recidivism.

In addition we note our objection to recent legislation which has removed the principle of detention as a last resort from the *Penalties and Sentences Act 1992* and the *Youth Justice Act 1992*, and the inclusion of express provisions that the court must *not* have regard to any principle that a sentence of imprisonment should be imposed only as a last resort.²¹ This fetter on judicial discretion is, in the view of the Society, inappropriate and undermines the ability of the Court to make sentencing orders that are proportional and appropriate. We submit that the legislation should not prohibit the Court from having regard to this principle, and submit that these provisions should be removed.

Furthermore, the costs of incarceration must be carefully considered. In 2012-2013 the average daily prison population was 5849, at a cost of \$ 315.52 per prisoner per day

¹⁹ VIC Sentencing Advisory Council paper found at: <http://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Does%20Imprisonment%20Deter%20A%20Review%20of%20the%20Evidence.pdf>

²⁰ Ibid.

²¹ Legislation amended under the [Youth Justice and Other Legislation Amendment Act 2014](#)

(contrasted with \$14.09 per prisoner per day for community corrections).²² This equates to imprisonment costs of \$1,845,476.48 for all prisoners per day, or \$673,598,915.20 per annum. We note that the Queensland Budget 2014/15 contains \$63.1M over five years to accommodate growth in prison numbers (in addition to \$64.5M over three years in capital costs). From a fiscal perspective, we suggest the Parliamentary Committee should examine viable alternatives to imprisonment in circumstances where community safety is maintained and rehabilitation can be promoted.

In July 2013, various media outlets reported that the Government was considering removing court-ordered parole and suspended sentences.²³ The Society would be deeply concerned by any such moves. We consider that these are integral sentencing options for the court which must continue to be available.

It should be noted that when the New Zealand government abolished suspended sentences, the prison population grew by 23% in the first two years.²⁴ A 2009 New South Wales study compared suspended sentences with prison sentences and found no evidence that imprisonment was the greater deterrent and that, for those who had already been to prison, being sent back to prison actually increased the risk of further offending. The conclusion: suspended sentences were more effective in these circumstances.

Similarly, we are supportive of court ordered parole as an effective sentencing option. Queensland Corrective Services has confirmed that court ordered parole is its most successful supervision order, and that in 2012-2013, 72% of these orders were completed without cancellation or reconviction.²⁵ It has also been identified that Court ordered-parole has reversed the growth in short sentence prisoners, delaying the need to invest in prison infrastructure. Given the significant investment identified in the budget forward estimates relating to the growth in the prison population and increased capital expenditure, these positive outcomes are a further argument in support of retaining court ordered parole. We submit that the Committee should commit to ensuring that these sentencing options remain in place.

Further, we submit that the Parliamentary Committee should consider recommending an extension of court ordered parole to sentences of 5 years or less, which would align the regime of court ordered parole with suspended sentences.²⁶ Importantly, this will also ensure a greater level of supervision for offenders when released into the community, given the extensive conditions that can be placed on a person subject to court ordered parole.

b) Justice reinvestment

The Law Council of Australia has described justice reinvestment as:

Justice reinvestment essentially refers to the diversion of funds that would ordinarily be spent on keeping individuals in prison, and instead, investing this money in the

²² Report on Government Services, Justice (Volume C), Tables 8A.39, 8A.7, 8A.44 and found at:

http://www.pc.gov.au/data/assets/pdf_file/0016/132325/rogs-2014-volumec-justice.pdf

²³ Media articles such as: <http://www.abc.net.au/news/2013-07-31/attorney-general-orders-review-into-qlds-sentencing-laws/4855074>

²⁴ Sentencing Advisory Council, 'Suspended Sentences in Victoria: Monitoring Report', 2010

²⁵ The importance of court-ordered parole, Balanced Justice fact sheet, August 2013, found at:

<http://www.balancedjustice.org/the-importance-of-court-ordered-parole.html>

²⁶ ss144 and 160B, Penalties and Sentences Act 1992

development of programs and services that aim to address the underlying causes of crime in communities that have high levels of incarceration. It has been described as a “data-driven” and comprehensive approach which “makes us think more broadly and holistically about what really leads to crime and how we can prevent it.”²⁷ [references omitted]

The significant potential benefits of justice reinvestment have been recognised in the United States where 16 states have signed up with the Council of State Governments Justice Centre, the Justice Reinvestment coordination body, to investigate or apply Justice Reinvestment schemes and other states have followed Justice Reinvestment through different avenues. In Australia there is increasing recognition of the benefits that justice reinvestment can bring.

The Society is supportive of the use of justice reinvestment.

We **enclose** our previous submission to the Federal Senate Legal and Constitutional Affairs References Committee Inquiry into the value of a justice reinvestment approach to criminal justice in Australia dated 1 March 2013. We consider that programs and mechanisms which address the underlying causes of criminal behaviour should be utilised in the justice system. The Society supports the justice reinvestment focus on evidence based policy making, and the processes involved in evaluating the quality and impact of new policy on an ongoing basis. Our submissions highlight a range of specific issues for Queensland, particularly using the justice reinvestment approach to address the overrepresentation of Aboriginal and Torres Strait Islander (ATSI) people in custody. The following statistics highlight the extent of the problem in Queensland:

- In 2013, ATSI persons were 12.2 times more likely than non-ATSI persons to be in prison in Queensland.²⁸
- In 2013, ATSI prisoners made up 31% of the prison population.²⁹
- Specifically for young people in Queensland, the Commission for Children and Young People and Child Guardian report 2011/2012 report states:
 - *ATSI children represent 6.4% of the total population of young people aged 10-17 in Queensland, yet offences by ATSI young people were:*
 - *17 times more likely to result in an Arrest by police,*
 - *12 times more likely to result in Childrens Court proceedings,*
 - *19 times more likely to result in a youth justice supervision order to be given by the courts,*
 - *33 times more likely to result in a sentenced detention order.*
 - *Aboriginal and Torres Strait Islander young people aged 10 to 13 years were detained in un-sentenced Detention (including Remand) at a rate 29 times that of non-Indigenous young people the same age.*³⁰

²⁷ Law Council of Australia submission to the Senate Inquiry into the value of a justice reinvestment approach to criminal justice in Australia, March 2013, page 5, found at: <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2700-/2704%20-%20Value%20of%20a%20justice%20reinvestment%20approach%20to%20criminal%20justice%20in%20Australia.pdf>

²⁸ Prisoners in Queensland 2013, Queensland Statistician, found at: <http://www.qgso.qld.gov.au/products/briefs/prisoners-aus/prisoners-aus-2013.pdf>

²⁹ Prisoners in Australia, 2013 found at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4517.0main+features412013>

³⁰ Child Guardian Report: Youth Justice System 2011/12, Commission for Children and Young People and Child Guardian, archived, found at: <http://pandora.nla.gov.au/pan/14014/20140117->

The Society considers these issues to be urgent and in need of reform to ensure rates of remand and imprisonment are reduced.

We note that the Senate Inquiry into the use of justice reinvestment was supportive of considering enhanced use of justice reinvestment.³¹

We also **enclose** information from the United States of America where justice reinvestment strategies have been used successfully in a number of jurisdictions.

As an example, we reproduce here below a case study on Texas published in a recent report from the Justice Committee of the House of Commons in the UK Parliament. The case study highlights the successful outcomes the strategy achieved in Texas (in terms of reducing recidivism, crime rates and cost effectiveness):

Texas case study

Texas has long been regarded as a state with some of the "toughest" criminal justice policies in the US. In 2007, its prison population was projected to grow by more than 14,000 people over a five-year period, costing taxpayers an additional \$523 million for the construction and operation of new prison facilities. With bipartisan leadership, policymakers identified and enacted alternative strategies in an attempt both to increase public safety and avert the projected growth in the prison population at a net saving to the state as they would cost only \$240m. These included investing in: parole and probation policies; expanding the capacity of community-based treatment programmes and residential drug and alcohol treatment facilities; expanding drug courts and other specialist courts to place offenders who committed minor crimes in treatment programmes; and expanding the nurse-family partnerships programme (an evidence-based, community maternal health initiative, referred to in the UK as family nurse partnerships, that serves low-income women pregnant with their first child) using savings generated by reductions in prison expenditure with a view to improving outcomes for low-income children and families. At the same time funding was authorised for the construction of three new prisons which could proceed only if the new policies and programs were not effective. This has not been necessary. Furthermore, one prison has since been closed and the legislature has authorised the closure of two more. Texas now has the lowest crime rate since 1968.³²

We commend serious consideration of employing justice reinvestment strategies in Queensland, noting its potential positive impact on reoffending rates and reducing costs.

c) *Early intervention*

The Society expresses disappointment that the state's three specialist courts (Drug Court, Murri Court and Special Circumstances court program), aimed at diversion of offenders from

1126/www.ccypcg.qld.gov.au/about/news/2014/january/Commission-releases-Child-Guardian-Report-Youth-Justice-System2011-12.html

³¹ Senate Inquiry Report found at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/~media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2010-13/justice_reinvestment/report/report.ashx

³² Crime reduction policies: a co-ordinated approach?, UK Parliamentary Justice Committee report, June 2014, found at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/307/30702.htm>

the justice system, have been abolished. The Society considers that early intervention through diversionary programs is essential.

There are currently pathways for diversion through the Magistrates Court Diversion Program, Queensland Courts Referral and the Indigenous Sentencing List.³³ As these are relatively recent innovations, we are not aware of relevant data as to the outcomes of the programs, and whether there is adequate and sustainable funding. We request that the Parliamentary Committee investigate further these programs and provide relevant information to stakeholders for further consideration.

Early intervention is particularly important for youth offending behaviour. The Society considers that a wider range of early intervention strategies should be available, and existing strategies should be better utilised. We highlight the importance of police cautioning, youth justice conferencing and drug diversion as important options for early intervention.

We note a 2013 study, *The monetary cost of offender trajectories: Findings from Queensland (Australia)*. The study found that a chronic offender costs between \$186,366 and \$262,799 by 26 years old, with 60% of costs accounted for by the criminal justice system. Importantly, a chronic offender costs over 20 times more than offenders in low offending groups.³⁴ The study suggests that there could be potential savings with expanding the use of diversionary practices to include adults:

Therefore, most offenders only have one or two officially recorded offences but there is a small group of costly offenders who begin offending early in life or during adolescence and offend at high rates. These findings highlight the potential savings that would result from extending the use of diversionary practices to include adults who have had limited contact with the system or who commit relatively less serious offences. On average, each police caution costs \$1,103 while each Magistrates finalisation costs \$3,090 plus any supervision costs. Savings resulting from the more widespread use of diversion could be redirected to ensure that appropriate evidence-based programs are available for those who commit more serious offences or for those who have more sustained contact with the criminal justice system. There are a range of therapeutic interventions which focus on the family or the ecological environments of young people which are quite effective for reducing offending (see Ogilvie and Allard, 2011). While these programs have different target populations and involve different practices, evidence from meta-analyses suggests that programs focusing on the family reduce offending by between 13.3% and 52.0% (Aos et al., 2001; Drake et al., 2009; Latimer, 2001; Lipsey and Wilson, 1998; Welsh and Farrington, 2006; Woolfenden et al., 2001). Programs which adopt a Multi-Systemic Therapy (MST) framework reduce offending by between 7.7% and 46.0% (Aos et al., 2001; Curtis et al., 2004; Lipsey and Wilson, 1998; Littell et al., 2005). Given the efficacy of these programs, they are likely to be cost-effective particularly if targeted towards those on costly chronic offender trajectories.³⁵

Further, the study states:

Decision-makers can use information about the cost of programs and the cost of offenders to assess the likely cost-benefits of programs. For example, an early intervention program

³³ Queensland Courts, found at: <http://www.courts.qld.gov.au/courts/courts-innovation-programs>

³⁴ Troy Allard et al, Griffith University, 2013, <http://www98.griffith.edu.au/dspace/handle/10072/57216>

³⁵ Ibid.

could target 100 potential chronic offenders, cost \$10,000 per participant and conservatively be held to prevent 10% of chronic offenders from developing a life of crime. This program could produce \$1.4 million in savings by the time targeted individuals turned 26 years old, over half of which would be direct savings for the criminal justice system. It should be noted, however, that savings to the criminal justice system could be more modest depending on whether reductions were such that fixed costs could be reduced or off-set by reductions in future costs.³⁶

A more concerted focus on early intervention and diversion for both adults and young people is a crucial step in preventing crime, and we note the potential for costs savings.

We also note that the government is undertaking a trial of Sentenced and Early Intervention Youth Boot Camps, with the trial due to run until late 2015. The Society supports non-custodial sentencing options for children and young people. In our view, it is imperative to maintain the principle that detention should be used as a last resort. We consider that for any sentencing option to be successful, including the Boot Camp Order, it must be based on empirical data and evidence based research. The evaluation of the boot camp trial should ensure an ongoing, detailed analysis of the relevant (and extensive) research in this area. Particular focus should be on deficiencies in the boot camp model identified in the research and ensuring that such deficiencies are identified and reported against in the Queensland context. This will ensure evidence based outcomes are reported on and taken into consideration when the efficacy or otherwise of youth boot camps is evaluated.

For example, a study from a US Department of Justice, "Correctional Boot Camps: Lessons From a Decade of Research" published in 2003, highlighted the following issues for consideration by policy makers:

- *Building reintegration into the community into an inmate's individual program and reentry plans may improve the likelihood he or she will not commit a new offense.*
- *Programs that offered substantial discounts in time served to those who completed boot camps and that chose candidates sentenced to serve longer terms were the most successful in reducing prison populations. Chances of reducing recidivism increased when boot camp programs lasted longer and offered more intensive treatment and postrelease supervision, activities that may conflict with the goal of reducing population.³⁷*

Further a more recent study has suggested that:

The purposes of juvenile boot camps is to rehabilitate young offenders, but current programs are punitive rather than treatment oriented (Marcus-Mendoza et al., 1998). Education and rehabilitation should be emphasized more than punishment functions. An emphasis on education may cause a decrease in recidivism among program graduates.

The focus of the camps should be changed from a punitive stance, since it is clear that punitive programs do not reduce recidivism. In addition, boot camps and aftercare programs should address family problems so that a new bond can be generated between the parents and the program graduates.

³⁶ Ibid.

³⁷ Paper found here: <https://www.ncjrs.gov/pdffiles1/nij/197018.pdf>

Trends show that juvenile boot camps will continue to increase and large amounts of tax dollars will be spent on their operation. Therefore, more careful and focused analyses should be done and future research should try to determine what works and what does not work. Moreover, the best practices of boot camps should be studied and replicated to increase consistency and increase the chance of success of other boot camp programs. Successful boot camps will return responsible and law-abiding youth to the community.³⁸

The Australian Institute of Criminology (AIC) has identified a number of policy recommendations to “minimise the damage and maximise any positive outcomes of boot camps”:

- defining goals and specifying the client group
- structuring the length and nature of the program, including aftercare, in accordance with those goals
- having the referring authority independent of the courts to stem net-widening
- selecting staff appropriate to the clientele and their needs, in terms of race, gender, and specialist knowledge
- ensuring adequate staff numbers and their careful training and monitoring to minimise abuse
- protecting the health and welfare of inmates and staff, and the liability of staff and the state, with appropriate legislation and/or regulations
- considering boot camps within a broader framework of equal opportunity, and
- a commitment to evaluation.³⁹

As boot camps have been in operation in Queensland since early 2013, we submit that consideration be given to an interim report being produced to inform the public of the outcomes and progress of the trial, based on identified deficiencies from empirical research. This will ensure that the evaluation is occurring consistently and transparently and that the public remains well informed.

d) Alternative dispute resolution

Adults

The Society is supportive of Justice Mediation, which currently operates in some (but not all) courts throughout Queensland. Justice Mediation as an addition to, or alternative to, conventional resolution of matters before the courts can provide parties and the community with a valuable tool. Successful mediation can impart powerful personal deterrence and provide both the complainant and defendant with rehabilitation tools. It can be particularly valuable in familial matters.

