

Building on sand: Why expanding the prison estate is not the way to 'secure the future'

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ISSN 1746-6946 ONLINE
ISSN 1746-6938 PAPER

Published by:
Centre for Crime and Justice Studies
King's College London
Strand
London
WC2R 2LS

Tel: 020 7848 1688
Fax: 020 7848 1689
www.crimeandjustice.org.uk

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A Company Limited By Guarantee
Registered in England No.496821

Editorial

The fact that the prison population in England and Wales has risen year on year for more than a decade cannot be disputed. Indeed, since Labour came to power in May 1997, it has increased by more than a third, rising from 60,000 to 83,000. But the reasons for the rise are more contested. Penal reform groups have consistently highlighted a more punitive sentencing framework. However, the Secretary of State for Justice, Jack Straw, drawing on the government's review of prisons, suggested in a recent speech that improvements in the delivery of criminal justice, which had resulted in 'many more serious, persistent and violent offenders being brought to justice, 60% more, and being sentenced for longer' (Straw, 2008), was the critical factor.

This report subjects the government's claims to independent scrutiny. It seeks to provide an authoritative evidence-based critique of the explanations for the growth in the prison population put forward in the government's review of prisons by Lord Carter. The author, Professor Carol Hedderman, is well placed to provide an expert analysis, having studied the subject for many years from both inside government as a senior official in the Home Office research department and outside as a distinguished academic. Her assessment neatly shows how Lord Carter has provided a partial, politically driven, review of the evidence.

The government is about to embark on a costly prison building programme that will be larger in scale than the construction currently underway for the 2012 Olympics. It is presented by the government as the only viable option. However, as Professor Hedderman demonstrates, there are alternative policies that could be pursued to change the use of custodial sentences. Building more prisons is by no means the only option for government and research shows that the public is not as much in favour of it as is often thought to be the case.

This report is intended to contribute to a more informed public and political debate on prisons and sentencing policy. In March Jack Straw told a conference organised by *the Guardian* that he wanted 'to see a sensible, rational debate about crime and the role of prison based on the evidence' (Straw, 2008). This report provides the evidence for such a debate.

Enver Solomon, Deputy Director, Centre for Crime and Justice Studies

Introduction

*'There are lots of nice things you can do with sand;
but do not try building a house on it.'*

(C.S. Lewis, 1943)

Over the last decade the prison population has grown from 65,300 to 83,200.¹ In the next decade, as the rise continues, the demand for prison places in England and Wales will outstrip the number planned. Others have, and will, debate the important questions this raises about the role prison plays in society, including whether we should use prison at all (cf. Walker, 1991; Hudson, 2003). This briefing paper, however, adopts a purely utilitarian viewpoint. From this perspective, there seem to be only two solutions to a position in which the demand for prison places exceeds supply: build faster or change the way custodial sentences are used. The government has chosen to focus on the first option because this appears to be the only approach which avoids two political elephant traps: being portrayed as soft on crime and, simultaneously, interfering with judicial independence. The report of an investigation led by Lord Patrick Carter (2007) did not persuade the government to take this course. This is the course it – and the preceding Conservative administration – has been pursuing for as long as the prison population has been rising.² However, Carter's report does reassure the government that it is feasible to physically build a way out of the problem, by confirming that the greater use of imprisonment has been associated with more offenders being brought to justice and reduced reconviction; and by asserting that, anyway, this is what the public want. A re-examination of the evidence on which these conclusions are based suggests that this reassurance is false comfort.

This report argues that, contrary to Carter's claims, the increased use of imprisonment has not been driven by more offences being brought to justice; that prison reconviction rates have escalated as the population has increased; and that the public appetite for prison is more limited and more susceptible to reasoned argument than Carter acknowledges. Finally, it is argued that expanding the prison estate will generate not satiate demand.

A tale of two Carters

In 2003, Lord Carter of Coles presented a report on 'managing offenders, to reduce crime and maintain public confidence' (Carter, 2003:4). This

report explained why the prison population had built to unprecedented levels and what should be done about it. The main explanation put forward for the increase in the sentenced population was that sentencers were responding more severely to the cases before them, although these had neither become more serious nor more numerous. Carter's solutions at that time involved reserving custody for dangerous and serious offenders, making non-custodial penalties more attractive to sentencers, and making the transition from custody to community seamless by bringing the Prison and Probation Services together in one new organisation – the National Offender Management Service (NOMS). It was anticipated that the new service and extra community orders would be paid for by the saving in prison places.³

The most obvious contrast between Carter's 2003 and 2007 reports is that while the former analysed the reasons for the rise in the sentenced population and suggested how it might be slowed if not reversed, the latter makes a number of additional but largely un-evidenced assertions about the reasons for the increase and focuses on how to cope with further rises in demand. It is also rather odd that the few additional analyses which are included in the 2007 report all relate to a ten-year period beginning in 1995 – two years after the increase began and after the prison population had already risen by 6,410 (from a low of 44,552 in 1993) (Home Office, 2001).

