

**Criminal  
Justice  
Alliance**

# **Crowded Out?**

**The impact of prison overcrowding  
on rehabilitation**

**March 2012**

## About The Criminal Justice Alliance

The Criminal Justice Alliance is a coalition of 67 organisations – including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions – involved in policy and practice across the criminal justice system.

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## The Criminal Justice Alliance's members

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Action for Prisoners' Families	pact
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Apex Charitable Trust	Penal Reform International
Association of Black Probation Officers	The Police Foundation
Association of Members of Independent Monitoring Boards	Prison Fellowship
Birth Companions	Prince's Trust
Buck Project	Prison Officers' Association
Carers Federation	Prison Reform Trust
Catch22	Prisoners Abroad
Centre for Crime and Justice Studies	Prisoners' Advice Service
Centre for Mental Health	Prisoners Education Trust
Chance UK	Prisoners Families and Friends Service
The Children's Society	Public and Commercial Services Union
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DrugScope	Rethink
The Fawcett Society	Revolving Doors Agency
The Forgiveness Project	RSA Prison Learning Network
The Griffins Society	Safe Ground
Gwalia Care and Support	Shannon Trust
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Institute for Criminal Policy Research	UNLOCK
JUSTICE	User Voice
Leap	Women in Prison
Nacro	Women's Breakout
National Appropriate Adult Network	Working Chance
New Bridge Foundation	The Young Foundation
	Young Minds

Although the CJA works closely with its members, this briefing should not be seen to represent the views or policy positions of each individual member organisation.

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# Crowded Out?

## The impact of prison overcrowding on rehabilitation

The prison population in England and Wales has almost doubled over the last 20 years from about 45,000 to over 85,000.

On top of the long term rise in the use of imprisonment, there has been a surge in prison numbers in the months following the public disorder in August. On top of the long term rise in the use of imprisonment, there has been a surge in prison numbers in the months following the public disorder in August. In late July 2011, the prison population stood at 84,902; by early December it had risen to 87,371.<sup>1</sup>

This rapid increase in prison numbers over the last six months is putting additional pressure on a prison system that has been overcrowded for decades. Members of the Criminal Justice Alliance – organisations which undertake a wide range of tasks within the justice system – report that the recent increase in overcrowding is making their work more difficult and undermining the rehabilitation of prisoners. The evidence collected in this briefing makes the case that the Government needs to take urgent steps to limit the unnecessary use of prison, ensuring it is reserved for serious, persistent and violent offenders for whom no alternative sanction is appropriate.

Some may say that the answer to overcrowding is simply to build more prison capacity so that a greater number of alleged and convicted prisoners can be locked up. But history shows that we cannot build our way out of the problem of prison overcrowding. Between 1997 and 2010, about 26,000 new prison places were built with expenditure on prisons reaching just under £4 billion a year. In spite of this relentless expansion programme, overcrowding has remained a stubbornly persistent feature of the prison system with more than 60% of prisons in England and Wales currently overcrowded. Lord Woolf, the former Lord Chief Justice who investigated the serious disturbances at Strangeways and other prisons in 1990 has described overcrowding as the cancer at the heart of the prison system and this remains the case. Overcrowding is inextricably linked with the overuse of prison. These are two interlocked crises which require urgent attention.

The Criminal Justice Alliance welcomes the government's commitment to greater use of community sentences, and a more effective probation service. It is crucial that more is done to divert minor and non-violent offenders out of prison and into the kind of measures which can enable them to make amends for their wrongdoing and better address the problems which lie behind their offending.

## What is prison overcrowding?

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Overcrowding is defined by the Prison Service as occurring when a prison contains more prisoners than the establishment's 'certified normal accommodation' or CNA. This is the level which represents the good, decent standard of accommodation that the service aspires to provide all prisoners.<sup>2</sup> In January 2012, the Ministry of Justice reported that the prison population overall stood at 112% of in use CNA. The fifteen most overcrowded prisons were holding a population of more than 150% of CNA.