³⁸ Is juvenile boot camp policy effective?, Kübra Gültekin, Sebahattin Gültekin, 2012, International Journal of Human Sciences found here: <http://www.i-humansciences.com/ojs/index.php/IJHS/article/view/1978/882>

³⁹ Boot Camps and Justice: A Contradiction in Terms? Lynn Atkinson, Australian Institute of Criminology, 1995, found here: <http://www.aic.gov.au/documents/B/8/E/%7BB8E5DC4C-4F1A-4D24-ACFA-5A77B248E391%7Dt46.pdf>

This extract from a 2014 AIC report on Restorative Justice in the Australian criminal justice system provides clear data indicating the program's effectiveness:

Approximately 300 conferences are conducted each year. Agreement rates are consistently high, as is compliance by offenders with all the terms of the agreement (Department of Justice & Attorney-General personal communication October 2013).

...

In 2011, an internal review was conducted to provide an assessment of the effectiveness of the Justice Mediation Program with regard to client and stakeholder satisfaction and the degree of reoffending. The review found that the Justice Mediation Program is effective in achieving a number of important outcomes—high participant satisfaction rates and indicative low reoffending rates. For those participants who responded to the client satisfaction survey, satisfaction rates are high. Indicative reoffending rates found in this review were an average of eight percent, with one location having a rate of 1.5 percent. The review also found that the stakeholders were generally satisfied with the operation of the program, although they did make a number of suggestions for improvement, including increasing the number of locations in which the service is available (Department of Justice & Attorney-General personal communication October 2013).⁴⁰

We strongly encourage the Government to increase the number of courts that have access to the Justice Mediation Program. The initiative provides for resolution of suitable matters being resolved without valuable court time and resources being utilised. Justice Mediation can also reduce the high demand for the finite funding and resources Legal Aid has access to. Anecdotally, our members have also noted that because consent is required before Justice Mediation can be undertaken, it can result in positive effects on both victims and defendants.

However, it must also be noted that the current restricted access to the program based on geography is inequitable and places certain defendants at a disadvantage.

It is the understanding of the Society that various Courts have expressed an interest in adopting the scheme who are otherwise restricted due to resource issues. The Society is willing to assist where possible in any implementation of, or consideration of, an expanded Program. We suggest that the Parliamentary Committee should investigate recommending the expansion of justice mediation throughout the state.

Children

The Youth Justice Conferencing Program allows police to refer an offender to mediation with a victim and their family. The Society is strongly of the view that youth justice conferencing is an effective diversionary tool and an appropriate mechanism to address young people's accountability for offending behaviour. The Childrens Court of Queensland Annual Report 2011-2012 stated that 95% of conferences resulted in agreement being reached, with 98% of participants indicating the conference was fair and they were satisfied with the agreement. Further, the 2014 AIC Report states:

⁴⁰ AIC Report- Restorative justice in the Australian criminal justice system found here: http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/05_restorative.html

Data reported by the Queensland Department of Communities (Queensland Government 2010), for all conferences held between 1997 and October 2008, indicate a high proportion of both victims and offenders who were satisfied with conference outcomes and who reported the process was fair. During 2012–13, 99 percent of youth justice conferencing participants (including the victim and/or their representative) were satisfied with the outcome (Queensland Government 2013a). A study of the impact of the conference experience on reoffending among a sample of 25 young offenders who participated in conferences in southeast Queensland between 2004 and 2006, found that reoffending was less likely for those young offenders who saw the conference as a positive experience after hearing the victim's story and realising the impact of their actions (Hayes, McGee & Cerruto 2011).⁴¹

We note that utilisation of youth justice conferencing by the police is particularly important following the removal of court ordered youth justice conferencing. The Society opposed the removal of court ordered conferencing, and we submit that it should be reinstated.

5. Other models in national and international jurisdictions which could be implemented in Queensland

There are several initiatives to which we draw the attention of the committee. In our view, these models are worthy of detailed consideration to ascertain their suitability for implementation in Queensland. These initiatives are discussed in detail below:

- Infringements Court
- Corrections impact statements, and
- Recording from point of first contact for police.

Infringements Court

Under section 119, *State Penalties Enforcement Act 1999* the Registrar is permitted to issue a warrant, directed to all police officers, for the arrest and imprisonment of an enforcement debtor for the period stated in the warrant.

In our view, the current system is flawed. At no time is the individual required to appear before a court for a hearing of the circumstances in relation to the non-payment of the fine. This results in significant disadvantage given that a person is deprived of legal representation and the opportunity to make submissions as to why the fine has not been paid.

We refer to an article from the Courier Mail dated 1 November 2011 entitled 'Simply jailing people who don't pay fines smacks of short-sighted injustice', which we have **enclosed**. The article details the concerning impacts of gaoling people purely on the basis of failure to pay fines. The case study of Julie is particularly disturbing considering her vulnerable circumstances and noting that she was unaware amounts were not being deducted from Centrelink payments to cover the fines.

The article references the Infringements Court which operates in Victoria. The Court is established under the *Infringements Act 2006* and provides a means through which disputes

⁴¹ AIC Report- Restorative justice in the Australian criminal justice system found here: http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/05_restorative.html

as to unpaid fines can be resolved, but retains the requirement for a person to appear before the court to be dealt with. Specifically under section 159, *Infringements Act 2006* an infringement offender must be brought before the Court within 24 hours of being arrested. Section 160 contains a range of options available to the court, including:

- imprisonment
- discharging the fine (in full or in part) if the infringement offender has a mental or intellectual impairment or that special circumstances apply, or
- adjourning the further hearing of the matter for a period of up to 6 months.

We consider that this level of judicial discretion and objective (and evidence based) determination as to the circumstances of the matter is essential if this process is to be fair and reasonable. The Society acknowledges that the non-payment of a fine is a serious concern which may warrant imprisonment in some cases, however we consider that effective sentencing options have been removed by the inflexible nature of the current regime and that, more fundamentally, the person is denied natural justice.

We submit that the legislation governing, and operation of, the Infringements Court in Victoria be reviewed, with a view to establishing a similar regime in Queensland.

Corrections impact statements

We note that some jurisdictions in the United States have adopted 'corrections impact statements' which are used for proposals that will have sentencing and corrections implications. A brief summary of the nature and intent of the statements is set out below:

Corrections Impact Statements

Fiscal impact statements put a price tag on proposed legislation. At least 16 states require the use of specialized corrections impact statements, which provide information to legislators that is unique to sentencing and corrections policies.

In Virginia, a corrections impact statement is required when a proposal will have a fiscal impact on correctional populations or criminal justice resources. Impact statements in Virginia include a six-year projection of correctional populations and associated increases in operating costs, an analysis of the impact on local jails and community corrections programs, and any required adjustments to the sentencing guidelines to conform with the proposal. In order for the General Assembly to adopt legislation that would result in a net increase in prison populations, a one-year appropriation is required in the amount equal to the highest single-year increase in operating costs identified within the six-year projection. As part of a larger corrections reform effort, Kentucky adopted a similar requirement in 2011.

Corrections statements often provide an analysis of the impact on existing programs, services and policies. In North Carolina, legislative fiscal research staff provide a five-year projection on correctional populations and bed capacity and the associated costs, including any capital costs for proposals that would increase prison populations. In addition, for bills that would create a new crime or change the classification or penalty range of an existing crime, the Sentencing and Policy Advisory Commission advises

*whether the provision is consistent with the statutorily defined crime classification and punishment criteria. The criteria was established to ensure a systematic and rational basis for classification that is based on harm to the victim.*⁴²

An example of the relevant legislative provision dealing with corrections impact statements appears below from the 2014 Iowa Code:

*Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation on minorities, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.*⁴³

Specialised statements may assist in obtaining detailed information on specific proposals where necessary, and would contribute to greater transparency on the effect that proposals will have on the justice system.

Recording from point of first contact for police

We submit that consideration should be given to the use of video and, separately, audio tape-recording from point of first contact between police and their interactions with the public. The introduction of these measures could lead to a reduction in allegations of both assault complaints against police and allegations that, before the police station tape-recorder is turned on for a police interview, there were off tape threats or inducements made to a suspect during the period from point of first contact to the formal police tape-recorded interview starting.

We are aware that in the Fortitude Valley Police District as well as in the CBD Police District there was a trial some years ago of video recording of contacts between police and citizens in public places. We **enclose** various media articles, for your information, which detail this trial.

A small study done in California in 2013 showed that the use of body worn cameras decreased public complaints against police by 88% from the previous year, and officers' use of force fell by 60%.⁴⁴ This has led the England and Wales College of Policing to undergo an evidence-based trial on the use of body-worn video, with the results expected to give further information on the effectiveness of body worn video.⁴⁵ We suggest consideration of these

⁴² Sentencing and Corrections Policy Updates Newsletter, National Conference of State Legislature, September 2011, found at: <http://www.ncsl.org/issues-research/justice/on-the-fiscal-front-corrections-impact-statement.aspx>

⁴³ Iowa Code, found here: <http://coolice.legis.iowa.gov/Cool ICE/default.asp?category=billinfo&service=iowaCode&input=2.56>

⁴⁴ California police use of body cameras cuts violence and complaints, November 2013, The Guardian, <http://www.theguardian.com/world/2013/nov/04/california-police-body-cameras-cuts-violence-complaints-rialto>

⁴⁵ Interim findings on body-worn video help build the evidence base, February 2014, College of Policing, <http://www.college.police.uk/en/21387.htm>

findings to evaluate the potential benefits, and also the safeguards required, for the use of body worn cameras.

We also note that the Minister for Police, Fire and Emergency Services has indicated that body worn cameras have been purchased for officers for the G20 taking place in November 2014.⁴⁶ We submit that the Parliamentary Committee should recommend that detailed statistics on the use of these cameras should be maintained and released to the public for review, so that the data contributes to consideration of more widespread use in future.

6. The experiences of Queenslanders with regard to the criminal justice system, including the experiences of victims of sexual violence and/or domestic violence including their interactions with the Queensland Police Service, the courts, prosecuting authorities, legal and support services and compensation processes.

Due to the complex nature of this term of reference, the Parliamentary Committee may be informed by considering the levels of the justice system and current government Inquiries. With respect to the experiences of victims, the Royal Commission on Institutional Responses to Child Sexual Abuse interim report in (June 2014) might contain relevant information. We also consider that the operation of the courts, the availability of access to legal services, and the work of prosecuting authorities is particularly relevant.

Experience of victims of sexual violence and/or domestic violence

The Royal Commission on Institutional Responses to Child Sexual Abuse released its interim report in June 2014, covering issues such as reducing vulnerability and providing justice for victims.⁴⁷ This information could perhaps assist with the Parliamentary Committee's consideration of these issues.

The AIC also publishes regular research in relation to victim of crime issues, such as the June 2014 publication, *Victims' experiences of short-and long-term safety and wellbeing: Findings from an examination of an integrated response to domestic violence*.

Operation of the courts

The Society supports and commends the significant amount of work undertaken expediently by Queensland Courts in the criminal jurisdiction. We particularly note the comments from the Queensland Government on the courts in the Report on Government Services 2014:

- In the Supreme Court (including appeals) the clearance rate was 110.5% in the criminal jurisdiction

⁴⁶ Police Demonstrate G20 Summit Skills, Minister for Police, Fire and Emergency Services, The Honourable Jack Dempsey MP, 22 May 2014, found here: <http://statements.qld.gov.au/Statement/2014/5/22/police-demonstrate-g20-summit-skills>

⁴⁷ Found here: <http://www.childabuseroyalcommission.gov.au/about-us/reports>

- In the District Court (including appeals) the clearance rate was 119.1% in the criminal jurisdiction, and
- In the Magistrates Court the clearance rate was 97.5% in the criminal jurisdiction.⁴⁸

The Society supports ensuring adequate resourcing for courts throughout Queensland to continue this work, including regional circuits and all support services required for the comprehensive operation of the courts system.

The Society also works closely with the courts to share information and address any issues relating to court operations, particularly through the Court Users Reference Group and ad hoc stakeholder consultation forums such as the Moynihan Roundtable, convened for the implementation of the *Civil and Criminal Jurisdiction Reform and Modernisation Act 2010*. We commend the courts' collaborative approach which assists in streamlining processes and operations.

Access to legal services

The Society's view is that access to justice is inextricably linked with access to legal representation in criminal law matters. Ensuring legal assistance contributes to swift and fair outcomes in the justice system.

We support the work done by Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Services and community legal centres to assist disadvantaged persons in the criminal justice system. Early, adequate and sustainable legal assistance for disadvantaged persons in areas of State law where fundamental human rights are at stake is essential. Legal assistance should always be available in circumstances such as where individuals are at risk of serving a term of imprisonment of any duration and representation for vulnerable people, and particularly those with mental health issues.

The Society remains concerned with inadequate funding levels provided to Legal Aid Queensland to carry out its important tasks. This has led to a situation where funding guidelines for criminal law representation have been restricted inappropriately, for example providing that in certain circumstances an accused will only obtain representation where they are faced with a real likelihood of being sentenced to six months or more immediate incarceration in a correctional centre.⁴⁹ These decisions which have a significant impact on people are made in order to deal with budgetary constraints, however there is a broader concern that funding levels must be increased in order to ensure access to justice.

Prosecuting authorities

A specific area in relation to which the Society's members have raised concern is in relation to disclosure provisions under the *Criminal Code Act 1899*. Our members report on a regular basis that the operation of these provisions is sub-optimal and need to be reviewed.

⁴⁸ Report on Government Services 2014 (Justice), 7.67 found at: http://www.pc.gov.au/data/assets/pdf_file/0016/132325/rogs-2014-volumec-justice.pdf

⁴⁹ Legal Aid Queensland – guidelines – state – criminal, found at: <http://www.legalaid.qld.gov.au/about/Policies-and-procedures/Grants-policy-manual/Pages/guidelines-state%e2%80%93criminal.aspx>

The current provisions assume that the defence know what disclosure to request. The reality, though, is that the defence do not know what they do not know, and accordingly will not be in a position to advise the prosecution of what documents they require. Whilst we are not aware of statistics regarding how many disclosure obligation directions have been made under rule 43A of the *Criminal Practice Rules 1999*, we consider that the operation of these provisions is so cumbersome and difficult that defence lawyers do not often utilise the provisions.