A second point to note about the 2007 report is that there is no direct discussion of why the measures Carter proposed in 2003 have not limited the prison population in the ways he anticipated. Indeed, according to Carter (2007:14), it is the National Audit Office which expected those changes to limit the prison population to 80,000 by 2008. But surely the reader has a right to know that the man in charge of the latest review recommended most of the recent changes which were expected to limit the growth in prisoner numbers and that those changes have not had the effects he anticipated?

The lack of such a declaration of interest raises questions about whether Lord Carter's role in creating the current context has affected his explanation for the increase. Certainly, this account has undergone considerable revision over the last four years with pre-eminence now being given in

¹On 30 June 1998 there were 65,298 prisoners in England and Wales (Home Office, 2003). On 27 June 2008 there were 83,243 (see: http://www.hmprisonerservice.gov.uk/assets/documents/10003BD527062008_web_report.doc).

²The Conservative opposition under David Cameron has also signalled its support for a substantial prison building programme in its recent policy Green Paper *Prisons With A Purpose*. See: www.conservatives.com/tile.do?def=safer.greener.page

³Perhaps because the remand population has risen less dramatically it gets much less attention than the sentenced population in Carter(2003). The need to move suitable remand prisoners to bail hostels is acknowledged in (Carter 2007) but only as something the 'government is already working on' (p.27)

the report's covering letter to the Prime Minister to 'a concerted and successful effort to catch, convict and detain for longer periods the most dangerous and serious offenders'. The courts' use of custodial sentences for low-risk offenders is acknowledged to be problematic but this factor is now accorded a subsidiary rather than a leading role. For this reason, solutions which might reverse this trend, such as a structured sentencing framework and a permanent Sentencing Commission, are treated as being worthwhile in the long term rather than urgently required. Because a core element of Carter's preferred explanation is that the prison population is rising because the numbers being caught and convicted for serious offences are growing, the new preferred solutions are to expand the prison estate by 6,500 places within five years, with larger individual prisons providing most of the increased capacity. Not only are these 'Titans' to offer better value for money, but Carter also advises the Prime Minister that they will provide 'much improved chances of reducing reoffending and crime', although no evidence is provided to support this claim.

The drivers of the prison population

Regardless of whether one accepts the conclusion drawn in Carter's earlier report, *Managing Offenders, Reducing Crime* (Carter, 2003), it is hard to fault the underlying analyses put forward in that report about the reasons the prison population has doubled since the early 1990s. These are that:

- Criminal justice legislation over the last decade has been characterised by increasing the penalties for a wide range of existing offences and expanding the range of criminal offences.
- The numbers remanded after conviction but before sentence have risen sharply.
- More people are being sentenced to custody for very short periods of time.
- Prison sentences imposed for some serious offences have increased dramatically, particularly in terms of their length.
- The chances of prisoners getting out early have been reduced as the Parole Board and prison governors have become increasingly risk-averse following a small number of high profile cases in which those released have offended seriously.

- The scope for criminal justice officials to deal informally or leniently with minor infractions of community orders or post-release licences has been limited by statute and by increasingly restrictive operational guidance, regardless of whether the infraction involved further offending, resulting in increasing numbers being either recalled to custody or imprisoned for breach of community sentences.

Overall the prison sink [sic] is filling up because the flow from the courts has been increased and the flow out through parole and early release has been reduced. Moreover, more of those who do come out are being poured back in and at a faster rate. Additionally, since Carter's analysis was published, judges have been empowered to impose new indeterminate sentences of imprisonment (or detention) for public protection (IPP). The fact that 1,450 IPPs were imposed in the first full year of operation (RDS NOMS, 2007b) suggests that they have taken up this power with alacrity. As Carter (2007) acknowledges, this is happening in a context in which the official crime rate has decreased, although he does not repeat his 2003 conclusion that the increased use of custody had made only a modest contribution to the fall in crime.

In *Securing the Future*, Carter (2007) gives prominence to three additional factors which have contributed to the rise in the prison population: the impact of more offenders being 'brought to justice'; the effectiveness of imprisonment in reducing reconviction; and public attitudes. His presentation of evidence in relation to these factors is inadequate and, it is argued, highly misleading.

The impact of more offenders being brought to justice

'Whilst these volume crimes have reduced significantly, the number of offenders sentenced in all courts has increased, from 1,354,294 in 1995 to 1,420,571 in 2006, an increase of 5% (see Figure 1.2). The number of offenders sentenced in all courts peaked at 1,547,353 in 2004, an increase of 14%, since 1995. This reflects the government's priority to reduce crime and increase the number of offences brought to justice.'

(Carter, 2007:5; emphasis in original)

This quotation comes from a section of the Carter report headed 'Drivers of the prison population',

so, despite the careful drafting, the intended implication is clearly that the number of offenders being sentenced is one such driver. It is possible to reach this conclusion only if one focuses on the period 1995 to 2005. The logical starting point for a genuinely independent assessment is when, or just before, the prison population began to rise. Adopting the latter approach shows that the numbers being sentenced fell successively from 1987 to 1995 and that the numbers being sentenced in the succeeding years did not reach pre-1995 levels again until 2003 (see Figure 1).