The average number of prisoners held in overcrowded accommodation during 2010-11 was 20,211 or 24% per cent of population. Within this total the average number of prisoners doubling up in cells designed for one occupant was 19,268 (23% of the total prison population) and there were on average 829 prisoners held three to a cell in cells designed for two (1% per cent).<sup>3</sup>

In addition to CNA, the prison service uses another measure of capacity – the 'useable operational capacity' of the system. This figure is higher than CNA and represents the maximum number of inmates the prison system can hold taking into account control, security and the proper operation of the planned regime. In January this figure was 88,407.<sup>4</sup> Each prison has a useable operational capacity but this is sometimes seen to be too high. The Independent Monitoring Board at Canterbury has repeatedly reported that the prison "is overcrowded and operating substantially above the Prison Service certified normal occupancy of 195. An operational capacity of 314 is not acceptable."<sup>5</sup>

Shrewsbury, the most overcrowded prison in England and Wales, is operating at 196% CNA or almost double capacity. It is a Category C Shropshire prison for male prisoners, of which over half are classified "vulnerable". The Independent Monitoring Board has expressed concerns that, because of a lack of adequate screening and ventilation of toilet facilities, none of the cells are suitable to house more than one prisoner. Despite these concerns, the level of overcrowding increased by 14% in the last six months.<sup>6</sup>

In 2007 the pressure on prison places was such that the then Labour government were forced to introduce an early release scheme which permitted prisoners to be released up to 18 days early to free up space. The End of Custody Licence scheme was subject to widespread public criticism and withdrawn shortly before the 2010 Election.

While new prison places have since become available, unanticipated events such as the public disorder of 2011 - which added around 1000 extra prisoners in the space of a few weeks - have once again created additional pressures.<sup>7</sup>

Even without unexpected surges in imprisonment, prison numbers are expected to rise. The *Prison Population Projections 2011-2017*, published last year by the Ministry of Justice, estimates that up to 94,800 people could be incarcerated by the end of 2017.<sup>8</sup>

This projected figure albeit a worst case scenario, is not only well above current usable operational capacity, but also above the expanded capacity planned by the government.<sup>9</sup> Although the projections do not include the possible impact of the *Legal Aid, Sentencing and Punishment of Offenders Bill* currently before Parliament, nor of the promised rehabilitation revolution, they nevertheless demonstrate the need for concerted action to reduce the unnecessary demand for prison places and strengthen community based supervision.

## The political context

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“I began my working life back in the 1980s working with young offenders for Nacro. I remember at that time people were worried that the imprisonment rate was getting close to 40,000....you come back and discover to your surprise that the imprisonment rate has more than doubled.....It can't be that suddenly everyone has got much worse and it doesn't seem to me that by locking up more people that we feel any safer. It is a problem and it has got out of control.”  
**Nick Hardwick, Chief Inspector of Prisons, quoted in *Prison Service Journal*, January 2011**

The Coalition Agreement in 2010 committed the new government to a “full review of sentencing policy to ensure that it is effective in deterring crime, protecting the public, punishing offenders and cutting reoffending.”<sup>10</sup> In the first parliamentary session this resulted in the Green Paper, *Breaking the Cycle*, and the subsequent *Legal Aid, Sentencing and Punishment of Offenders Bill* currently before parliament.

The Secretary of State for Justice has described current levels of prison overcrowding as “unsustainable”<sup>11</sup> and the legislation seeks to tackle factors contributing to increased numbers of people in custody. Examples include restrictions on the use of remand for those offenders for whom there is no real prospect of a future custodial sentence; the extension of the scope of suspended sentence orders to prison sentences of up to two years; and the abolition of indeterminate sentences of imprisonment for public protection – all of which the Criminal Justice Alliance has welcomed.

Latest Ministry of Justice figures estimate that the Bill will reduce the demand for prison places by around 2,600, relative to the medium prison projection, by the end of the current spending review period.<sup>12</sup> Proposals in the Green Paper, *Breaking the Cycle*, had been estimated to reduce demand much further, thanks in large part to proposed increases in sentence discounts for early guilty pleas. These were shelved before the Bill was published.<sup>13</sup>

During the passage of the Bill, there has been strong opposition in some quarters to perceived ‘softer’ sentences. In response to critiques that short prison sentences were ineffective in reducing reoffending, Conservative MP Philip Davies stated that, “If short sentences do not work, frankly the argument should be for longer sentences, not putting them out on the streets to terrorise local communities.”<sup>14</sup>