We consider that proper and continuous disclosure is a fundamental aspect of the changes introduced by the Moynihan Report in 2009 and the subsequent *Civil and Criminal Jurisdiction Reform and Modernisation Act 2010*. We suggest that this is an issue for consideration to enhance the operation of prosecution disclosure.

7. Possible strategies to increase collaboration and co-operation between various participants in the criminal justice system

The Society's view is that a whole of government approach, and importantly collaboration with stakeholders, is required to address specific issues affecting the criminal justice system.

We note in particular the whole of government approach adopted in New Zealand in 2009 to address drivers of crime (materials are **enclosed**). The Ministry of Justice coordinates the group, which involves other agencies such as Ministry of Social Development, Ministry of Education, Department of Corrections, Ministry of Health, New Zealand Police and others. There are four priority areas:

- improving maternity and early parenting support
- addressing conduct and behaviour problems in childhood
- reducing harm from alcohol and improve treatment, and
- managing low-level repeat offenders.

The latest progress report shows that this whole of government approach has resulted in a 32% decrease in offending rates for Māori youth between 2008 and 2012, better outcomes in early childhood education and lower rates of preventable hospitalisations.⁵⁰ The Society suggests consideration of similar a whole of government approach, to ensure a coordinated, early intervention-based approach to the criminal justice system.

Close consultation with stakeholders is key to ensuring effective collaboration between all parties. We provide a specific example to demonstrate the benefits of this approach.

Police Powers and Responsibilities Act 2000

A comprehensive review was undertaken of the *Police Powers and Responsibilities Act 2000* (PPRA), which resulted in the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2011*. The Explanatory Notes to the Bill detail the significant consultation process undertaken with government and external stakeholders:

⁵⁰ Addressing the Drivers of Crime: Progress report, December 2012, found at: <http://www.justice.govt.nz/justice-sector/drivers-of-crime/publications-and-background-information/addressing-the-drivers-of-crime-progress-report-december-2012>

Extensive consultation has been undertaken throughout the development of the Bill. A PPRA Review Committee was formed and chaired by the Member for Ipswich West, Mr Wayne Wendt MP. The Committee consisted of members representing the following organisations:

- *Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd;*
- *Crime and Misconduct Commission;*
- *Department of Communities;*
- *Department of Justice and Attorney-General;*
- *Department of the Premier and Cabinet;*
- *Legal Aid Queensland;*
- *Office of the Director of Public Prosecutions;*
- *Public Interest Monitor;*
- *Queensland Council for Civil Liberties;*
- *Queensland Law Society;*
- *Queensland Police Commissioned Officers Union of Employees;*
- *Queensland Police Service (QPS); and*
- *Queensland Police Union of Employees.*

All recommendations made by the PPRA Review Committee were considered during the preparation of the Bill. The majority of the Committee recommendations are included in the Bill.

The Queensland community was consulted on the Bill. The community was invited to provide comments during the policy development of the Bill from 5 April to 17 May 2010 and again during the development of the Bill from 28 March to 6 May 2011.

Intra-Government consultation was also conducted during the development of the Bill with:

- *Department of Justice and Attorney-General;*
- *Department of the Premier and Cabinet;*
- *Queensland Health;*
- *Department of Communities;*
- *Department of Community Safety;*
- *Queensland Treasury; and*
- *Department of Transport and Main Roads.⁵¹*

⁵¹ Police Powers and Responsibilities and Other Legislation Amendment Bill 2011, Explanatory Notes, page 9-10

The Society commends the detailed and collaborative process which was utilised. The resulting Bill had substantial input from stakeholders as well as the public at the crucial early stages of the process. Even though there were still certain aspects of the final Bill which the Society had concerns with, the process adopted allowed the opportunity for all parties to share and consider proposed solutions.

We submit that the Parliamentary Committee should consider making recommendations to ensure collaborative consultation processes, similar to that outlined above, for the development of policy and legislative reform. This is an important area which could benefit from improved coordination between government and stakeholders.

Mandatory sentencing laws policy position

Queensland Law Society (QLS) has long maintained a strong stance against any form of mandatory sentencing. QLS supports the fundamental principles of Australia's legal system, including principles of procedural fairness, judicial precedent, the rule of law, and the separation of powers. We promote these concepts as central to the protection of a citizen's right to justice and equality before the law. In our view, mandatory sentencing laws are unfair and unworkable and run contrary to these fundamental tenets.

We join with other Australian legal professional bodies, including the Law Council of Australia and the Bar Association of Queensland, in voicing concern with mandatory sentencing laws.

QLS supports judicial discretion for sentencing of criminal matters in order to reflect the discrete facts of each case.

- Mandatory sentencing is an undue fetter on judicial discretion.
- Mandatory sentencing regimes undermine sentencing guidelines as set out in section 9 of the *Penalties and Sentences Act 1992* (the Act). The Act states that sentences may be imposed on an offender to an extent or in a way that is just in all the circumstances.¹ In the youth justice system, mandatory sentencing applied to children undermines the principles of the *Youth Justice Act 1992*, and the sentencing principles outlined in section 150.
- Mandatory sentencing laws are arbitrary and contravene the principles of proportionality and necessity.
- Mandatory sentencing laws have the potential to lead to serious miscarriages of justice, exacerbated by the fact that mandatory sentences, by definition, are not reviewable on appeal.
- Removing judicial discretion hinders the court's ability to bring about justice in individual cases. The Northern Territory experience of mandatory sentencing in property law offences offer the following examples of injustice where the facts of offending become irrelevant:
 - A 23 year old Indigenous woman, who was a first offender, was sentenced to 14 days' imprisonment for unlawful entry and stealing a can of beer. She was employed at the time. The magistrate observed that, but for the mandatory requirement, a non-custodial order would have been made.²
 - A 16 year old with one prior conviction received a 28 day prison sentencing for stealing a bottle of spring water.³
 - A 17 year old first offender received a 14 day prison sentence for stealing orange juice and lollies.⁴
 - A 15 year old Indigenous youth was sentenced to 20 days' imprisonment for stealing less than \$100 worth of stationery from his school. He died in custody while serving his sentence.⁵
 - A 21 year old broke into a smoko room on Christmas day and stole biscuits and cordial to the value of \$23. He received one years' imprisonment because he had two previous convictions for property offences.⁶

¹ s 9(1)(a), Penalties and Sentences Act 1992

² Mason, A. "Mandatory Sentencing: Implications for judicial independence", 2001, AJHR 21; Warner, K. "Mandatory sentencing and the role of the academic", 2007, Criminal Law forum, 18(3-4), 344

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ ABC 7.30 Report, Call to review mandatory sentencing laws, 22 December 1999

- Sentencing decisions should rest with highly trained judicial officers. Judges are in the best position to administer justice through judicial reasoning and comprehensive understanding of the offence and the circumstances surrounding its commission.
- Judicial discretion is an essential characteristic of the court and forms part of the court's independence and impartiality.
- Mandatory sentencing laws that diminish judicial discretion and the independence of the court are inconsistent with Article 14 of the International Covenant on Civil and Political Rights. This provides:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Mandatory sentencing does not encourage transparent sentencing processes.

- Mandatory sentencing encourages judges, prosecutors and juries to circumvent mandatory sentencing when they consider the result unjust. In some circumstances when an offender is faced with a mandatory penalty, juries have refused to convict.⁷ Prosecutors have deliberately charged people with lesser offences than the conduct would warrant to avoid the imposition of a mandatory sentence. In effect mandatory sentencing shifts sentencing discretion from an appropriately trained and paid judicial officer to a prosecutor. Prosecutorial discretion is unregulated and less transparent than judicial sentencing processes.

QLS is concerned that mandatory sentencing laws can disproportionately affect minorities.

- Mandatory sentences can impact disproportionately on the most marginalised members of society. Those groups who are over-represented in receiving criminal charges such as homeless people, young people, children in residential care, substance-addicted individuals, Aboriginal and Torres Strait Islander people or people with mental illness or intellectual disability, are often impacted most heavily by mandatory sentencing.⁸ This inevitably reinforces over-representation of these groups in the corrective system.

QLS supports a fiscally sustainable justice system.

- Mandatory sentencing reduces the proportion of pleas of guilty, thus increasing court costs and court delays. The criminal justice system has, in recent years, undergone significant reform on issues including jurisdiction. These reforms fundamentally targeted the cost of administration of justice. Mandatory sentencing regimes undermine these reforms by artificially increasing the number of persons proceeding to trial and those electing to be tried by trial and jury, when available. State resources must cater for an increase in prosecution costs, defence costs (often publicly funded by Legal Aid Queensland), police resources, judicial administration and the costs of a trial. There is also a social cost involved in subjecting victims of crime and witnesses to delay and the stress of cross-examination and a criminal trial.
- The inevitable increase in prison populations as a result of mandatory sentencing is one of many additional costs to the community without commensurate benefit.
- The cost of imprisoning a person convicted of people smuggling for the mandatory minimum term of three years is in excess of \$170,000 per person.⁹ This figure does not include the cost of a trial.

⁷ Tony, M. "Sentencing Matters", 1996, cited in Australian Institute of Criminology, "No 138. Mandatory Sentencing", 1999

⁸ Cumaraswamy, Dato' Param "Mandatory sentencing: the individual and social costs" Australian Journal of Human Rights, Dec 2011, 7(2); Ward, A. "Mandatory sentencing and the emergence of regional systems for the protection of human rights", Dec 2011, Australian Journal of Human Rights, 7(2)

⁹ Senate Legal and Constitutional Affairs Legislation Committee, Report on Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012, (2012) vii [2.30] as cited in Trotter, A. and Garozzo, M. "Mandatory sentencing for people smuggling", 2012, Melbourne University Law Review, 36, 553-617, 612

- The evidence against mandatory sentencing shows there is a lack of cogent and persuasive data to demonstrate that mandatory sentences provide a deterrent effect. A review of empirical evidence by the Sentencing Advisory Council (Victoria) found that the threat of imprisonment generates a small general deterrent effect but increases in the severity of penalties, such as increasing the length of terms of imprisonment, do not produce a corresponding increase in deterrence.¹⁰ Research regarding specific deterrence shows that imprisonment has, at best, no effect on the rate of re-offending and often results in a greater rate of recidivism.¹¹
- Other jurisdictions which have followed the route of penalty increases, such as Texas in the United States, have faced tipping points where they have looked to justice reinvestment strategies to reduce spiralling incarceration costs.

QLS supports greater public education to increase public confidence in sentencing decisions.

- QLS supports increased research and education to ensure public awareness and understanding of sentencing decision processes. Current research suggests the following:
 - “The public at large is often misinformed about trends in crime and criminal justice and this lack of accurate knowledge is associated with lack of confidence in sentencing.”¹²
 - Increasing criminal penalties is unlikely to result in a change to public perception.¹³ International and Australian research consistently shows that the public consider the sentences imposed in criminal matters to be too lenient.¹⁴
 - The perception of sentencing changes as additional information about a matter is provided. A study published by Professor Kate Warner from the University of Tasmania asked jurors to assess the appropriateness of the judge’s sentence for the case they were involved in. The jurors, who were not informed of the sentence imposed by the judge in the case, were asked what sentence they would impose. More than half of the jurors surveyed indicated they would have imposed a more lenient sentence than the trial judge imposed. When subsequently informed of the actual sentence imposed, 90% said the judge’s sentence was (very or fairly) appropriate.
- The community has limited or no access to comprehensive evidence on criminal justice sentencing and trends. Public education on these matters is paramount when seeking to enhance community confidence in the criminal justice system. The Queensland Sentencing Advisory Council, prior to its dissolution, was charged with functions that included:
 - To provide information to the community to enhance knowledge and understanding of matters relating to sentencing
 - To publish information relating to sentencing
 - To research matters relating to sentencing and publish the results of the research.

Government support for these educative functions is essential in order to promote public awareness and community understanding of sentencing processes.

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¹⁰ Sentencing Advisory Council “Does Imprisonment Deter? A Review of the Evidence”, April 2011, Melbourne, p.2

¹¹ Ibid

¹² Jones, C. & Weatherburn, D. “Public Confidence in the NSW Criminal Justice System: A Survey of the NSW Public”, 2010, p. 507

¹³ Roberts L., Spiranovic, C., & Indermaur, D. “A country not divided: A comparison of public punitiveness and confidence in sentencing across Australia”, 2011, Australian and New Zealand Journal of Criminology, 44(3) 370-386 at 381

¹⁴ For example, Jones, C., & Weatherburn D. “Public Confidence in the NSW Criminal Justice System: A Survey of the NSW Public”, 2010, Australian and New Zealand Journal of Criminology, 43: p.506-525; Robert, J., Crutcher, N., & Verbrugge, P. “Public attitudes to sentencing in Canada: Exploring recent findings”, 2007, Canadian Journal of Criminology and Criminal Justice, 49(1), 75-107

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Dear Acting Secretary-General

**INQUIRY INTO THE VALUE OF A JUSTICE REINVESTMENT APPROACH TO CRIMINAL JUSTICE IN AUSTRALIA**

Thank you for inviting Queensland Law Society to provide input into the Law Council's submission to the parliamentary inquiry on the value of a justice reinvestment approach to criminal justice in Australia. Queensland Law Society supports a justice reinvestment approach and considers that programs and mechanisms which address the underlying causes of criminal behaviour should be utilised in the criminal justice system. The Society supports the justice reinvestment focus on evidence based policy making, and the processes involved in evaluating the quality and impact of new policy on an ongoing basis.

This submission is focused on issues particularly relevant to Queensland. The comments are by no means an exhaustive review of the value of a justice reinvestment approach to criminal justice in Australia.

(c) the over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples, and people experiencing mental ill-health, cognitive disability and hearing loss;

The overrepresentation of Indigenous persons in custody in Australia is well documented.¹ Furthermore, we note the particularly concerning rate of Indigenous offenders in Queensland who also suffer from a mental illness. A 2010 study published in the Medical Journal of Australia found that of the sample, 86.1% of indigenous women and 72.8% of indigenous

¹ Australian Bureau of Statistics 2012, *Prisoners in Australia, 2012*, cat. No. 4517.0 viewed 12 February 2013 <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>>

men in Queensland prisons had a diagnosed mental health disorder in the preceding 12 months.² Of those people, 66% suffered from a substance misuse order.³

The study noted the frequent transition between prison and the community. It concluded for mental health services to be effective, they must be culturally capable, and accessible both in custody and in the community, with a focus on enabling continuity of care between the two.⁴ We consider that a justice reinvestment approach could focus on building community support and providing rehabilitation, with an aim to prevent recidivism. Importantly, an approach that aims to divert persons from prisons, where mental health issues may be exacerbated, would potentially reduce recidivism and would build community capacity to deal with similar problems.

Young Indigenous offenders

The Society is concerned with the over-representation of Aboriginal and Torres Strait Islander people in Australian prisons, in particular, Queensland prisons. We also note the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice and child protection system. We support efforts to reduce these rates and consider that tackling this issue using a justice reinvestment approach may directly decrease the numbers of Aboriginal and Torres Strait Islander people in detention. The Society considers there is a need for active consultation with Aboriginal and Torres Strait Islander leaders on all decisions that affect their communities.