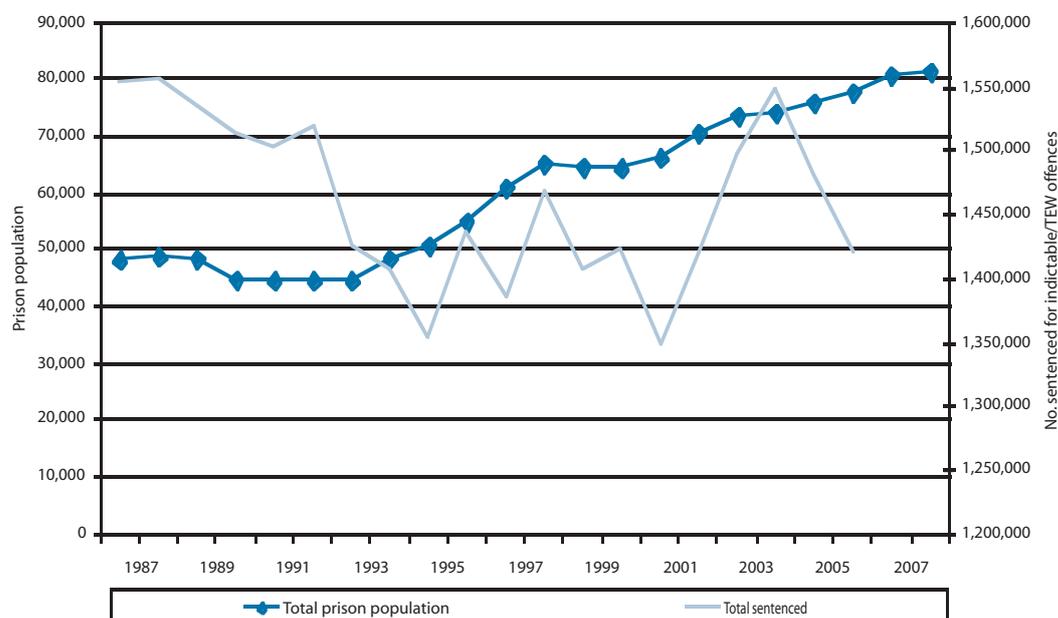
The most obvious conclusion to draw from Figure 1 is that the rise in the prison population bears little relation to the overall numbers being sentenced. Indeed the rise began at the very point the numbers being sentenced were declining most sharply; and the prison population is continuing to increase despite a recent dip in sentenced numbers.

The lack of connection between the prison population and total numbers sentenced is not surprising given that most court cases involve comparatively trivial summary offences. It is more reasonable to expect the prison population to rise if the number of more

serious (indictable and triable-either-way (TEW)) cases rises. However, Figure 2 shows that the number of serious cases being sentenced has been relatively static throughout most of the period in which the prison population has grown, and has actually been declining since 2003.

While the overall numbers being sentenced for all offences and the numbers sentenced for indictable/TEW offences are not driving the prison population up, it is true, as Carter (2007:7) claims, that 'the proportion of different types of serious offences coming before the courts has changed, with violence against the person, robbery and drug offences increasing at the expense of burglary and theft offences' (assuming that 'coming to court' means sentenced). However, it is hard to know the basis for his (admittedly tentative) conclusion that this has resulted in a 'perhaps more serious offence mix'. For example, while the numbers sentenced for drug offences rose by 23 per cent between 1995 and 2005, this was not a steady increase.⁴ The numbers sentenced for drug offences peaked in 1999 fell in 2000, 2001, peaked again in 2003 and fell again in 2004 and 2005. The use of custody for such cases rose slightly over the period from 17 per cent to 20 per cent (with reductions in 2002

FIGURE 1: THE PRISON POPULATION AND TOTAL NUMBERS SENTENCED



⁴The sentencing statistics on which this discussion and Figures 3 and 4 are based are taken from Home Office (2001) and RDS NOMS (2007a). They cover 1995-2005 because this is the only period on which all the relevant data is publicly available. Also, while the average sentence lengths for some indictable offences appear to have fallen slightly since 2004, this is likely to be related to the introduction of IPPs. Unfortunately, this cannot be properly assessed because IPPs are excluded from sentence length statistics (although not from the number of sentences imposed).