However, there is widespread support for a more balanced approach to sentencing and some concern about the harshness of sentences following the riots. Simon Hughes MP expressed hope that, “the courts will show understanding and relative leniency on first-time offenders and make sure that all the sentences don’t just put people inside and pull them out again, but engage with the community”.<sup>15</sup> Liberal Democrat peer, Lord Carlile, also recently stated that “just filling up prisons” would not prevent future problems. An ICM poll, commissioned by the Prison Reform Trust a few weeks after the riots, found overwhelming public support for community payback and restorative justice. Less than two-thirds considered that a prison sentence would be effective in preventing crime and disorder.<sup>16</sup>

## Why are our prisons overcrowded?

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“The steep rise in the prison population over the last decade does not appear to be attributable to an increase in the level of crime. Rather it arises from a significant increase in the proportion of offenders given a custodial sentence and an increase in the average length of prison sentences.”

Home Affairs Committee report, 2005 (membership included David Cameron MP)<sup>17</sup>

Much of the rise in the prison population over the last twenty years can be attributed to changes in law, policy and sentencing practice by the courts. The rate of imprisonment in England and Wales rose from 90 prisoners per 100,000 of the general population in 1992 to 155 in 2012.<sup>18</sup> The numbers in prison on remand have risen by just under 20% since 1992 (from 10,404 to 12,464) while sentenced prisoners have more than doubled in number (from 35,564 to 71,964).<sup>19</sup> 90,482 people were received into prison under sentence in 2010,<sup>20</sup> a third more than in 1992.

The main reason for the increase in imprisonment is that courts are much more likely to sentence offenders to prison than in 1992. In 1992 just under one in seven offenders convicted of indictable offences went to prison. In 2010 it was close to one in four.<sup>21</sup> The main change happened between 1992 and 2002 when the custodial sentencing rate leapt from 5% to 17% in Magistrates Courts and from 45% to 63% in the Crown Court.<sup>22</sup> Since 2002 the rate has been fairly stable.

Since 2000 there has, however, been a marked increase in the length of the average custodial sentence imposed by courts for indictable offences - from 14 to 16.2 months.<sup>23</sup> Prisoners stay longer in prison as a result of a number of important changes in the type and lengths of sentences imposed by courts over this period. In 1992 almost one in three of the people sentenced to prison were fine defaulters - almost 20,000 in number - who would spend a matter of days locked up.<sup>24</sup> In 2010 the 1300 fine defaulters sent to prison represented less than 1.5% of those received under sentence.<sup>25</sup> At the other extreme almost three times as many people received life and other indeterminate sentences in 2010 than in 1992 - 898 compared to 236.<sup>26</sup> The 3000 indeterminate prisoners in 1992

represented 8% of the sentenced population.<sup>27</sup> The 13,644 indeterminate prisoners in 2011 represented just under 19%.<sup>28</sup>

There have been important changes too in the proportion of the prison sentence imposed by the court which is served in prison. Until 1992 offenders sentenced to four years or more were eligible for parole after a third of the sentence. The 1991 Criminal Justice Act introduced a system of discretionary conditional release at the halfway point for this group meaning that prisoners had to spend more time in prison before being considered for parole. Since 2000 the average time served has increased by 14%.<sup>29</sup> The nature of the prison population too has been affected by an increase in the numbers recalled to prison for breaking the conditions of their release.

The increase in prison sentences do not reflect in any direct way an increase either in crime, or the numbers of offenders being sentenced by the courts. Crimes recorded by the police and measured by the British Crime Survey (BCS) peaked in 1995 and have fallen thereafter until very recently. The 9.6 million incidents estimated by the BCS to have taken place in 2010/11 is almost exactly half of the number estimated in 1995. The number of offenders sentenced by the courts for all offences remained relatively stable since 1992, ranging between 1.38 million (in 1997) and 1.56 million (in 2004). There were in fact fewer offenders sentenced in 2010 than in 1992.<sup>30</sup>

The increases in the custodial sentencing rate and length of sentences are thought by the Ministry of Justice to reflect the fact that cases coming before the courts are becoming more serious, with two offence groups, violence against the person and drug offences, having the largest impact on increasing the prison population. It is true that volumes sentenced for these two categories increased by 30% and 41% respectively between 1995 and 2007, but given the wide range of offences that fall into these categories more detailed analysis is needed to confirm that cases have been more serious.