We refer to the report in *The Australian*, 'Jailing of kids 'does not work': Governor,' in which West Australian Governor Malcolm McCusker said the jailing of juveniles - up to 70% of them Aboriginal - must be reassessed. The Governor commented that the current approach is not working and "prevention is much cheaper than punishment. And that's where I think more funds need to be directed."⁵

(d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures

A number of diversionary court programs and rehabilitation measures demonstrate the effect of restorative justice practices and the savings to costs of imprisonment in Queensland. These programs and courts have recently been disbanded following legislative reform in 2012. However, they serve as indicators to the effectiveness of similar programs, and could provide an evidence base for future justice reinvestment strategies.

² E. Heffernan, K. Andersen, A. Dev, and S. Kinner, 'Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons' (2012) 197 *Medical Journal of Australia*, 39

³ Ibid

⁴ Ibid 41

⁵ Natasha Robinson, 'Jailing of kids 'does not work': Governor', *The Australian*, (Surry Hills), 25 February 2013, 7.

Youth Justice Conferencing Program

The Youth Justice Conferencing Program is a diversionary option based on restorative justice principles.⁶ The program allows the court to refer an offender to mediation by a police officer with a victim and their family. The Children's Court of Queensland Annual Report 2011-2012 stated that 95% of conferences resulted in agreement being reached, with 98% of participants indicating the conference was fair and they were satisfied with the agreement. The President of the Children's Court stated conferencing is an important mechanism in diversion from the court system, recompense to the victim and rehabilitation of the offender.⁷ The Queensland Law Society considers the success of this program indicates the value of restorative justice options. However, in 2012 the government took steps to remove the option of court ordered youth justice conferencing. This valuable diversionary program still remains in Queensland through police referred conferencing, and may benefit from further funding or as part of a broader justice reinvestment strategy.

The Drug Court

The *Criminal Law Amendment Bill (No. 2) 2012* provides for the cessation of the Drug Court by 30 June 2013. This court acted as a rehabilitative mechanism to address underlying causes for offending behaviour. The program "requires participants to have achieved a substantial period of abstinence from illicit drugs and be either employed or have developed job-readiness skills by the end of the intervention".⁸ At the time 155 people were diverted from imprisonment and this resulted in a saving in resource costs equivalent to the cost of 588 years of actual imprisonment.⁹

The Murri Court

The Murri Court allowed for cultural considerations within a criminal justice context, and for any sentence to take into account the community's views. Queensland's Attorney-General indicated that for the cost, the program was not reducing imprisonment rates and recidivism for indigenous offenders. The Attorney-General stated "this is because many offenders return to their communities, where they are exposed to the same levels of unemployment and drug and alcohol use."¹⁰ The Society considers that a justice reinvestment approach, which could build community capacity to deal with substance abuse, could address this concern.

⁶ Children's Court of Queensland, *Annual Report 2011-12*, Brisbane Qld, 2012 pp. 7

⁷ Ibid

⁸ Magistrate's Court of Queensland, *Magistrate's Court Annual Report 2010-11*, Brisbane Qld, 2011, 30

⁹ Ibid 31

¹⁰ Tony Moore, 'Diversionary courts fall victim to funding cuts' *Brisbane Times* (Online) 13 September 2012 <<http://www.brisbanetimes.com.au/queensland/diversionary-courts-fall-victim-to-funding-cuts-20120912-25sj5.html#ixzz2KjvZq2sl>>.

(f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia

The Society notes that remote and very remote communities are areas identified as areas of high disadvantage, well positioned for place-based intervention.¹¹ One of the existing challenges that would need to be met by a justice reinvestment approach surrounds the court processes for those people living in remote areas. Often Aboriginal and Torres Strait Islander people in remote areas are transported from their families and communities, whether to attend bail hearings or serve a period of imprisonment. The remoteness of communities also inhibits the participation of offenders in community based programs. Similarly, bail programs such as conditional bail support programs, which successfully divert offenders away from the court processes, may be unworkable in remote areas. Poor access to not only criminal justice initiatives but services generally will present a challenge for justice reinvestment strategies.

(j) other related matters

Children in Queensland

It has long been the position of the Society that 17 year olds should be treated as children under the Queensland *Youth Justice Act 1992* to bring Queensland in line with all other Australian States and Territories.

In this regard, we reiterate Article 40 (3) (b) of the Convention on the Rights of the Child which stresses the need for governments to develop means outside of the court system to assist in rehabilitation efforts.

Please contact our Policy Solicitor, Ms Raylene D'Cruz on (07) 3842 5884 or r.dacruz@qls.com.au; or Graduate Policy Solicitor, Ms Jennifer Roan on (07) 3842 5885 or j.roan@qls.com.au.

Yours faithfully



Annette Bradfield
President

¹¹ T. Allard, A. Chrzanowski, and A. Stewart, 'Targeting crime prevention to reduce offending: Identifying communities that generate chronic and costly offenders' Research Report No. 445, Australian Institute of Criminology, September 2012.

JUSTICE REINVESTMENT IN TEXAS

Assessing the Impact of the 2007 Justice Reinvestment Initiative



WHEN THE 80TH SESSION of the Texas Legislature convened in 2007, elected officials faced a major dilemma: spend a half billion dollars to build and operate new prisons to accommodate the surging number of people expected to be incarcerated or explore options to control that growth. A bipartisan group of legislative leaders commissioned the Council of State Governments Justice Center (“Justice Center”) to conduct a comprehensive analysis of the state’s prison population. The data collected were used to shape a series of policies that avoided the need to build more prisons and allowed for the reinvestment of roughly half the funds earmarked for prison construction toward a range of strategies designed to increase public safety and reduce recidivism.

This report reviews the situation the legislature faced in 2007; the policies

lawmakers enacted; the extent to which policies enacted in 2007 have been implemented; trends in the prison, parole, and probation population since 2007; projections for the prison population beyond 2009; and the challenges the 81st Session of the Texas Legislature faces as it convenes in 2009.

This bulletin is part of a series for state policymakers interested in following what happened in states that applied a justice reinvestment strategy to increase public safety and reduce spending on corrections. Beginning in 2005, Texas policymakers worked with the Council of State Governments Justice Center, and with the support of the Bureau of Justice Assistance, a component of the U.S. Department of Justice, and the Public Safety Performance Project of The Pew Charitable Trusts’ Center on the States, to pursue a justice reinvestment strategy.

The report highlights the following findings:

- In 2007, the legislature rejected plans to spend \$523 million in additional prison construction and operations and instead, through its Justice Reinvestment Initiative, appropriated \$241 million to expand the capacity of substance abuse, mental health, and intermediate sanction facilities and programs that focused on people under supervision who would otherwise likely be revoked to prison.
- Since the enactment of the reinvestment initiative, the expansion of prison-based programs and some outpatient services has been mostly on track, but a number of beds in residential substance abuse treatment or intermediate sanction facilities are not yet operational. Communities have resisted the placement of non-secure treatment facilities, and few vendors have bid for the contracts. State officials remain confident they can address these challenges by the end of 2009 as recent strategies have resulted in more positive responses to the expansion of these residential options.
- From January 2007 to December 2008, the Texas prison population increased by only 529 individuals; the projected increase for that period at the beginning of the 2007 legislative session was 5,141 individuals if the justice reinvestment strategies had not been implemented.¹
- Between 2006 and 2008, probation revocations to prison declined by 4 percent and parole revocations to prison plummeted 25 percent. During this same period, the parole board's rate of approvals for supervised releases rose from 26 percent to 31 percent.
- The increased availability of treatment and intermediate sanction facilities – made possible through the Justice Reinvestment Initiative – has facilitated the reduction in revocations and the enhanced use of parole.
- Although the state's nonpartisan Legislative Budget Board projected in 2007, before the enactment of the Justice Reinvestment Initiative, that the prison population would grow by approximately 17,000 people over five years, it now projects relatively minimal growth. No shortfall in capacity is predicted until 2013, when the system will need approximately 1,300 beds.
- State revenue shortfalls projected for the 2010–11 budget could cause some strategies enacted through the Justice Reinvestment Initiative to be scaled back. Such action by the legislature in 2009, however, would likely restart prison population growth, and, as a result, in 2011 the legislature may again need to appropriate funds for new prison construction. State leaders are aware of this fact and are being careful about substantially scaling back the initiative.

1. Legislative Budget Board, "January 2007 Projection Report," 2007. Legislative Budget Board, "LBB Tracking Spreadsheet: TDCJ Population Report," 2008.

Texas's Growing Prison Population in 2007

In January 2007, the state's nonpartisan Legislative Budget Board (LBB), which is charged with issuing an annual projection of the Texas prison population, predicted significant growth. It estimated the need for 17,000 additional prison beds, requiring new construction before 2012 at a minimum cost of \$2 billion. Based on this official estimate, the Texas Department of Criminal Justice (TDCJ) submitted a budget request for the FY 2008–09 biennium of \$523 million to build additional prisons and an additional \$184 million in “emergency” contracted capacity to rent detention space in county jails.²

A bipartisan group of legislative leaders, led by Senator John Whitmire (D), Chair of the Senate Criminal Justice Committee, and Representative Jerry Madden (R), Chair of the House Corrections Committee, sought to examine why the state's prison population continued to grow. They requested technical assistance from the Justice Center to analyze corrections data and assist in developing policy options that could achieve cost-effective increases in public safety and control the size of the prison population.³

The Justice Center's analysis found that the increase in the prison population (both recent and projected) significantly outpaced the growth in the state's resident population. The Justice Center focused on three factors contributing to the buildup of the prison population:

- 1) Increased probation revocations.** Between 1997 and 2006, the number of people revoked from probation to prison increased 18 percent, despite a 3 percent decline in the probation population.
- 2) Reduced capacity of residential treatment programs serving people on probation and parole.** Reductions in funding for community-based substance abuse and mental health services during the 2003 legislative session forced the closure of various treatment programs and facilities. By 2006, more than 2,000 individuals were awaiting placement in such programs and facilities.
- 3) Fewer approvals for parole.** Parole grant rates were lower than even those suggested by the parole board's own guidelines. For example, had the parole board adhered to its minimum approval rates for low-risk individuals, an additional 2,252 releases would have been made from prison to community supervision in 2005.

2. Texas Department of Criminal Justice, Legislative Appropriations Request, Fiscal Years 2008–2009, August 2007.

3. The analysis and policy options were presented in different policy briefs by the Justice Center. A summary of the work is in the September 2007 publication *Justice Reinvestment in Texas: A Case Study* at www.justicecenter.csg.org.

Table 1: Implementation Status of the Texas 2007 Justice Reinvestment Initiative

PROGRAM	2007 LEGISLATIVE INCREASE IN FUNDING/SIZE	DESCRIPTION	STATUS AS OF JANUARY 2009
Probation Outpatient Treatment	\$10 million 3,000 slots	Probation outpatient substance abuse treatment under contract or by probation department	All funding distributed to local probation departments for the services
Mental Health Pre-Trial Diversion	\$10 million 1,500 slots	Mental health treatment funding dedicated to encouraging pre-trial release of mentally ill offenders	All funding distributed to local authorities for the services
State Jail Treatment	\$5.8 million 1,200 slots	Substance abuse treatment in state jail facilities housing low-level property and drug offenders	Operational
In-Prison Therapeutic Community (IPTC)	\$21.7 million 1,000 slots	The program provides intensive substance abuse treatment services to offenders in prison and post-release. The 6-month in-prison phase is followed by 3 months in a TTC in the community, and 3 to 9 months of outpatient counseling. The parole board uses the program as a condition for the release of offenders who need substance abuse treatment.	Operational
DWI Prison Treatment	\$22.2 million 500 beds	A prison facility dedicated to providing offenders convicted of DWI offenses with a 6-month substance abuse treatment program.	Operational
Probation Residential Treatment	\$32.2 million 800 beds	Residential treatment facilities provide substance abuse treatment, counseling, and rehabilitation services. Programs range from 3 to 12 months.	752 beds operational (84% operational) with 48 beds pending
Parole Halfway Houses	\$5.6 million 300 beds	Halfway houses are used for offenders approved for prison release who need transitional housing contingent upon a suitable residence plan. The average length of stay in a halfway house is 90 days.	200 operational with 100 pending in late 2009
Substance Abuse Felony Punishment (SAFP)	\$63.1 million 1,500 beds	The program provides intensive residential substance abuse treatment services to offenders on probation who are violating the conditions of their supervision due to substance abuse problems. The program involves treatment in a secure facility for 6 months, followed by 3 months in a TTC in the community, and 3 to 9 months of outpatient counseling. This program is also available to parolees, but most of the capacity is used for probationers.	704 beds operational (47% operational) with 796 pending in 2009 and 2010. 236 of pending will be operational in April 2009 and 560 in September 2009 100% operational by September 2009
Transitional Treatment Centers (TTCs)	After-care funding included in institutional programs above 1,250 beds	Residential facilities dedicated to providing transitional treatment for up to 6 months for offenders participating in any of the institutional treatment programs such as the IPTCs and SAFPs.	312 beds operational (25% operational) with 938 pending or pending program restructuring
Intermediate Sanction Facilities (ISFs), Parole/ Probation	\$28.7 million 1,400 beds	ISFs are secure facilities that serve as detention centers for offenders violating the conditions of their supervision ("technical violations"). These facilities are used to sanction offenders in lieu of a revocation to prison. The average length of stay is 60 days.	309 beds operational (22% operational) with 1,091 fully operational by August 2010

Description of the Justice Reinvestment Initiative Enacted in 2007

Senator John Whitmire and Representative Jerry Madden worked with their colleagues and the Justice Center to develop a justice reinvestment initiative that would address these three drivers of prison growth, generate savings to the state, and reinvest in strategies that could improve public safety by reducing recidivism. In May 2007, the Texas legislature adopted, and the governor approved, a budget that included greater treatment capacity in the prison system and the expansion of diversion options in the probation and parole system. A total of 4,500 new diversion beds and 5,200 new program slots were funded.⁴ At the end of the 2007 legislative session, the LBB projected that the justice reinvestment policies, if adopted and implemented, would cause the prison population to stabilize and would result in no significant shortfall in the prison system capacity by 2012. Subsequent projections completed in January 2008 and June 2008 were consistent with these projections.⁵

The final budget adopted by the legislature for the 2008–2009 biennium reflected an increase of \$241 million in funding for additional diversion and treatment capacity. The expansion of these programs translated into a net savings of \$443.9 million in the FY 2008–09 budget by reducing funding for contracted bed space and canceling funding for the construction of the new prison units originally proposed.⁶

Implementation of the 2007 Justice Reinvestment Initiative

The extent to which components of the 2007 Justice Reinvestment Initiative were implemented by December 2008 varied considerably.

Although the expansion of prison-based programs and some outpatient services is on track, plans to increase the capacity of some residential treatment facilities are behind schedule. Particularly, the requests for proposals that TDCJ issued for Transitional Treatment Centers (TTCs) for residential treatment on reentry into the community from an institutional program generated few responses. The underwhelming interest does not appear to be related to the rates TDCJ offered to pay; the request for proposals (RFPs) stated the agency would be willing to negotiate per diem rates for these facilities. Instead, two challenges in particular appear to have discouraged vendors from submitting proposals.