Sources: Home Office (2003); RDS NOMS (2005, 2006, 2007a, 2007b); Prison Service (2006, 2007, 2008)

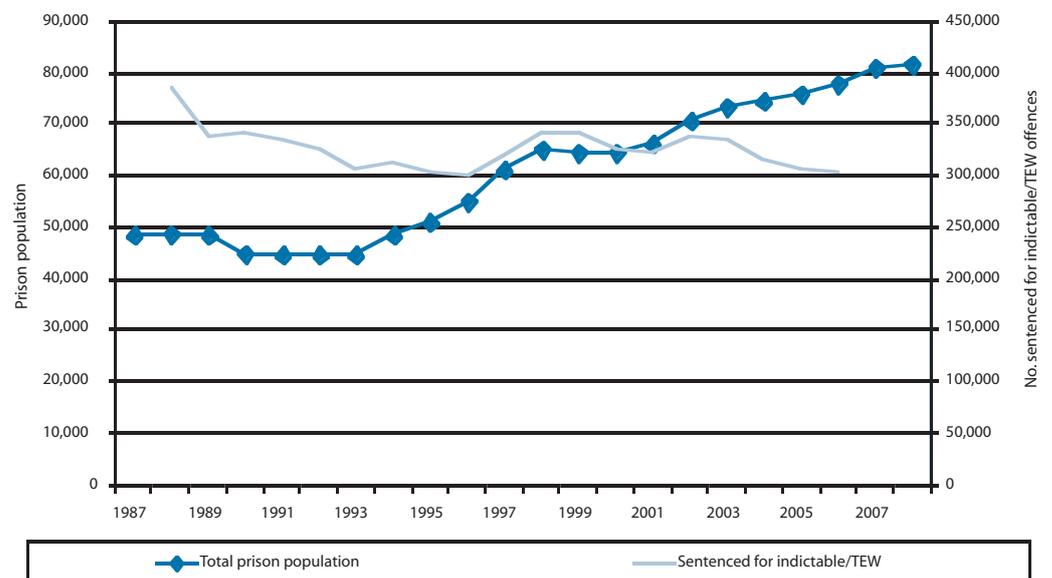
and 2003). These patterns are not consistent with a simple explanation based on the premise that courts are responding to a significantly larger or more serious caseload. Moreover, using sentence length as a measure of case seriousness shows that the average did not rise above 30 months until 2002 and has since fluctuated between 34 and 37 months. Of course, even when relatively static, such long sentences make a large contribution to the prison population. The point here is that, using sentence length as a crude indicator of seriousness, the cases going to prison now are not obviously much more serious than they were a decade ago. In the case of violence, between 1995 and 2005 the proportionate increase in the use of custody for violent offences (53 per cent) was greater than the proportionate increase in the number of such cases being sentenced (40 per cent). This could be a sign that the courts are responding more robustly to violence but it does not support the idea that they are dealing with a more serious case mix as, while sentence lengths have fluctuated between 16 and 19 months over this period, no simple trend is discernible. These findings also indicate that the courts were not using custody more frequently as a direct, proportionate response to more and worse violence coming before them.

In fact, because sentence length plays such an important part in determining the size of the prison population, Carter’s comments about offences brought to justice are essentially a red herring. To see this, it is worth looking at the relationship between the number of more serious offences being sentenced to custody and the overall use of custody each year (Figure 3).

The sentencing of these serious offences has made a large contribution to the rise in the prison population, mainly because of the length, rather than the number, of custodial sentences being imposed.

Although not included in Carter’s list of serious offences, burglary is generally considered a serious offence by the public. Like other serious offences, burglary’s contribution to the rise in the prison population lies mainly in the length of sentences being imposed, which rose from an annual average of 12 months in 1995 to 17 months in 2005. The number of burglars sentenced to custody remained at between 12,000 and 14,500 throughout 1995-2005, although the overall number of burglars sentenced dropped from 35,450 in 1995 to 22,652 in 2005. While these figures show that the courts are dealing more severely with the burglars who come

FIGURE 2: THE PRISON POPULATION AND TOTAL NUMBERS SENTENCED FOR INDICTABLE/TEW OFFENCES



Sources: Home Office (2003); RDS NOMS (2005, 2006, 2007a, 2007b); Prison Service (2006, 2007, 2008)

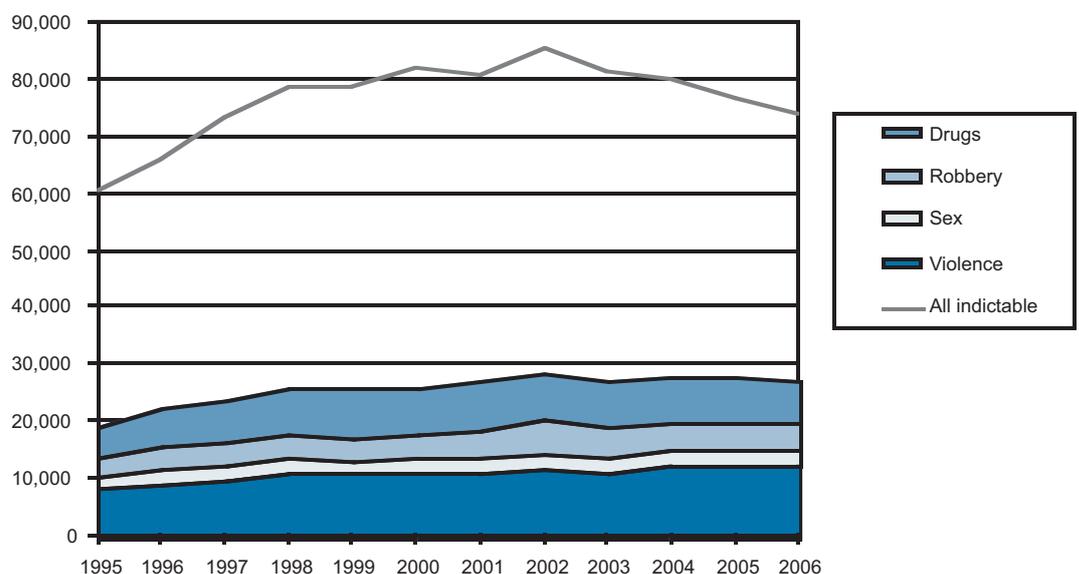
before them, it is hard to construe this as evidence of the government’s commitment to bringing more offences to justice, as the number of burglars being sentenced has dropped over this period by an average of 1,400 per year.