There are several other possible reasons for an increasingly tough approach by the courts. This may be, in part, due to perceived public demand for such an approach. Additionally, research shows many sentencers are poorly informed about local community penalties available to them and that this may be linked to greater use of custody.<sup>31</sup> Similarly, a lack of feedback on how community orders are progressing may impact on their uptake. Four in five magistrates would like feedback on the probation of individual cases, however, only a quarter say they receive this.<sup>32</sup> This was cited as a significant reason why magistrates were not issuing community sentences more frequently.

Prison overcrowding can also be seen to arise from a lack of suitable facilities to accommodate prisoners. Successive governments have failed to produce accurate estimates of the impact of legislative changes. Even when demand for additional places is anticipated, construction of new prisons is expensive, takes time, and can fuel demand rather than cut overcrowding. As the House of Commons Justice Select Committee concluded in their report

on Justice Reinvestment, increasing the prison estate can only ever provide temporary reprieve from the problem of prison overcrowding and does not adequately address the factors that are causing an increase in numbers.<sup>33</sup>

There is also conflicting evidence about whether putting more people in prison serves to reduce or deter criminal behaviour. The Justice Secretary has said “there is and never has been, in my opinion, any direct correlation between spiralling growth in the prison population and a fall in crime.”<sup>34</sup> Certainly, the reoffending rates for ex-prisoners remain persistently high: the most recent figures from the Ministry of Justice show that 48.5% of ex-prisoners are reconvicted of a further offence within a year of release.

## International Comparisons

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Prison populations have increased in almost all European countries over the last two decades. In England and Wales, there are 155 prisoners per 100,000 people – the highest rate in Western Europe. The US has the highest rate in the developed world (730) and Iceland (47) the lowest.

In a number of countries, such as Germany and the Netherlands, prison numbers have started to fall after a period of increase, and in others rises have been much less severe than in the UK, placing less pressure on prison places and having less of an impact on overcrowding.

Making international comparisons of prison overcrowding is difficult, as the definition of overcrowding differs across borders. Own-country definitions may vary in meaning from “having two in a cell built for one to having two in a bed made for one, or having barely enough floor space to lay full length.”<sup>35</sup> Despite difficulties in definition, it is clear that overcrowding in many countries has increased according to countries’ own official figures. The European Federation of Public Service Unions found that average over-occupancy rates in EU prisons is 125% of capacity, reaching 200% in Bulgaria.<sup>36</sup>

Closer to home, Scottish prison numbers reached an all-time high in 2010 but have dropped slightly over the last year. A government audit in 2008 had reported that plans to increase prison capacity may not be sufficient to accommodate projected prisoner numbers.<sup>37</sup> It is too early to tell if this recent dip represents the start of a longer term leveling out of the prison population or not. A presumption against prison sentences of three months or less was introduced last year through legislation, hoping to reduce the use of unnecessary custodial sentences. Courts are still able to imprison an offender for such short sentences, but are required to explain why they consider it necessary instead of using alternative disposals such as the Community Payback Order.

In Ireland, a pilot scheme is underway allowing prisoners serving sentences of between

one and five years to trade part of their sentences for community service once they have served a certain period in custody. The scheme has the benefit of returning non-violent or otherwise dangerous prisoners to the community and cutting down numbers in the State's prisons. It has the support of Minister for Justice and is likely to be expanded when the pilot concludes this spring.<sup>38</sup>

The European Federation of Public Service Unions has attributed the causes of prison overcrowding in many European countries to a range of factors. On the demand side, these include insufficient investment in non-custodial measures such as community work and electronic tags, inappropriate sentencing of non violent offenders, excessive use and length of pre-trial detention and tougher sentencing regimes for vulnerable offenders including foreigners, drug using offenders, the mentally ill and people with learning disabilities. On the supply side they point to a lack of investment in decent prison facilities, and detention conditions which prevent rehabilitation and lead to recidivism; and lack of prevention and resources in social and mental health care.<sup>39</sup> Many of these factors have contributed to current overcrowding problems in the growing UK prison population.