First, contractors report having an insufficient number of certified counselors to make available the services the RFPs contemplate. Second, state officials and private contractors have had little success securing community approval for the establishment of new – or the expansion of existing – non-secure residential treatment facilities, particularly smaller ones located in urban areas. Texas law requires public hearings and approval by county and city officials before correctional residential centers are located or expanded in a county or city, and community leaders have been outspoken in their opposition

4. Figure 2 as presented in Council of State Governments Justice Center, September 2007. *Justice Reinvestment Texas: A Case Study*, cited above.

5. Legislative Budget Board, Adult and Juvenile Correctional Population Projections, January 2008 and June 2008, http://www.lbb.state.tx.us/PubSafety_CrimJustice/PubSafety_CrimJustice.htm#.

6. Council of State Governments Justice Center, September 2007. *Justice Reinvestment Texas: A Case Study* www.justicecenter.csg.org. The savings represent the difference between the original request for appropriations by the administration and the final adopted plan and do not consider potential future savings or cost-avoidance due to the impact of the plan on the projected prison bed shortfall and reductions in recidivism.

to the delivery of these services in their neighborhoods.

For example, the City of Amarillo opposed the proposal of a residential substance abuse treatment center – even though it was located in a light-industrial zone.⁷ In El Paso, where elected officials have historically supported alternatives to incarceration, leaders successfully opposed the expansion of an existing halfway house.⁸ Finally, in Austin, which is widely seen as especially accepting of alternatives to incarceration, the local probation department abandoned attempts to expand a treatment counseling center near the downtown area after running into strong opposition among neighborhood leaders.⁹

TDCJ continues to pursue strategies to have the rest of the facilities operational by late 2009 and 2010. It also is developing an intense outpatient treatment transition program in response to the shortage in TTC beds.

Prison Population Trends 2007–2009

Despite the challenges of expanding residential treatment, the legislature's 2007 initiative appears to be helping to stabilize the growth of the Texas prison population. The increase in treatment capacity and intermediate sanction facilities funded by the initiative has helped to increase the number of people on probation connected to services and reduce the number revoked to prison. The legislation's in-prison program resources have reduced delays in parole release, enabling the parole board to increase its rate of grants for supervised release. And, the infusion of resources

for intermediate sanction facilities and the administrative policy changes regarding violations seem to be the main reasons for decreasing parole revocations.

As the prison population in Texas has stabilized, the number of people placed on probation has increased and the parole approval rate has slightly increased. The number of people placed on felony probation in Texas increased by 6 percent from FY 2006 (before the initiative) to 2008 (see Table 2).¹⁰ Consequently, the average number of felons under probation supervision increased almost 7 percent during the same period.

Between FY 2006 and FY 2008, the average number of monthly parole releases increased by about 14 percent. The 30-percent parole approval rate has been relatively stable during this two-year period, representing an increase over the preceding two-year period and moving closer to the 31-percent approval rate the state's parole guidelines provide. The number of people under parole supervision did not increase significantly (2 percent), which may indicate that parole supervision terms have shortened.

Although the number of people being placed on probation has increased and the parole approval rate has increased the number of people on parole, revocation rates for people on probation and parole have held steady or improved. The parole revocation rate decreased by 25 percent from 2006 to 2008. Texas had 77,990 parolees under direct supervision in 2008, but only 7,444 were revoked to prison, and, of these, only about 20 percent were revoked for technical violations.¹¹ As documented in a Justice Center report to TDCJ, this is the result of the aggressive implementation of progressive sanctions and the use of ISFs in lieu of a prison revocation.¹²

7. "Rehabilitation Center Shot Down" at http://www.amarillo.com/stories/040208/new_10009429.shtml, April 2, 2008.

8. "200 new beds headed to halfway house near Sparks," www.kvia.com, April 3, 2008.

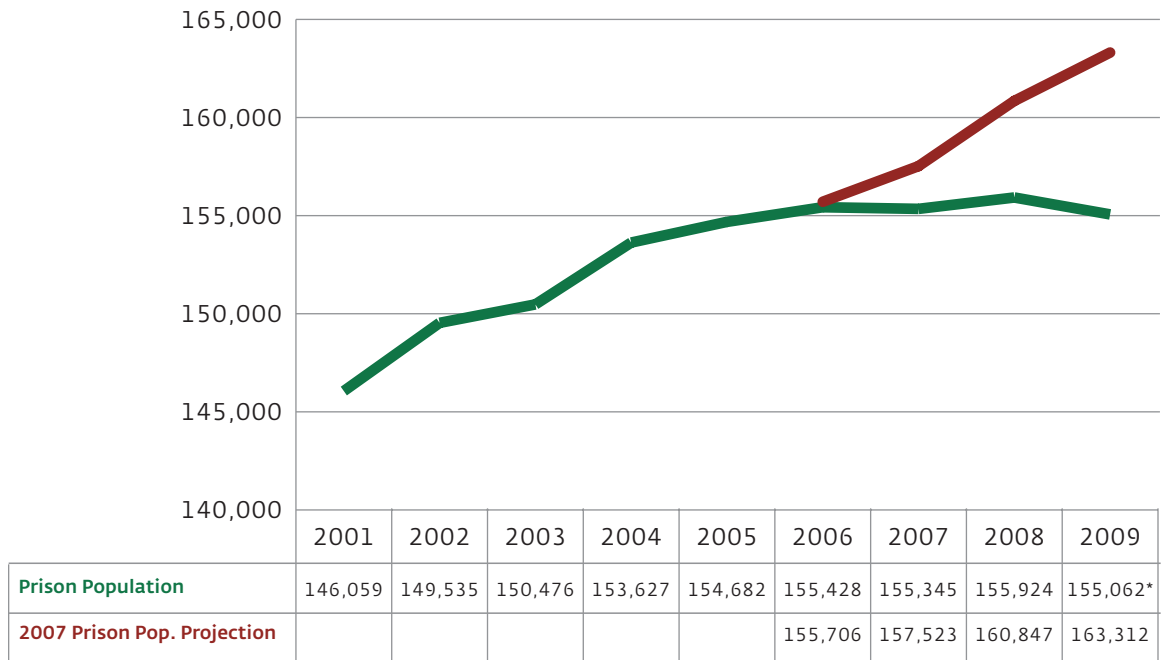
9. http://www.co.travis.tx.us/commissioners_court/minutes/2007/12/071204vrsd.pdf.

10. Texas' fiscal year is September to August.

11. Texas Board of Pardons and Paroles Annual Reports FY 2000–2006. TDCJ-CJAD, Annual Statistical Report FY 2007.

12. Internal Report to TDCJ, Justice Center, Texas Parole System: A Case Study of Progressive Sanctions and Risk Reduction Strategies at Work, February 2009.

Figure 1: Actual TDCJ Population at Calendar Year End Compared to Projected Population of January 2007 Before Justice Reinvestment Initiative



*Projected TDCJ population for December 2009 from the most recent projection (January 2009, LBB)

Table 2: Probation Population and TDCJ Admissions and Population Trends

FISCAL YEAR	FELONS PLACED ON PROBATION	AVERAGE YEARLY FELONS ON PROBATION	TOTAL ADMISSIONS TO TEXAS PRISONS	TDCJ POPULATION*
2006	56,706	157,993	75,544	155,651
2007	59,742	159,851	74,779	155,428
2008	60,214	168,788	74,283	156,127
% Change 2006–2008	6.1%	6.8%	-0.01%	0.3%

*Note: Texas prison population for August 2006 and August 2007 adjusted to account for a methodological change in the population count that became effective in September 2007 and explained in the note of Figure 6, in Justice Center, Council of State Governments, September 2007. The number of admissions and population includes inmates in prison, state jails and SAFP facilities. *Justice Reinvestment Texas: A Case Study* www.justicecenter.csg.org.

Source: Texas Department of Criminal Justice, Community Justice Assistance Division and Legislative Budget Board unpublished statistical tables.

Table 3: Parole Release and Approval Rate Trends

FISCAL YEAR	AVERAGE MONTHLY PAROLE RELEASES	PAROLE APPROVAL RATE	PAROLE POPULATION
2006	1,504	26.43%	76,721
2007	1,532	29.87%	76,709
2008	1,719	30.93%	77,990
% Change 2006–2008	14.3%	17.0%	1.6%

Source: Legislative Budget Board unpublished statistical tables and Texas Board of Pardons and Paroles, Parole Guidelines Reports.

Table 4: Probation and Parole Revocation Trends

FISCAL YEAR	FELONY PROBATION REVOCATIONS	FELONY PROBATION REVOCATION RATE	PAROLE REVOCATIONS	REVOCATION RATE
2006	23,214	14.7%	9,875	12.87%
2007	23,952	15.0%	9,792	12.77%
2008	24,028	14.2%	7,444	9.54%
% Change 2006–2008	3.5%	-3.1%	-24.6%	-25.8%

Source: Texas Department of Criminal Justice, Community Justice Assistance Division and Legislative Budget Board unpublished statistical tables.

2009 Prison Population Projection

The LBB's prison population projection issued in January 2009 takes into account the policy shifts resulting from the legislature's 2007 actions. This updated projection reflects a net reduction of approximately 15,000 people in the estimated growth of the prison population by 2012.

The January 2009 projection, unlike the January 2007 projection, does not suggest a pressing need for new prison construction. Little growth is projected for the prison population, and no shortfall in capacity is projected until August 2013, when the system will need 1,293 additional beds. Traditionally, when a relatively small shortfall of beds is projected (as in this case), the state of Texas has contracted with the counties for additional, temporary bed space. For example,

in 2007 and 2008 the state contracted with the counties to use more than 2,000 beds. Another (less costly) option for the state is to eliminate the need for additional capacity by slightly increasing the parole grant rate for people in prison who have a low risk of reoffending and streamlining the release process for individuals whose parole is approved.

Parole grant rates have yet to reach 31 percent consistently, which is the average rate recommended by the board's own guidelines. Moreover, the LBB performance review of the parole release process showed that inefficiencies in the process create delays in an offender's release and limit bed availability. Minor modifications in the release protocols could reduce the prison population by more than 1,000 offenders and potentially save close to \$14 million in the next two fiscal years.¹³

13. Legislative Budget Board, January 2009. "Reduce the Prison Population by Reducing Parole Process Delays" in *Texas State Government Effectiveness and Efficiency: Selected Issues and Recommendations*.

Challenges for the Legislature

The 81st Texas Legislature, which convened in January 2009, still faces major challenges regarding the state's corrections system. A shortage of correctional officers persists with 2,354 correctional officer vacancies, or 8.9 percent of all correctional officer positions, on January 31, 2009.¹⁴ The state will also need to address the problems related to the expansion of residential treatment center capacity. Additional support for probation and reentry strategies must also be a priority (see Table 5). These needs will compete with the agency's additional priorities, as shown below, as well as with the priorities of other state agencies.

TDCJ has requested \$6.853 billion for its FY 2010–11 budget, an increase in funding of approximately \$1 billion over the preceding two-year period. The TDCJ baseline budget includes continued support for all the programs adopted during the 2007 legislative session. In addition, TDCJ has requested “above the baseline” funds for FY 2010–11 for correctional and parole officers' pay raises (\$453.4 million); probation supervision, outpatient treatment, and mental health treatment (\$72 million); and reentry coordinators (\$10.4 million). The basic probation supervision funding request also includes funding for a probation officer pay raise.¹⁵ This will compete within the TDCJ budget for additional funding for items such as correctional healthcare (\$181.2 million); repairs and rehabilitation of facilities (\$100 million); correctional security equipment (\$30 million officially requested and potentially more to be requested to address the public safety concerns related to smuggled cell phones, an issue that gained national attention in late 2008);

and for 2009 an “emergency” request of more than \$176 million to address a budget shortfall during the present fiscal year related to increased fuel and electricity costs and other unanticipated operations expenses.¹⁶

Texas is facing better budget prospects than 44 states with major budget shortfalls.¹⁷ Still, the backdrop for this legislative session is one of declining revenues and expected economic downturns; the governor and the LBB have instructed state agencies, including TDCJ, to present an alternative budget, which incorporates across-the-board cuts of 10 percent.¹⁸

Historically (and as was the case during the 2003 recession), Texas policymakers have shown little interest in cutting agency expenses by reducing the prison population and closing down old, expensive prison units. Accordingly, TDCJ has proposed realizing a 10 percent spending cut by reducing funding for alternatives to incarceration and rehabilitation programs. Of the proposed \$124.3 million FY 2010–11 reduction, \$109.4 million, or 88 percent, will be reductions in probation and parole supervision, alternatives to incarceration, mental health services, substance abuse treatment, halfway houses, and intermediate sanction facilities.

Unfortunately, any such reductions will likely cause an increase in the prison population as they have in the past. For example, if the increase in prison population materializes due to a reduction in alternatives to incarceration in FY 2010–11, Texas will again face demands for a costly prison expansion program. Breaking this vicious cycle will be one of the biggest corrections and budgetary challenges faced by the Texas Legislature.

14. Legislative Budget Board, January 2008. “The Impact of Correctional Officer Workforce Shortages on Prison Operations and Security” in *Texas State Government Effectiveness and Efficiency*.

15. Texas Department of Criminal Justice, Community Justice Assistance Division, Strengthening Community Supervision Fact Sheet, February 2009.

16. Austin American-Statement, “Prison officials ask for \$66 million to help stop cell phone smuggling,”

December 4, 2008 at <http://www.statesman.com/news/content/news/stories/local/12/04/1204cellphones.html>.

17. Center on Budget and Policy Priorities, November 12, 2008 “State Budget Woes Worsen.”

18. LBB and Governor's Office Policy Letter, May 5, 2008 as presented in the FY 2010–11 TDCJ Legislative Appropriations Request, August, 14, 2008.