The largest numeric and proportionate increases in the sentencing of an individual indictable offence occurred in relation to theft and handling. The number sentenced to custody rose by nearly a third (from 15,637 in 1995 to 20,472 in 2005) even though the overall number sentenced by the courts for this offence declined from 116,078 to 103,318 (RDS NOMS, 2007b). Figure 4 shows that this change in sentencing behaviour has played an important part in the rise in the numbers received into prison. Given that the average length of sentences imposed for theft and handling has dropped from 6.3 to 4.3 months over the same period, it could even be true that those going to prison for these offences may actually have committed less serious rather than more serious offences than those sentenced to custody ten years earlier. Of course these cases do not add very much to the prison population because they involve such short sentences, but they do add

very significantly to prison receptions and the costs of imprisonment.

It is hard to see on the basis of these analyses how Carter could conclude that the rise in the prison population is a consequence of successfully bringing more offences to justice except in the sense that it is recycling the ‘usual suspects’ more quickly. This is the predictable – and probably intended – consequence of an objective framed in terms of bringing *more offences*, rather than *more offenders*, to justice. This would explain why sentencing statistics (RDS NOMS, 2007a) show that the proportion of offenders with ten or more previous convictions coming to court is increasing, while the proportion of first-time offenders coming to court is stable.⁵ In other words, while the ‘usual suspects’ are developing longer records, it is not bringing additional offenders into the net. Given that this pattern is particularly evident at the magistrates’ court level, this may help to explain why individuals convicted of comparatively minor offences are now more likely to be given custodial sentences. This may be what the government intended but it is less clear that this is what the public want.

FIGURE 3: CHANGES IN THE OVERALL USE OF CUSTODY AND THE USE OF CUSTODY FOR SERIOUS INDICTABLE OFFENCES, 1995-2006



⁵ Interestingly, modelled reconviction rates allow for this (see, for example, Cunliffe and Shepherd, 2007).

Sources: Home Office (2001); RDS NOMS (2007b)

The link between the greater use of custody and reconviction

'Overall proven re-offending has reduced by 5.8% comparing 2000 to 2004 using a predicted rate, with re-offending by former prisoners reducing by 4.6% on the same basis. This reflects the increased investment in offender interventions both in prison and the community.'

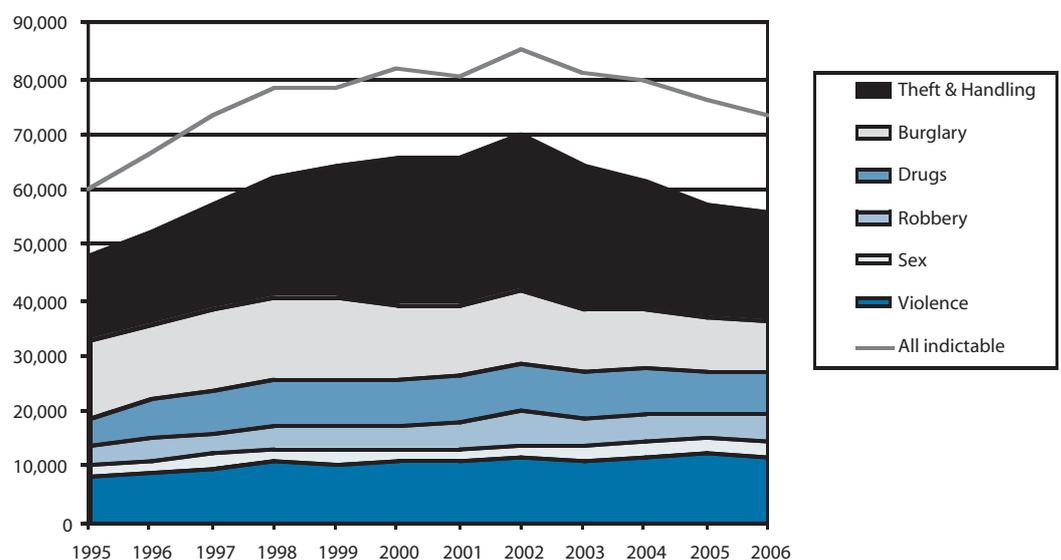
(Carter, 2007:5)