## **What are the effects of prison overcrowding?**

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Overcrowding has a pervasive negative impact on people in prison. Prisoners tend to be allocated to prisons where there is space. They are thus moved around the estate, as the prison system attempts to find space near to the appropriate court for prisoners on remand. As the Justice Secretary told parliament in January 2012, "In many cases, a high priority is given to trying to house prisoners in places where they are reasonably in contact with their family and home. Of course, the more pressure the service comes under, the more difficult it is to maintain that."<sup>40</sup> At Onley in the West Midlands the Independent Monitoring Board (IMB) reported concerns last year over the number of prisoners arriving at the prison from the London area, which is causing difficulties for families to visit.<sup>41</sup> Bullingdon prison serves Oxford and Reading Crown Courts and the Magistrates Courts in Oxfordshire and Berkshire. The IMB reported that "due to overcrowding intakes, it holds prisoners from many other parts of England and Wales. Prisoners are often transferred at short notice in and out of the prison."<sup>42</sup> This so-called churn can be highly disruptive to prisoners' living routines, activities, and treatment.

The impact on life in individual establishments is damaging too. At Pentonville the IMB reported that "the decrepit physical environment of the entire prison is aggravated by overcrowding and urgently needs to be upgraded to reach acceptable standards of decency." For most of the year the prison was officially overcrowded by 25 to 35 per cent, and at times it held as many as 330 more prisoners than can be accommodated with a "good, decent standard of accommodation".<sup>43</sup>

## Strain on Staff

Overcrowding can place enormous burdens on staff, who may be overstretched as they try to maintain a safe and rehabilitative prison environment. Inadequate resources for the number of offenders detained can exacerbate levels of frustration and tension by prisoners, leading to higher risks of violence. This was recently highlighted by the Prison Officers' Association.

“.. if we continue as we are - warehousing prisoners, not being able to build the relationships between prisoners and prison officers that have been successful in the past - we will see riots in our prisons in which we will not be able to cope.”

*Prison Officers' Association national chairman, Peter McParlin, January 2012*

The Onley IMB found that “there are gangs within the prison and information about the membership of, particularly the London gangs, is difficult to access and therefore makes the appropriate allocation of accommodation difficult.”<sup>44</sup> The IMB at Preston noted that a significant proportion of the control and restraint used in the prison was to put prisoners onto transport when refusing to transfer.

## Deterioration of Living Conditions

Cramped conditions can mean that prisoners are expected to eat, sleep and defecate in the same small space. At Bedford the IMB reported that overcrowding is such that prisoners are still required to eat most of their meals locked in their cells with their cell-mate, immediately adjacent to an open WC.<sup>45</sup> At Bullwood Hall the IMB were concerned that “during September 2011 the accommodation in E wing which held thirteen prisoners in single cells, was doubled up and bunk beds installed in each cell to accommodate two prisoners, bringing the total number of prisoners in E wing to twenty six. This was partly the result of the need to increase prison accommodation following the riots. The Board is concerned that this represents overcrowding in a wing that has only two toilets and three showers.”<sup>46</sup> At Wymott the IMB has repeatedly raised concerns regarding the inappropriate double occupancy of single cells.

## Lack of Access to Education, Training and Work

There are high levels of illiteracy and innumeracy among the prison population and almost half of all prisoners have no qualifications at all.<sup>47</sup> Overcrowding places huge demands on education and training services, and many prisoners therefore cannot access courses because of high demand. Being moved around the system can lead to frequent interruptions in a prisoners' learning. According to the Offender Learning and Skills Unit just under a third of the prison population is attending education classes at any given time.<sup>48</sup> At Reading the IMB found that young prisoners suffer as a result of being unable to access or complete the services/rehabilitation programmes available at the YOI. Effort and resource is invested in trying to provide an environment which will maximise the life chances of these young prisoners when they are released back into society and “the Board is often at a loss to understand the lack of attention to this in the population management mandate.”<sup>49</sup>

Overcrowding limits opportunities for real work in prisons and therefore the possibility of obtaining a job upon release. This is counter-productive as studies show employment can reduce the risk of reoffending by between a third and a half.<sup>50</sup> A National Audit Office report in 2010 found that “Partly because of overcrowding and the constraints of physical space, there are not enough activity spaces for all prisoners. Between a third and a half of short-sentenced prisoners, including the least motivated, are not involved in work or courses and spend almost all day in their cells.<sup>51</sup> At Lewes due to the constant churn of prisoners in the overcrowded estate, it has been necessary to abandon attempts to enable kitchen workers to achieve NVQs.<sup>52</sup>