Table 5: Challenges Faced by the 81st Texas Legislature to Maintain an Effective Correctional System

ISSUE	DESCRIPTION
Prison correctional officer shortage and high turnover rate for probation officers	The present shortage in correctional officers negatively impacts all aspects of prison operations. TDCJ has requested a budget increase of \$453.4 million in FY 2010–11 for a 20 percent average pay increase for correctional and parole officers and \$40 million for a pay increase for probation officers.
Treatment facility locations	The rural location of some treatment facilities makes it difficult to hire qualified counseling staff and increases isolation from family who can assist in rehabilitation efforts. There are also cultural issues that have never been addressed; namely, the ability of a rural Anglo staff to effectively connect and establish “treatment” relationships with a predominantly African-American and Hispanic urban offender population.
Transitional Treatment Centers in the community and treatment staff	Transitional Treatment Centers (TTCs) are used to manage the transition from in-prison treatment to community treatment of offenders. There is a shortage of vendors to operate TTCs due to low per diem payments, the shortage in qualified certified counselors, and urban communities’ opposition to having these facilities (which are usually in urban areas to be effective). There is also a significant shortage of Spanish-speaking counselors, which negatively impacts the ability to deal with the growing Hispanic population. TDCJ is developing an intensive outpatient transitional treatment program and shortening the length of stay in TTCs, but these strategies need to be evaluated to assure an impact on recidivism equivalent or better than the impact that has been documented for the TTCs.
Per diem payments	With state agencies competing against each other due to different per diem payment schedules, per diem payments vary. In general, TDCJ pays lower per diem than those provided by the state health agency or federal government, which affects its competitive position in the market.
Probation/mental health	Probation officer turnover has increased, and the general higher operational costs for the probation system is putting pressure on diverting funds from programs and diversion efforts. The number of mentally ill persons in the system continues to increase and put added demands to more effectively deal with this population. TDCJ has requested an additional \$72 million for FY 2010–11 for enhancements in this area, including funding for additional outpatient substance abuse treatment and mental health courts.
Reentry and collaboration	Transitioning offenders from programs to community reentry requires effective collaboration with other public and private social services providers, such as housing acquisition or workforce development, but programs are staffed at levels that do not allow for dedicated personnel to do this. TDCJ has requested \$10.4 million in new funds for “reentry transitional coordinators” to enhance collaboration and reentry follow-up.
Barriers to success	State policies enacted in this decade are directed at the apparent protection of different segments of the public, but these policies have created significant barriers to offender success. Occupational license restrictions prevent offenders from engaging in certain occupations; results of background checks increasingly restrict housing options; and ex-inmates’ employment opportunities and financial obligations related to the payment of court imposed fines and fees have increased the financial burdens of an already economically distressed population. These policies need to be re-examined.
Sustainability	The state has not funded adequate research to measure the outcomes of Justice Reinvestment programs, which over the long term decreases the confidence the programs are producing well-documented results. Funding for this research should be considered an important part of improving the programs and sustaining their support.

To learn more about the justice reinvestment strategy
in Texas and other states, please visit:
www.justicereinvestment.org.

JUSTICE CENTER THE COUNCIL OF STATE GOVERNMENTS

The Justice Center is a national, nonpartisan organization that works with policymakers to develop data-driven, consensus-based strategies that increase public safety and strengthen communities. Assistance from the Justice Center is made possible in part through funding support provided by the Bureau of Justice Assistance, a component of the U.S. Department of Justice, and the Public Safety Performance Project of The Pew Charitable Trusts' Center on the States.



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To learn more about the Bureau of Justice Assistance, please visit: <http://www.ojp.usdoj.gov/BJA/>.



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To learn more about the Public Safety Performance Project, please visit: <http://www.pewpublicsafety.org/>.

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Justice Reinvestment State Brief: **Texas**



This brief is part of a series for state policymakers interested in learning how particular states across the country have employed a data-driven strategy called justice reinvestment to better manage corrections spending, increase public safety, and redirect some of the savings toward efforts that will improve conditions in the neighborhoods to which most people released from prison return. In 2007, Texas policymakers worked with the Council of State Governments Justice Center, and with the support of the Bureau of Justice Assistance, a component of the U.S. Department of Justice, and the Public Safety Performance Project of The Pew Charitable Trusts' Center on the States, to pursue a justice reinvestment strategy.

Highlights

- The prison population in Texas was projected in 2007 to grow by more than 14,000 people over a five-year period, costing taxpayers an additional \$523 million for the construction and operation of new facilities in the 2008 and 2009 fiscal biennium.
- An analysis of the prison population identified high rates of failure on community supervision, limited in-prison and community-based program capacity, and inefficient use of parole as key factors driving the projected growth.
- To reduce recidivism rates and avert further growth in the prison population, state lawmakers enacted a package of criminal justice policies to improve success rates for people on community supervision, expand the capacity of treatment and diversion programs, and enhance the use of parole for low-risk offenders.
- To fund the package, policymakers reinvested \$241 million (which would have otherwise been appropriated for the construction and operation of new prisons) for additional treatment and diversion programs.
- By enacting these policies, the state saved \$210.5 million for the 2008–2009 fiscal biennium. If new treatment and diversion programs are successful and no additional prisons are constructed, the state will save an additional \$233 million.
- Policymakers also reinvested in the expansion of the Nurse-Family Partnerships Program, a nationally recognized model for improving outcomes for low-income families and reducing crime, to reach 2,000 families/children.

Texas has long been regarded as a state with some of the “toughest” criminal justice policies in the nation. During the early 1990s, policymakers enacted laws increasing the time serious, violent offenders serve in prison. With those and other changes to state law, the incarceration rate in Texas increased significantly, and today, it has the second-highest incarceration rate in the United States.¹

Between 1985 and 2005, the prison population grew 300 percent, forcing the state to build tens of thousands of prison beds. From 1983 to 1997, the state spent \$2.3 billion in construction costs to add 108,000 beds to its system. Less than 10 years later, the prison population exceeded the capacity of the state’s prisons by 3,000 and was projected to continue growing. An official state projection released in January 2007 forecast that the prison population would increase by 14,000 people within five years.

Faced with an impending prison overcrowding crisis, policymakers had to decide whether spending \$523 million to build and operate additional prisons was the best way to increase public safety and reduce recidivism. With bipartisan leadership, policymakers in Texas identified and enacted strategies to expand the capacity of treatment programs and residential facilities that are projected to increase public safety and avert the projected growth in the prison population at a net savings to the state.

**“If we don’t change the course now, we will
be building prisons forever and ever—
prisons we can’t afford.”**

**— STATE SENATOR JOHN WHITMIRE, D-HOUSTON,
CHAIR, SENATE CRIMINAL JUSTICE COMMITTEE**

1. William J. Sabol, Todd D. Minton, and Paige M. Harrison, *Prison and Jail Inmates at Midyear 2006*, Bureau of Justice Statistics, June 2007.

STEP 1

Analyze the Prison Population and Spending in the Communities to Which People in Prison Often Return

In 2006, Texas state leaders requested intensive technical assistance from the Council of State Governments Justice Center. In response, the Justice Center provided state policymakers with an analysis that identified the factors contributing to the projected growth of the prison population:

- Between 1997 and 2006, the number of probation revocations to prison increased 18 percent, despite a three percent decline in the total number of persons under community supervision.²
- Reductions in funding for community-based substance abuse and mental health services led to a shortfall of treatment beds with over 2,000 persons awaiting space in various treatment programs or facilities.³
- The percentage of people approved for parole remained lower than suggested by the Parole Board’s guidelines based on risk levels and crime severity. Had the guidelines been followed, an additional 2,252 persons might have been released in 2005.⁴

The Justice Center also provided geographic analyses of the state prison population which revealed that five counties accounted for more than half of the people sentenced to prison at a cost to taxpayers of over a half billion dollars. Of these localities, Harris County (Houston) received and contributed the most prisoners, with 10 of Houston’s 88 neighborhoods accounting for almost \$100 million a year in incarceration costs.



2. Texas Department of Criminal Justice, Community Justice Assistance Division, Statistical Tables, December 2006.
 3. Memorandum from Deanne Breckenridge, Texas Department of Criminal Justice, December 7, 2006. As of December 2006, there were

1,386 offenders awaiting space in a Transitional Treatment Center, 823 offenders were in county jails awaiting treatment space in a Substance Abuse Felony Punishment (SAFP) facility, 174 were in prison awaiting in-prison therapeutic treatment, and there were 1,206 fewer

therapeutic treatment beds in state jails as these were eliminated in prior budget cuts.
 4. Sunset Advisory Commission: Texas Department of Criminal Justice, Board of Pardons and Paroles, Correctional Managed Health Care Committee Staff Report, October 2006.

**STEP
2**

Identify Options to Generate Savings and Increase Public Safety

In January 2007, House and Senate members, under the leadership of state Senator John Whitmire (D, Chair, Criminal Justice Committee) and state Representative Jerry Madden (R, Chair, Corrections Committee), convened a rare joint hearing to review all factors contributing to the increase in the prison population, respond to research findings by the state Sunset Commission, a legislative committee established to review the necessity of state agencies including the Texas Department of Criminal Justice (TDCJ), and consider policy options which would reduce recidivism and increase public safety. In addition to the analyses that identified the factors driving the growth of the prison population, the legislature requested that the Justice Center and its expert consultant present

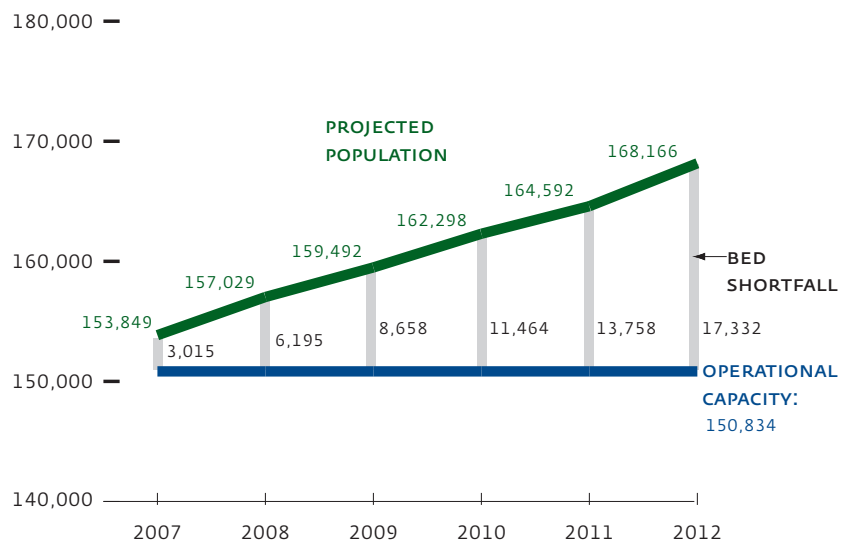
a set of policy options that included expanding residential and in-prison substance abuse and mental health treatment capacity, enhancing the use of parole and diversion programs, and transferring two Texas Youth Commission (TYC) facilities to TDCJ to quickly expand prison capacity.

Leaders in the House and Senate worked with the Texas Legislative Budget Board (LBB) and the Sunset Commission, to review several policy options and their estimated impact. According to these policy analyses, increasing the capacity of treatment and diversion programs would reduce prison admissions due to a reduction in revocations, while enhancing the use of parole would allow the TDCJ to operate at capacity—without a bed shortfall by 2012.⁵

“We’re in the process of sharply turning the ship—not an easy process—to focus more on treatment of peoples’ problems so they can do their time and return to society as productive citizens...In 10 years, we may look back on this as one of the most significant changes we’ve made.”

– STATE REPRESENTATIVE JERRY MADDEN, R-PLANO, CHAIR, HOUSE CORRECTIONS COMMITTEE

Texas Projected Prison Population, 2007-2012



Source: Legislative Budget Board, June 06 and January 07 (Adult and Juvenile Correctional Population Projections). The LBB report with the official projections for the 2007 session can be found at: http://www.lbb.state.tx.us/PubSafety_CrimJustice/3_Reports/Projections_Reports_2007.pdf.

5. Council of State Governments Justice Center, *Texas Justice Reinvestment Scenarios*, 2007.

In May 2007 the Texas Legislature enacted a package of criminal justice legislation which many policymakers consider to be the most substantial redirection in state corrections policy since the early 1990s. The new policies included an expansion of treatment and diversion programs with:

- 800 new beds in a residential program for people on probation supervision with substance abuse needs;
- 3,000 slots for outpatient substance abuse treatment for people on probation supervision;
- 1,400 new beds in intermediate sanction facilities to divert probation and parole technical violators from prison;
- 300 new beds in halfway house facilities for people under parole supervision;
- 500 new beds in a new facility for an in-prison treatment unit targeting people with DWI offenses;
- 1,500 new beds for an in-prison intensive substance abuse treatment program; and
- 1,200 slots for intensive substance abuse treatment programs in the state jail system.

The new policies enhance parole and probation policies and procedures by:

- establishing a maximum limit for parole caseloads to ensure adequate supervision;⁶
- reducing probation terms for drug and property offenders from a maximum of 10 years to a maximum of five years to ensure that they receive treatment and supervision during the years when research studies show that they are more likely to re-offend;⁷
- establishing incentives for counties that create progressive sanctioning models for probation officers to respond effectively to violations of supervision;⁸ and
- expanding drug courts and other specialty courts to place offenders who committed minor crimes in treatment programs that will reduce their likelihood to re-offend.

Policymakers also authorized bond funding for the construction of three new prisons—an addition of 3,990 beds. But construction for these institutions can proceed only if the new policies and programs are not implemented effectively and the LBB deems such construction necessary.⁹

“[W]e have embarked on a bold initiative to rehabilitate non-violent felons to leave room to incarcerate the violent.”

**– STATE SENATOR STEVE OGDEN, R, CHAIR,
SENATE FINANCE COMMITTEE**

6. Texas Legislature, House Bill 3736, “An Act Relating to Establishing Parole Officer Maximum Caseloads,” enacted 2007.

7. Texas Legislature, House Bill 1678, “An Act Relating to the Operation of a System of Community Supervision,” enacted 2007. Dr. Patrick

A. Langan and Dr. David J Levin, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994*, NCJ193427, June 2002.

8. Texas Legislature, Senate Bill 166, “An Act Relating to a Prison Diversion Progressive Sanctions Program,” enacted 2007.

9. Texas Legislature, House Bill 530, “An Act Relating to the Operations and Funding of Drug Court Programs,” enacted 2007.

**STEP
3****Quantify Savings and Reinvest in Select High-Stakes Communities**

The state reinvested \$241 million, which would have otherwise been spent on prison construction and operation, to expand the capacity of in-prison and community-based treatment and diversion programs.¹⁰ The LBB projected that this reinvestment would eliminate the prison bed shortfall by 2012. Because the cost associated with increasing the capacity of treatment and residential facilities is significantly less than the TDCJ's original budget request for additional prison capacity, the state saved \$210.5 million for the 2008–2009 fiscal biennium.¹¹ Assuming that no additional prisons are constructed, the state will save an additional \$233.4 million over the 2008–2009 fiscal biennium.

Policymakers also reinvested some of the savings generated in strategies to improve outcomes for low-income children and families. For example, the legislature appropriated \$4.3 million for fiscal years 2008–2009 to the Nurse-Family Partnerships (NFP) program, a nationally recognized model that pairs nurses with first-time, low-income mothers during the child's first two years. The purpose of NFP is to increase self-sufficiency, improve the health and well-being of low-income families, and prevent violence. The program will provide services to 2,000 families in “high stakes” communities throughout the state.¹²

**STEP
4****Measure the Impact and Enhance Accountability**

Lawmakers enacted these policies in the 2007 session as overcrowding in Texas correctional facilities continued to intensify. Consequently, state officials are under significant pressure to make available the new treatment and diversion programs almost immediately. They must also ensure that these programs and services target the appropriate categories of people that are awaiting release or under community supervision.

At the same time, the Parole Board must review and update its parole guidelines to ensure that members consistently use and apply an objective risk assessment instrument to determine the likelihood of the person committing another crime. Parole Board members must also coordinate with the TDCJ to ensure that people eligible for parole are completing appropriate in-prison treatment, educational, and vocational programs.

To ensure that state agency officials and Parole Board members are meeting these challenges, the legislature established the Criminal Justice Legislative Oversight Committee (CJLOC) to monitor the implementation of the new policies and programs and to evaluate their impact on state prison populations. The CJLOC comprises the chairs of two legislative committees, two designees of the Senate and Lieutenant Governor, and two designees of the House of Representatives. This new committee will provide the state legislature with the nonpartisan research, analysis, and recommendations necessary to shape ongoing criminal justice policy.