It has been well established that reconviction rates following different sentences vary largely because of differences in the types of offenders who are given such sentences. Studies conducted on samples taken from those sentenced to community penalties or released from prison in the early 1990s show that once allowance was made for differences in offending and sentencing history, age and sex, reconviction rates for the most commonly used forms of community supervision and imprisonment varied by only a percentage point or two, whereas there were large differences in the 'raw' rates (cf. Lloyd, Mair and Hough, 1994; Kershaw and Renshaw, 1997). This is why, when reconviction results are used

to compare the impact of prison and probation, statistical modelling is conducted to remove the effect of differences in the case mix each service is required to supervise. This is also done to assess changes in their effectiveness over time.

Recently, analyses of 'modelled' data have been used to claim that the effectiveness with which the Prison and Probation Services supervise offenders is improving (see Spicer and Glicksman, 2004, for example). While the causes of the change cannot be known for certain, it is reasonable to assume that better supervision has played a part in the fall in reconviction these analyses demonstrate (Hedderman, 2006). However, these modelled reconviction rates should not be used when assessing the impact of sentencing behaviour, as the effects they strip out include changes in the apparent characteristics of offenders which may be a consequence, rather than a cause, of changes in sentencing behaviour. Evidence for this view lies in Carter's 2003 analysis and more recent statistics (RDS NOMS, 2007a),⁶ which confirm that, since the rise in the prison population began, offence seriousness has remained stable or fallen, the proportion of first-time offenders sentenced to prison has risen, and

FIGURE 4: CHANGES IN THE OVERALL USE OF CUSTODY AND THE USE OF CUSTODY FOR SERIOUS INDICTABLE OFFENCES, 1995-2006, ADDING IN BURGLARY AND THEFT AND HANDLING



⁶It is to be hoped that the decision to drop analyses of sentencing by previous convictions from routine sentencing statistics (RDS NOMS, 2007b) is a one-off and not the start of a trend. Ideally these should also include the raw reconviction rates, which have not been published as a series since RDS NOMS (2005) produced the 2004 volume of the Offender Management Caseload Statistics. It would be helpful if the Ministry of Justice reinstated the publication of reconviction rates by length of prison sentence which was discontinued in the early 2000s.

Sources: Home Office (2001); RDS NOMS (2007b)

the proportion of those convicted who have high numbers of previous convictions only began to rise in 2002 (well after the rise in the prison population began).

Although they are a poor measure of the work of the Prison and Probation Services, currently raw reconviction rates are the best available measure for assessing the impact of changes in sentencing behaviour. These show that Carter's (2007:5) claim, based on modelled reconviction rates, that there have been 'reductions in reoffending', is both untrue and misleading. There has been a reduction in the modelled 2004 reconviction rate compared to 2000, but raw reconviction rates published in the annexes of the latest PSA⁷ report (Cunliffe and Shepherd, 2007) show that the actual reconviction rate for those released in 2004 (64.7 per cent) was almost identical to that for those released in 2000 (64.8 per cent). While it is laudable that the Prison and Probation Services are being more effective with those they are sent by the courts, the bald fact is that, for most of the period that our use of custody has been increasing, reconviction rates on release have also been rising (see Figure 5).

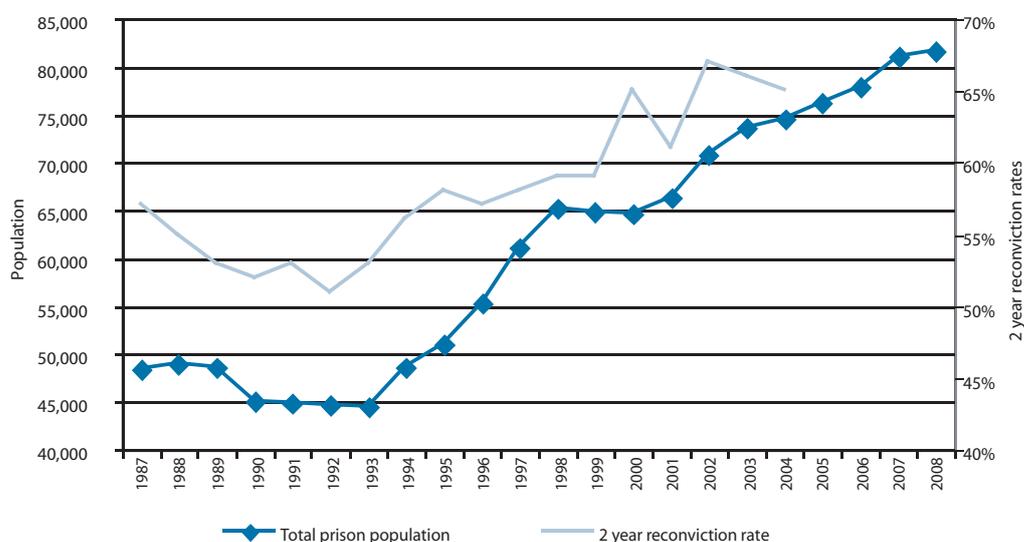
The most obvious explanation for the rise in raw reconviction rates on release from prison is that sentencers are employing custody less effectively now than they were in the early 1990s. It is quite plausible that by sending significantly more minor offenders (e.g. those convicted of theft and handling and 'other non-motoring' offences) to prison for short periods of time, they are simply disrupting offenders' lives so that they lose employment and accommodation and contact with support networks (Social Exclusion Unit, 2002) without providing an opportunity in prison or in the community for any worthwhile rehabilitative work to be pursued.