### **Mental Health Treatment**

Up to 90% of prisoners have some form of mental health problem, from acute psychiatric illness to more common conditions such as depression: Two thirds of prisoners, for instance, have a personality disorder and 45% suffer from depression and anxiety.<sup>53</sup> Levels of self-harm are exceptionally high, particularly among women in prison: women represent 5% of the prison population but account for over half of all reported self-harm incidents.<sup>54</sup>

Overcrowding can have a significant impact on prisoners with mental health problems. A 2004 report by the Joint Committee on Human Rights raised concerns about the link between prison overcrowding and self-inflicted deaths in custody.<sup>55</sup> Overcrowding places pressure on healthcare facilities, so that prisoners do not have access to the level of support they need. The disruption of churn can do damage to a prisoner’s mental well-being; 26% of self-harm incidents occurred within the first month of arriving in a prison.<sup>56</sup> The Prison and Probation Ombudsman found in an analysis of deaths in prison that the location of the cell was inappropriate in 10% of all cases. Examples included: holding Rule 45 prisoners (those who were deemed to be too vulnerable to be housed on normal location) on normal location due to overspill or overcrowding.<sup>57</sup>

### **Drug & Alcohol Treatment**

Levels of overcrowding within the prison estate means that the high numbers of prisoners with drug or alcohol problems are unlikely to receive the support that they need to address their substance misuse. This is a self-perpetuating problem as many people are in prison for reasons connected to drugs or alcohol. In a recent thematic report by HM Inspectorate of Prisoners, 60% of those who entered prison with an alcohol problem said that they thought they would leave with an on-going alcohol problem.<sup>58</sup> The very high levels of reoffending by drug-addicted prisoners suggests that the availability of treatment in prisons is inadequate – a problem aggravated by overcrowding.

### **Reoffending**

When prisons are overcrowded, the risk that offenders will commit crimes upon release may even be greater. A combination of some of the above effects – strain on prison staff, reduced access to educational and training programmes, and lack of mental health and

substance abuse treatment services – reduce the likelihood that prison sentences will actually work to tackle the causes of offending behaviour.

People serving short prison sentences of less than 12 months are the most likely cohort to reoffend; they often do not have access to offender management programmes and are not supervised and supported on release. Unfortunately, when levels of overcrowding and churn are higher, short sentenced prisoners end up further down the list of priorities; in effect their sentence becomes short term warehousing.

The Home Affairs Committee report in 2004/05 stated that “It is clear that overcrowding is having a hugely damaging impact on the delivery of rehabilitative regimes across the prison estate, both in terms of quality and quantity of appropriate interventions.”<sup>59</sup>

### Financial Costs

A prison place costs the taxpayer around £40,000 a year.<sup>60</sup> Such large figures provoke the question of whether or not the taxpayer could get better value for money. By “reinvesting” that money on activities that prevent crime happening in the first place, or by spending the money on other parts of the criminal justice system, such as community sentences or restorative justice programmes, we could reduce crime, prevent future victims and rehabilitate ex-offenders.

## Recent impact of overcrowding on CJA members

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The Criminal Justice Alliance contacted our members, many of whom work directly in prisons or with ex-prisoners on release, to find out about their experiences of recent overcrowding and how it was impacting on their work. They reported the following pressures:

- Not enough prison officers to escort prisoners to their appointments or classes. This meant that prisoners were unable to take part or missed their appointments. For the charity workers that come into prisons to run the courses or hold appointments it can be a waste of their time.
- Longer waiting lists for courses, including victim empathy courses, education courses, parenting and relationship courses and work opportunities.
- Sudden and last minute transfers of prisoners which meant more prisoners had their courses interrupted or stopped completely. It also disrupted established resettlement plans.
- Sudden transfers impacted on families who could no longer visit so easily or turned up to find their family member had been moved.