10. Texas Legislative Budget Board, Conference Committee Projection Scenario, May 7, 2007. The original projection assumed that the parole rate will continue at the FY 2006 level of 26% while the final policy assumes that the rate will increase to 28% due to the additional in-prison treatment capacity and assumes that the new prison will not be constructed due to the impact of the diversion policies.

11. The savings represent the difference between the original request for appropriations by the administration and the final adopted plan and do not consider potential future savings or cost-avoidance due to the impact of the plan on the projected prison bed shortfall and reductions in recidivism.

12. The Colorado Blueprints for Violence Prevention, a national initiative to identify models that provide effective violence prevention and intervention strategies, conducted a rigorous evaluation of 600 model programs and identified the NFP program as one of 11 proven models to prevent violence. To learn more, please visit <http://www.colorado.edu/cspv/blueprints/>.

Comparison of Requested New Funding (Exceptional Items) in Texas Department of Criminal Justice Original Request for Appropriations and Final State Appropriation (HB 1, Fiscal Years 2008–2009)

	TDCJ REQUEST FOR APPROPRIATIONS	FINAL STATE APPROPRIATION, HB 1
Probation/Parole Program Capacity	\$28,135,448 650 beds	\$129,734,638 4,000 beds
In-Prison Substance Abuse Treatment	\$20,154,609 700 beds	\$43,951,050 1,500 beds/slots
Other Program Capacity	\$48,436,000	\$25,800,000
Other Plan Costs	(\$1,369,392)	\$15,891,698 1,200 TYC beds
SUB-TOTAL (Items related to Whitmire/Madden plan)	\$95,356,665	\$241,043,449
Prison Expansion & Contracted Capacity		
Temporary Contracted Capacity for Backlog Governor's Veto	\$184,485,360	\$66,089,360 -\$29,249,240
Debt Service for New Prisons*	\$55,840,099 4,080 beds	\$4,916,438 3,990 beds
Other Operational Cost Above Baseline Governor's Veto	\$187,359,311	\$184,907,557 -\$10,918,309
TOTAL FY 2008–2009 OPERATIONAL COSTS ABOVE BASELINE	\$523,041,435	\$456,789,255
Bonds for New Prisons	\$377,700,000	\$233,400,000 (if need arise, pending approval)
TOTAL INCLUDING NEW PRISONS	\$900,741,435	\$690,189,255
Averted Costs in Comparison to TDCJ Request for Appropriations	–	\$210,552,180 (if new prisons are approved) \$443,952,180 (if new prisons are not approved)
Projected Prison Bed Shortfall by 2012	8,399 beds	0

* During the 2007 legislative session, the Texas legislature provided \$4.9 million to the TDCJ in estimated expenses for debt services. If new prisons are constructed, the debt service may be higher than this amount. However, TDCJ is allowed to "spend forward" funds to cover correctional expenses and can do so to cover a higher debt service cost. During the next legislative session, legislators will then allocate the funds to the TDCJ so that the department does not experience a budget shortfall.

To learn more about the justice reinvestment strategy in Texas and other states, please visit:
www.justicereinvestment.org.

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The Council of State Governments Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The Justice Center provides practical, nonpartisan advice and consensus driven strategies, informed by available evidence, to increase public safety and strengthen communities.



BJA Bureau of Justice Assistance



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Simply jailing people who don't pay fines smacks of short-sighted injustice

Matilda Alexander

ON NOVEMBER 15, 1988, 17-year-old Queensland Patrick Booth was found hanging in a cell in Rockhampton prison. He was serving a five-month sentence for failure to pay fines for minor offences.

One month earlier, teenager Bradley Engelman died in jail from a drug overdose after being imprisoned for failing to pay traffic fines.

These deaths led to legal and policy change aimed at stopping imprisonment for fine default.

Unfortunately, these changes were not long-lasting and in the past few years a small but growing number of Queenslanders have found themselves in prison for not paying fines.

According to the Report on Government Services 2011, tax-

payers spend \$280 a day to keep a person in prison.

Most of this money goes towards containment rather than rehabilitation. A prisoner serving time for fine default is not eligible for offender programs, but will spend their time paying off their fine at a rate of \$100 a day.

The case of an Aboriginal woman released last week demonstrates the futility of this situation.

Julie (not her real name) has had a harder life than other Queenslanders. She was taken from her family at the age of six and placed into foster care where she was repeatedly abused. She became pregnant when she was in Year 9 and was forced to discontinue her education.

For many years, Julie struggled to survive a domestically violent relationship that led to the loss of

her accommodation, possessions, and children. She started drinking, using drugs and ended up living on the street.

To survive, she stole and committed other crimes reflecting increased interaction with the law, such as obstructing police.

She committed numerous driving offences including driving a car that she could not afford to register and failing to display L plates. Julie amassed many fines that she could not afford to pay.

She asked the State Penalties Enforcement Registry to automatically deduct money from her Centrelink payment for the fines. She failed to complete the required forms they sent her but nevertheless believed that the amount she was receiving had the payments deducted.

Julie was 27 when she was arrested for non-payment of

fines. She was taken straight to prison: no lawyer, no court, no judge. Sixty per cent of her fines were for traffic offences and all were related in some way to her disadvantage, poverty and homelessness. She was 7½ months pregnant and left behind six children with a new partner who was chronically ill.

Julie was handcuffed to the hospital bed during her ultrasounds and also while giving birth. She had to wait a week after the birth to be told her son would be allowed to stay with her in prison. When he was six weeks old, they were reunited, but he was now unable to breastfeed. He has lived in prison ever since.

Julie's partner was unable to attend the birth and was told three days later that he had a son.

While Julie was in prison, two of her children were hospitalised

Julie was 27 when she was arrested for non-payment of fines. She was taken straight to prison: no lawyer, no court, no judge

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and she was forced to make decisions about their wellbeing without seeing them or talking to their doctors. A family member died and Julie was unable to grieve with her family.

If Julie had been a Victorian, an infingement court would consider whether imprisonment would be excessive, disproportionate and unduly harsh.

The Victorian court could then either forgive the outstanding fines or reduce the period of time in custody.

In November 2009, the Commonwealth, state and territory governments endorsed the National Indigenous Law and Justice Framework. One of the goals of this framework was to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

The incarceration of an

abused, homeless Aboriginal woman for seven months without mitigation, representation or a trial is the antithesis of this goal.

Julie's incarceration has cost the state \$61,600 of taxpayers' money.

It has not lifted her out of poverty, nor increased her education. It has not prepared her for employment. It has not increased her contact with support services or provided stable accommodation for her family.

Instead it has broken an already damaged soul.

And so, as we did in 1988, Prisoners' Legal Service calls on the State Government to immediately suspend the use of imprisonment for fine default.

Matilda Alexander is co-ordinator and principal solicitor for Prisoners' Legal Service.

(12)

Candid camera cops in Valley

189 words

8 January 2007

The Gold Coast Bulletin

GCBULL

B - Main

8

English

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ELEMENTS of the science fiction film Robocop have become a reality in Queensland, with police trialling head-mounted miniature cameras for the first time in Australia.

The move has sparked concerns from civil libertarians, who say the devices should be independently vetted and subjected to parliamentary oversight.

Police officers in Brisbane's CBD and Fortitude Valley area are the first in the country to use the technology as part of a special squad enforcing the state's liquor laws.

The Cylon Body Worn Surveillance System takes the form of a miniature camera fitted to a police officer's cap.

Two officers, who are part of a 20-member public order squad, are using the \$4500 cameras to gather evidence in CBD and Valley clubs on weekends.

Club owners are shown the footage of their employees serving drinks to drunk patrons, then warned to clean up their acts or lose their licence.

While the footage has not been used in court to date, it is understood some club owners have pleaded guilty and accepted fines after seeing video evidence.

[GCB_T-20070108-B-008-207112]

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Qld: Police trial head-mounted cameras

417 words

7 January 2007

Australian Associated Press General News

AAP

English

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CAMERAS By Paul Osborne

BRISBANE, Jan 7 AAP - Elements of the science fiction film Robocop have become a reality in Queensland, with police trialling head-mounted miniature cameras for the first time in Australia.

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Club owners are shown the footage of their employees serving drinks to drunk patrons and then warned to clean up their acts or lose their licence.

While the footage has not been used in court to date, it is understood some club owners have pleaded guilty and accepted fines after seeing video evidence.

Queensland Police Service Acting Commissioner Dick Conder said the technology had proven useful in some instances, although officers conducting the trial were concerned some of the images were inadequate.

"One of the areas that I'm concerned about is we move our heads very quickly ... and the moving of the head distorts the picture," he said.

"At this point, it's got very limited application."

In April last year, a British woman became the first person to be convicted by evidence filmed on one such cameras.

President of the Australian Council for Civil Liberties Terry O'Gorman said the technology had the potential to collect a large amount of footage that had nothing to do with particular arrests and could impinge on personal privacy.

But, Mr O'Gorman said, they could reduce court disagreements over evidence.

"Most disputes that go to court arising from police arrests or directions to move on are associated with denials and they are fairly lengthy court proceedings, so from that point of view the cameras, so long they are operating all the time, are a good idea," the lawyer said.

But, he said, the trial should be overseen by the state's Crime and Misconduct Commission (CMC) and a parliamentary committee.

The CMC also should seek reports from the UK to identify any potential problems.

AAP pjo/jvcdh

Document AAP0000020070107e317001up

News
Cop-cam heads our way

EDMUND BURKE

366 words

7 May 2006

Sunday Mail, The

SNDMAL

2 - State - Main Country

43

English

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QUEENSLAND **police** and sniffer dogs soon could be equipped with **head-mounted** cameras to record evidence as they work.

The miniature **camera** systems are in use in the United Kingdom and the **camera-makers** plan to give a detailed presentation to Queensland **police** this year.

Steve Rodgers, of UK-based Cylon Systems, said demand for the \$3600 cameras had been huge since their December launch.

"We have had numerous contacts and requests from Australian companies to be distributors," he said.

"We intend to contact the Queensland **police** very soon."

The Queensland **Police** Service has indicated serious interest in the cameras.

"QPS is always prepared to look at technology being used in other jurisdictions and we'd definitely want to have a look at this," a **police** spokeswoman said.

Australian Council for Civil Liberties president Terry O'Gorman said the cameras could be a useful law enforcement device, but cautioned that it should be made mandatory for Queensland **police** to use them from the point of contact with any member of the public.

"We should not have a situation where **police** can pick and choose when they want to use the evidence," he said.

"There are also issues of privacy to consider. We can't have a situation where **police** can enter someone's home on a **police** matter and then sit around and comment on the decor, back at the station."

The Cylon Body Worn Surveillance System takes the form of a miniature **camera** fitted to a policeman's cap.

With advances in both **camera** and recorder technology, the quality of the images captured is now good enough to use in court.

Last month, a British woman became the first person to be convicted by evidence filmed on one of the cameras.

They are also being used in the UK in a campaign against domestic violence.

The cameras have been supplied to 30 forces in England and Scotland.

Miniature cameras are also being used with **police** dogs to gather evidence in the UK.

Previous **camera** systems had a heavy battery pack which meant dogs became tired quickly and suffered from decreased mobility.

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Ensuring police integrity.

511 words

2 October 2001

Courier Mail

COUMAI

10

English

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Tuesday, October 2, 2001 INTEGRITY is the bedrock on which a respectable **police** service is built. **Queensland** is perhaps in a better position than some other states to know that maintaining the integrity of the **police** service is a constant task. This was one of the most salutary lessons learned during the Fitzgerald inquiry. The latest plan to improve the public standing and efficiency of **Queensland Police** is to introduce **tape-recordings** of all conversations officers have with the public. The move, which will effectively make **tape-recorders** part of the **police** uniform, should be supported. It would legitimise the practice of many **police** officers, here and interstate, who have already chosen to **record** their dealings with the public, particularly if the issue being discussed is contentious. Some parking inspectors also carry **tape-recorders** in case of arguments with motorists.

Trials of similar systems in NSW have resulted in a 70 per cent drop in the number of complaints against **police**. The Criminal Justice Commission hopes much the same will happen in **Queensland** once the **tape-recorders** become part of everyday **police** operations. NSW Justice James Wood, in his 1997 report into **police** corruption in that state, said the use of hand-held **recorders** for official conversations with the public would improve relations between **police** and those with whom they deal.

CJC chairman Brendan Butler has similar views, saying it would help discourage **police** from acting inappropriately and also result in less time being spent on resolving complaints against **police**. About a third of the complaints against **police** investigated by the CJC are found to be unworthy of further action. The time and resources used to investigate baseless complaints would be put to better use if individual **police** had a **tape-recording** to back them up.

But such a system would not only protect the **police**. The use of **tape-recordings** of **police** dealing with the public is a natural progression from the post-Fitzgerald reforms aimed at eradicating the "verbal", or false confession, from the **police** culture. The **tape-recording** of formal interviews with crime suspects has improved the system, but lawyers argue their clients remain vulnerable to threats made before the **record** button is pushed.

Finally, there is the general issue of public trust. **Queensland police** strive for, and generally deserve, the public's trust. But, quite apart from the gross injustices it produced, the "verbal" became a catch-all reason to distrust the **police** in this state. More than a decade on from the Fitzgerald inquiry, a survey conducted for the CJC in 1999 suggested about 20 per cent of Queenslanders still had difficulty agreeing with the notion that "most **police** are honest". The same survey suggested 30 per cent of Queenslanders believed **police** had a bad image.

Having **police record** all dealings with the public throws up some organisational and storage problems. But the progress of a trial system, to be conducted at Cleveland **police** station, east of Brisbane, should suggest ways to meet such challenges, and indicate how much the system will cost.

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Police to tape every remark.

By Michael McKinnon.

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English

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POLICE could **tape-record** all conversations with the public if a trial of the system succeeds in southeast Queensland.

The **tape-recordings**, from the moment **police** have contact with a member of the public, are designed to stop evidence being falsified and designed to discourage people from making false complaints to the Criminal Justice Commission.

The **police** union and civil libertarians have backed the trial which was recommended by the CJC in March.

Many **police** already use **tape-recorders** unofficially to protect themselves against false complaints.

Police Minister Tony McGrady confirmed that a trial use of **tape-recorders** would be conducted at Cleveland **police** station east of Brisbane.

"The trial will help ascertain what benefits the move could have for both the public and operational **police** officers," Mr McGrady said.

"The trial will be segmented in three periods of three months each and a full report will be delivered to the State Government for consideration once the trial is completed midway through next year.

"The **police** are in the process of purchasing 40 standard technology **recorders** and five digital **recorders** with download equipment for the 55 staff who work at Cleveland **police** station."

Police sources said the plan could face difficulties because tapes would have to be kept for up to seven years for evidence, raising serious problems with their storage.

CJC chairman Brendan Butler said the CJC had been pushing for some time for all operational **police** to use hand-held **recorders**.

"The commission believes this will discourage **police** from acting inappropriately as well as discouraging anyone from making unfounded complaints against **police** if they know they are being **recorded**," he said.