The public appetite for imprisonment and the cost of feeding it

'Despite improvements in the performance of crime reduction and criminal justice agencies, much of the public debate is centred on issues of punishment and fear of crime. For example:

● 65% of the public continue to believe that crime is increasing across the country as a whole;

FIGURE 5: THE PRISON POPULATION AND TWO YEAR PRISON 'RAW' RECONVICTION RATES



⁷ Public Service Agreements (PSAs) were first introduced in the 1998 Comprehensive Spending Review. This set approximately 600 performance targets for around 35 areas of government. The number has been reduced and combined in successive spending reviews (Gay, 2005).

Sources: Home Office (2003); RDS NOMS (2004); Cuppleditch and Evans (2005); Shepherd and Whiting (2006); Cunliffe and Shepherd (2007).

- 79% feel that sentence lengths should not be shortened; and

- 57% feel that the number of people sent to prison should not be reduced.'

(Carter, 2007:6)

Carter (2007) presents these figures as part of the justification for increasing the size of the prison estate without discussing why falling official crime rates as measured by the British Crime Survey (BCS) are not mirrored by improvements in public confidence, and without acknowledging that the public's views on imprisonment are not so unambiguously draconian as these statistics suggest.

While it is true that nearly two-thirds of the public still believe that crime is rising nationally, this proportion has fallen since the early 2000s (Lovebakke, 2007), perhaps suggesting that the message is finally getting through. The most obvious reason for the continuing disjuncture is that most people know very little about actual levels of crime and assume that what is reported in the media is a comprehensive account rather than a selective focusing on the bizarre and abnormal (Pratt, 2007). Those sections of the public who rely on the popular press for their news assume that particularly horrible crimes are reported so frequently because crime is getting more serious and more prevalent rather than that crime reporting is a useful weapon in a newspaper's battle for market share.

It is also important to recognise that perceptions of local crime are less distorted than perceptions of the national picture. Over the past ten years, the percentage of BCS respondents who think that local crime is rising has been around 20 percentage points lower than the percentage who believe this about crime across the country. In 2006-2007, for example, 41 per cent thought that crime had increased locally compared with 65 per cent who thought it had increased nationally (Lovebakke, 2007). This is probably because local media reporting is less feverish but also because local views are more likely to be shaped by direct personal experience and that of friends and family.

The statistics Carter selects suggest that while increasing the number of prison places 'may not offer the tax payer optimum value for money' (Carter, 2007:27), it is justified because it is what the public

wants. But this ignores the fact that they have already been given what they want – custody has indeed been used more frequently, and for longer, even if it has not been targeted on serious offenders in the way the public expected! The money spent on building extra prisons might more profitably be spent on reassuring the public that they have been listened to – and the consequence has been increased prison reconviction rates.

There is also good reason to think that it is possible to tackle the public perception that sentencing is unduly lenient (e.g. Hough and Roberts, 1999). Indeed, a careful review of the research concludes: 'The idea that there is widespread support for greater use of imprisonment and for tougher prison conditions is based on a partial and selective reading of the research evidence' (Roberts and Hough, 2005:301). Hough and Roberts (2004a; 2004b) suggest that a national information campaign might be useful in spreading a more informed picture of sentencing. However, given that their review also showed that politicians are even less trusted than judges, it may be more useful to use local communication initiatives to communicate just how frequently the courts now resort to custody.⁸

It should also be noted that the figures used by Carter to demonstrate the public's apparently insatiable demand for custody only tell only part of the story, as the Secretary of State for Justice, Jack Straw, noted in a recent speech:

'When asked what the most important issues are when it comes to crime the single most popular answer coming from 26% of those polled was that sentences are too lenient. But when asked what would most reduce crime - only 6% suggested that more offenders in prison was the answer. So when I hear journalists saying that they are simply reflecting the views of their readers I have to sometimes question their interpretation. Reporting of crime does not reflect the true picture, nor do calls for tougher sentences withstand much scrutiny. When presented with alternatives, very few people want to send more people to prison.'