"The use of hand-held **recorders** should help to speed up investigations and the resolution of complaints.

"There are substantial resource implications for the **police** and the CJC has suggested a staged implementation beginning with a trial that looks at all aspects of the scheme."

Queensland Police Union president Gary Wilkinson said the union had been aware for "some time" that a trial would be conducted.

"We have no major concerns about the trial and we look forward to seeing the results when finalised," Mr Wilkinson said.

Australian Council of Civil Liberties president Terry O'Gorman said the policy had first been recommended as far back as 1996.

Mr O'Gorman said there were an increasing number of challenges in the courts over interviews **recorded** in **police** stations because of fears that suspects were being coerced or threatened before the tapes were turned on.



Addressing the
Drivers of Crime

Background Information

17 December 2009

Addressing the Drivers of Crime: Background Information

The Government is progressing a new approach to reducing offending and victimisation called 'Addressing the Drivers of Crime'. This document provides background information on this approach.

Why is the Government taking action to address the drivers of crime?

There is no question that we must give the police the tools they need to catch criminals and have strong penalties in place to punish those who break the law. But we must also recognise that such measures are only part of the answer to creating a safer society. As well as being 'tough on crime' we also need to be 'smart on crime'. This means taking action to prevent crime before it occurs, and to reduce the likelihood of further offending and victimisation. In order to do this, we need to understand and address the drivers of crime.

In April this year, the Ministers of Justice and Māori Affairs hosted a Ministerial Meeting on the Drivers of Crime, to establish a dialogue and build consensus on drivers of crime in the New Zealand context. The meeting was attended by over 100 participants from a range of backgrounds, with a common interest and expertise in dealing with, and preventing, crime and victimisation. The full proceedings from the meeting can be found online at www.justice.govt.nz.

'Addressing the Drivers of Crime' has been developed in direct response to the messages conveyed at the Ministerial Meeting. This new approach to reducing offending and victimisation recognises that although responsibility for reducing crime currently sits with the justice sector agencies, many of the tools for achieving this are located in other sectors - health, education, parenting support, housing, recreation, and economic, social and community development. It recognises that efforts to reduce crime cannot be pursued separately from efforts to address other social harms, but need to be part of a coordinated set of responses across sectors. It recognises the need for a greater sense of shared responsibility across government and within communities for reducing crime.

What are the drivers of crime?

The term 'drivers of crime' refers to the underlying causes of offending and victimisation. It recognises the growing body of knowledge about

the circumstances of people's lives that are associated with a greater likelihood of offending and victimisation.

The factors that participants at the Ministerial Meeting identified as the underlying drivers of crime are not new or surprising. They also represent the most difficult problems in our society today: family dysfunction; poverty; child maltreatment; poor educational achievement; harmful drinking and drug use; poor mental health; severe behavioural problems amongst children and young people; and the intergenerational transmission of criminal behaviour. Many of these issues are concentrated within socially and economically disadvantaged families and communities. Participants also noted that some aspect of the way in which the criminal justice sector operates can perpetuate rather than prevent offending.

Fragmentation of government-provided or funded services was a significant theme at the meeting. While the underlying drivers of crime are inter-related, many services are focused on dealing with a single issue (e.g. housing needs, health needs). Participants advised that addressing the factors that lead to offending and victimisation requires a more coordinated approach across government, underpinned by evidence, and supported by strong leadership and engagement with Māori and local communities.

There was also agreement at the Ministerial Meeting about the need to focus on addressing the drivers of crime for Māori, who are over-represented in the criminal justice system as both victims and offenders.

What decisions has the government made on 'Addressing the Drivers of Crime'?

On 2 November 2009, Cabinet agreed that 'Addressing the Drivers of Crime' be established as a whole-of-government priority, and that this approach to reducing offending and victimisation will involve:

- addressing the underlying issues that drive and facilitate offending and victimisation, particularly for Māori,
- responding effectively to the drivers of crime along the pathways to offending, including early prevention, treatment for specific needs related to offending, and justice sector responses that reduce re-offending,
- shared responsibility across a range of government agencies and service providers, and

- a focus on improved value for money through better coordinated, better targeted, and more effective services and programmes.

What does this approach mean in practice? What will change?

Government already invests significantly in a wide range of programmes and services aimed at improving individual outcomes. Many of the services are focused on crisis intervention. We can do better if services to individuals are reinforced at the family and community level, and underlying causes are addressed early. We can do better by making connections between existing services, getting rid of duplication and inconsistencies, and plugging gaps in services between different agencies. We can achieve better individual, family and community outcomes by pooling knowledge and resources, jointly contracting services, reducing backroom bureaucracy, and improving the alignment of services within and between sectors.

A number of Ministers are leading work that can make a significant difference in reducing offending and victimisation. By working together and aligning our policy objectives and work programmes, Ministers and their agencies will be able to get better value from existing and new spending and have a greater impact across a range of priority areas.

The underlying drivers of offending and victimisation are complex and wide-ranging, and represent some of the most pressing social problems we face today. Government action on the Drivers of Crime will focus initially on four priority areas, to ensure we achieve real change and deliver real results in these areas.

What are the four priority areas?

The four priority areas for cross-government action on Addressing the Drivers of Crime are:

- improve the quantity, quality and effectiveness of maternity and early parenting support services in the community, particularly for those most at-risk,
- develop and implement programmes that treat and manage behavioural problems in at-risk children and young people,
- reduce the harm from alcohol and improve the availability and accessibility of alcohol and drug treatment services, and
- identify alternative approaches to manage low-level offenders and offer pathways out of offending.

These four priority areas have been chosen as the initial focus for action on addressing the drivers of crime, because:

- they were highlighted as significant areas of concern at the Drivers of Crime Ministerial Meeting,
- research suggests that improvements in these areas are linked to reductions in offending and victimisation, as well as wider social benefits, and
- responsibility for funding, policy and/or service delivery in these areas sits across a range of agencies, and better collaboration between agencies is needed to deliver timely, effective services to those who are most at risk.

Why is it so important to prioritise Māori in this work?

Māori have the highest rates of offending, re-offending and victimisation of any population group, and their rate of imprisonment is over seven times that of non-Māori. Reducing the over-representation of Māori in the criminal justice system is crucial to achieving meaningful and sustained reductions in overall offending and victimisation.

In each of the four priority areas, explicit consideration will be given to ways in which services can be improved in order to ensure they are accessed by, and effective for, Māori. This will include the identification of opportunities for Māori to design, develop and deliver innovative and cost-effective solutions that are responsive to the needs of Māori.

While Government has a central role to play, the ongoing commitment of Māori communities and Māori leadership to an approach to address drivers of crime will be crucial. Many Māori organisations are already very active in whānau and community development, using innovative cultural models to deliver effective programmes. The Government is committed to maintaining dialogue with the leadership of iwi, Māori communities and organisations, and exploring ways in which they can be supported to lead change and strengthen capability within their communities.

Who will be involved in the work?

There has been strong Ministerial and Chief Executive leadership for the work to date on Addressing the Drivers of Crime, and this will continue. The Ministers of Justice and Māori Affairs will support Addressing the Drivers of Crime at the Ministerial level by coordinating with other Ministers.

Work on the four priority areas will be overseen by the Social Sector Chief Executives' Forum (SSF). The SSF comprises the Chief Executives of the Ministries of Justice, Education, Health, Social Development, and the Department of Prime Minister and Cabinet. Representatives from Te Puni Kōkiri, the New Zealand Police and the Department of Corrections have also been invited to be directly involved in leading and contributing to the Drivers of Crime work programme.

There are agreed Terms of Reference for the cross-government work to be undertaken in each of the four priority areas. Information on the focus of the work under each priority area is provided in **Appendix A**.

How will the Government know if this approach has made a difference?

Adoption of this approach will have positive short-term impacts on the efficiency and effectiveness of programmes and will improve the take-up of services by individuals and groups at the greatest risk of offending. It is expected to have positive effects on wider social, educational and health outcomes.

The impact on justice sector outcomes will take longer to realise. These longer term (five years and beyond) results include:

- improved community safety and fewer victims of crime,
- reduced offending and fewer offenders being dealt with in the criminal justice system, with an associated reduction in costs,
- a reduction in the wider public and private costs associated with the harm caused by crime and victimisation,
- improvements in wider health, education, economic and social outcomes,
- positive inter-generational effects from reduced parental criminality, and
- a reduction in offending and imprisonment rates for Māori.

The Ministry of Justice will report to Cabinet on a six-monthly basis on progress and results in implementing this approach. By April 2011, Ministry of Justice officials will take stock of progress and review the results achieved through Addressing the Drivers of Crime. This will involve an assessment and analysis of:

- monitoring and accountability information to determine impact,
- the impact of the approach on service delivery, participation and outcomes, and
- opportunities to reframe or refocus the approach.

Appendix A: Priority Areas for Cross-Government Action

Priority Area	Reason for prioritising this area	What is the focus of cross-government action?
<p>Maternity and early parenting support services</p>	<p>Poor attachment and parenting practices and more serious issues such as child neglect and maltreatment are risk factors for subsequent youth and adult offending.</p> <p>There is strong evidence that effective antenatal / maternity and parenting support can reduce youth and adult offending and improve many other outcomes. Multiple agencies are involved in setting policy frameworks and funding services in this area. There are acknowledged issues in linkages, transitions and referrals between services.</p> <p>Vulnerable families and Māori are less likely to take part in antenatal, and Well Child services and attached specialist services.</p> <p>Wider impacts resulting from improvements in this area include prevention of child maltreatment, improved maternal mental health and child health outcomes.</p> <p>Action will coordinate efforts across social agencies to reduce duplication and ensure the most vulnerable families receive support.</p>	<p>This work will focus on:</p> <ul style="list-style-type: none"> • improving the linkages and transitions between maternity and early parenting support services, including Well Child/Tamariki Ora • identifying ways in which existing or new services can be enhanced or configured to improve engagement with vulnerable families and ‘hard to reach’ groups, and to ensure services better meet the needs of these groups • improve linkages between targeted and universal services (such as early childhood education) to ensure increased participation by vulnerable groups in the universal services • assessing current action being taken to enhance the capability of the maternity and early parenting support workforce, and identifying any other actions needed to ensure that the workforce has the skills and competencies required to provide effective support for vulnerable families and ‘hard to reach’ groups. • exploring the feasibility, costs and benefits of developing integrated information for parents (e.g. integrating information provided by telephone, internet and face-to-face services) so that parents (including expectant parents) can easily access information about the services and support available to them in different locations and circumstances. • identifying and addressing gaps in current monitoring data, so that we better understand who uses maternity and early parenting support services and how effective these services are at improving outcomes for children.

Priority Area	Reason for prioritising this area	What is the focus of cross-government action?
<p>Treatment of behavioural problems in children and young people</p>	<p>Serious behavioural problems in early childhood are one of the strongest predictors of adverse adult outcomes, particularly offending. Between 5 and 10 percent of children are estimated to have severe behavioural problems. The incidence of serious behaviour problems is estimated to be 10 to 15 percent among Māori children.</p> <p>Multiple agencies are involved in funding and setting policy and delivering services in this area. No agency has clear accountability in this area and there is a significant shortage of behavioural services.</p> <p>There is good evidence about ‘what works’ in terms of addressing serious behavioural problems in family, school and therapeutic settings.</p> <p>Action will coordinate efforts across social agencies to ensure consistency in referrals and treatment. Focus will shift to identifying and treating the problem earlier, with 3 to 7 year olds a priority.</p>	<p>This work will focus on:</p> <ul style="list-style-type: none"> • developing and implementing programmes and services that prevent, treat and manage conduct and behavioural problems in at-risk children and young people • taking a targeted approach to addressing the conduct and behavioural problems of vulnerable children and young people, with a particular focus on meeting the needs of Māori families/whānau. This includes promoting whānau wellbeing and ensuring that children, young people and their families/whānau receive wider social service supports necessary for them to succeed • providing greater opportunities to build protective factors and increase family resilience through intervening earlier with families within primary care settings such as schools, well child services, primary health organisations, non-government organisations etc. • working with Māori to design, develop, deliver and evaluate interventions to address behaviour problems with children and young people and build an evidence base about what works with Māori • ensuring that agencies work collaboratively to address conduct and behavioural problems of children and young people and to better coordinate care.

Priority Area	Reason for prioritising this area	What is the focus of cross-government action?
Reduce the harm from alcohol	<p>Alcohol is implicated as a contributing factor in a third of all crime. Between 70 and 80 percent of 'hard core' youth offenders have a diagnosable alcohol or drug problem. Addressing alcohol issues has the potential to deliver large, broad-based benefits and requires action across multiple agencies.</p> <p>Māori are more likely to need help for drug or alcohol addictions, but are less likely to access this help compared to the national average.</p> <p>Action will include taking a harm-reduction focus to legislative and regulatory settings, and improving justice sector clients' access to health sector services.</p>	<p>Considerable activity to address alcohol-related harm is already underway across government, with a particular focus on supply control and demand reduction actions. Accordingly, this work will target problem limitation issues by focusing on:</p> <ul style="list-style-type: none"> • improving justice sector clients' access to health sector services and reducing barriers to assessing and treating offenders with alcohol-related issues • improving access to, and timeliness of, services for clients with alcohol-related issues, including developing the skills and capacity in non-health sector agencies to address mild to moderate cases and refer severe cases to specialist sector expertise as appropriate • designing and implementing further solutions to better address the needs of people with alcohol problems who come into contact with the justice system, through programmes such as sobering up shelters for holding intoxicated people detained by the Police • presenting findings on the effectiveness of kaupapa Māori service delivery of alcohol and other drug treatment, and barriers to increasing supply of these services • examining existing or potential initiatives with a view to assessing their cost effectiveness and sustainability, including the extent to which they offer insights into how to address harm to Māori and Pacific peoples • developing a monitoring framework to track progress in reducing alcohol-related harm.

Priority Area	Reason for prioritising this area	What is the focus of cross-government action?
<p>Alternative approaches to managing low-level offenders and offer pathways out of offending</p>	<p>Low-level offenders (i.e. those who have committed less serious offences) have a range of needs (education, health, employment) which need to be addressed to provide viable pathways out of offending. This is an area where the government/community interface can be strengthened.</p> <p>Māori are over-represented amongst low-level offenders and have higher rates of re-offending, which contributes to their over-representation in criminal justice system.</p> <p>Action will focus on ways to reduce the churn of offenders in and out of the justice system, including work with community, iwi and Māori leaders to establish community-based supports.</p>	<p>This work will focus on:</p> <ul style="list-style-type: none"> • working with local community service providers, and iwi and Māori leaders to consider how community-based support could provide alternative pathways for low-level offenders • developing options to ensure that release conditions and community based sentences support the effective reintegration of offenders • identifying options to expand the provision of restorative justice services in communities for young adult offenders and to increase the provision of Māori community-based restorative justice services • reviewing options for establishing Community Justice Centres • identify options for prioritising young adult low-level offenders within existing education, employment and social schemes • investigating the risks and benefits of ending disqualification from driving after imprisonment and providing pathways for disqualified drivers to get their licences back