(Straw, 2008)

In an age in which the financial cost of giving life-saving drugs to cancer patients is regarded as a legitimate consideration, it is astonishing that so little of the public debate centres around whether sending more people to prison represents

⁸ See, for example, Salisbury (2004), who found that improvements in public perception could be achieved simply by engaging people in a discussion of crime and criminal justice even before they had received more information about it.

a cost-effective way of tackling crime and reducing reconviction. Even if we accept that Carter's 2003 estimate that the 22 per cent increase in the prison population between 1997 and 2003 led to a 5 per cent decrease in crime is accurate – and absolutely no evidence is presented to support it – this does not mean that financing additional prison places was money well spent. A recent analysis (Matrix, 2007) has assessed the financial value of the reductions in reconviction associated with different interventions and the cost of such interventions. It concluded that the savings to the taxpayer of using a community-based intervention rather than prison ranged from just over £3,000 to about £88,000, depending on the nature of the community intervention. When the calculation included the savings resulting from fewer victim costs, the savings were between £16,000 and £202,000 per offender. Whatever its faults, the 'quality adjusted life year', or 'QALY', system used by the National Institute for Health and Clinical Excellence (NICE) at least allows the value for money of different medical treatments to be assessed on a comparable basis.⁹ Creating a similar measure for assessing the extent to which criminal justice interventions secure public safety may help to move the debate about our use of imprisonment forward. Using this approach would make it possible to compare prison sentences with and without time on licence and with and without programmes. With this approach it would be possible to take account of both the incapacitative effects of imprisonment and the harm it can cause (e.g. loss of employment, accommodation and social ties) when assessing the value of imprisonment and when comparing it with other sentences.

Conclusion

Contrary to claims made in the Carter (2007) report, this paper shows:

- The only connection efforts to bring more offenders to justice has with the prison population is that it has increased the proportion of offenders coming to court with high numbers of previous convictions.
- The increased use of custody has been affected by the sentencing of some serious offences but the biggest change in sentencing behaviour concerns the number and length of custodial sentences for less serious property offences and cases which are too trivial (summary only) to be sent to the Crown Court.

- Those convicted of these relatively minor offences are surely not the offenders the public have in mind when they call for tougher sentencing.

The fact that modelled reconviction rates show that the Prison Service is doing a better job is a testament to its hard work, despite increasing over-crowding. Raw reconviction rates suggest that this is in the face of custody being used less effectively by the courts. The cost of the change in sentencing behaviour cannot be measured simply in terms of extra prison places; the extra reconvictions which have resulted also carry a cost.

In putting the case for building more prison places, Lord Carter suggests that we may have a gap between the demand for prison places and prison capacity which is 'at worst' 13,000. This is by no means the worst case scenario imaginable.

There are no new easy or quick fixes for constraining or reducing the size of the prison population. Of course, tackling sentencing drift is not the only strategy needed, but there is even less political appetite for tackling the issues around executive release. An obvious first step, given the evidence provided in this report, would be to disentangle the idea of introducing a structured sentencing framework from the question of whether a permanent sentencing commission is needed and to introduce the framework immediately, perhaps under the aegis of the existing Sentencing Guidelines Council. Even if that is not politically viable, immediate action could be taken to limit magistrates' powers to use custody for non-violent summary offences more strictly, and specifically to discourage sentencers from using custody for theft and handling. This would not solve prison overcrowding but it would slow down the rate at which it worsens.

Of course, any calls to limit the prison population are likely to be portrayed by the popular press negatively as being soft on crime but that is not a good enough reason to conceal the damaging financial and public safety consequences of our increasing use of custody. The consequence of pandering to 'penal populism' in the short term by building more prison places is that the financial costs of the building programme will be much greater than the forecast because it will feed rather than meet demand.

⁹As the Select Committee on Health's recent report explains: 'A single QALY would indicate one year in perfect health. The value of a year in less than perfect health would be a fraction (e.g. 0.5) of a QALY. Improvements in length and quality of life are referred to as fractions of a QALY. To assess cost-effectiveness, the QALY score is integrated with the price of treatment using the incremental cost-effectiveness ratio (ICER). This represents the change in costs in relation to the change in health status. The result is a 'cost per QALY' figure, which allows NICE to determine the cost-effectiveness of the treatment' (House of Commons Health Committee, 2008:33).

The longer-term cost of leaving penal populists to frame the debate entirely in terms of punishment versus leniency will be felt in terms of reduced public safety. Recent history suggests that if the prison population rises, reconviction rates on release will also rise. Developing a recognised measure – or ‘QALY’ – of public safety could help to inform and reframe the public debate so that the impact and value of different interventions can be compared in a common currency.

Finally, while it may be possible to meet the public’s demand for punishment *and* for sentences which are effective in reducing reconviction, more frequently, at the level of the individual offender, this results in sentences which send out such mixed messages that neither is achieved effectively. There is good evidence to suggest that the public has a more sophisticated take on this than either government policies or media reports give it credit for. It is important to capitalise on that if the use of imprisonment is to be used in a way which genuinely ‘secures the future’.

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The Centre for Crime and Justice Studies would like to acknowledge the generous funding from the Hadley Trust without which publication of this report would not have been possible. CCJS would also like to thank Rob Allen and Professor Mike Hough for their comments on this paper.