- Greater numbers of prisoners double bunking in cells designed for one person, and more triple bunking.
- Prisoners previously in their own cell, now sharing cells with others who are drug dependent.
- Higher levels of stress and tension amongst staff and prisoners, alongside increased levels of bullying.
- More frequent and longer lock down times.
- Prison staff stretched so that, although they want to help voluntary sector workers coming into prison, they are less able to do so.
- Visitors' centres without enough lockers or enough seating in the waiting area for families who come in. There is also not enough staff to support them.
- Prisoners' families unable to get through to helplines to book visits.
- It is now less likely for families to be involved in sentence planning and annual reviews.
- Deteriorating relationships between voluntary sector staff and prison staff as both have less time for partnership working.
- Higher levels of referrals to the voluntary sector working with prisoners, and higher levels of enquiries or requests for help from prisoners and their families.
- Less support for women on short sentences, again often transferred very shortly before release, and staff struggling to deal with the release paperwork at the last minute.
- High levels of distress, especially among those who had never been to prison before and were shocked at their sentence.
- Reduced access to group work as no classroom space available and more difficult to organize safely.
- Less chance of getting a place on family visits or special children of lifer visits, and more competition for weekend visits.
- Lower wellbeing of prisoners including more anxiety and fear, including vulnerable women and pregnant women reporting feeling unsafe.

## Case Studies

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### Housing difficulties

A charity working to help stop and reduce reoffending of offenders on release from prison found that several prisoners they had been working with for a number of months were suddenly transferred to another prison in different area of the country. This was in order make space for new 'riot-related' prisoners. The sudden move had a particularly damaging impact upon housing as several prisoners were released far from home, without stable accommodation in place. Their housing was lost or was never able to be arranged and so they face homelessness on release.

### Learning interrupted

One organisation reported prisoners being moved from a Category B to a Category A prison just two months before the end of their sentence because of recent overcrowding. This meant they could not complete their course that was planned to lead to employment on release. The prisoner is now unable to finish the course and they have lost the opportunity for a qualification and practical experience. The prison governor was clear that the reason for this move was that the prison had been told to make 20 extra spaces available at very short notice.

### Mentoring stopped

A prisoner taking part in peer support, helping other prisoners as part of a 'through the gate' project with a charity, was moved to another prison to make room for the influx of prisoners convicted of riot-related offences. He had been particularly good at helping other prisoners' access family support and had been doing really well in the role. At the new prison he didn't have this opportunity, lost interest and his family were less able to visit because of the distance.

### Care and wellbeing compromised

The women's prison estate has been put under significant additional strain which is having a negative impact on wellbeing and care for women. For example, a woman prisoner reported not being allowed a compassionate telephone call to her mother who had a heart problem. Overcrowding and short staffing was seen as the reason for this. There are reports of more lockdown and time spent in cells, rather than on rehabilitative courses. Anecdotally, staff report that levels of self harm and suicide are likely to increase in the women's prison estate.

## What should be done?

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Clearly, there are no quick or easy fixes to the increasing prison population. The main driver of high prison numbers is increasing numbers of prisoners on long or indeterminate sentences. Scaling back, even a little, on the length of sentences imposed would produce major positive impacts on the prison population. But although accounting for much less of the overall prison population on any one day, the overuse of short prison sentences for non-serious offences remains problematic, contributing significantly to court costs, churn in the system and wasted use of resources. The CJA believes there are several groups of people who could be diverted from prison immediately and altogether. This could be done without risking public safety, and may even contribute to reduced future offending.

### Fine defaulters

Despite reductions in the use of imprisonment for fine defaulters since the 1990s, on average more than 4 people are still sent to jail every weekday for non-payment of fines,<sup>61</sup> often for a matter of days or even hours. Imposing short custodial sentences in these cases is inappropriate, ineffective, and contributory to the problem of prison overcrowding and churn. Incarcerating low level offenders reduces the resources available to rehabilitate other prisoners who have committed more serious offences. The former governor of Mountjoy prison in Ireland has recently argued that imposing prison sentences on fine defaulters is “an act of lunacy”. Regardless of whether non-payment is due to poverty or a deliberate act, there are other ways of responding to fine defaulting that do not disproportionately place poor people at a disproportionate risk of prison, for instance through part-payment over a period of time or community service.<sup>62</sup>

### Parents of truant children

In 2010, 11,757 parents were prosecuted and 25 were given prison sentences as a result of failing to assure their child’s attendance in school. The longest jail sentence imposed on a parent was 90 days.<sup>63</sup> Prosecuting parents, rather than working with them, is counter-productive to resolving the underlying issues that lead to difficulties in attending school. Custody is an inappropriate form of punishment for a child’s truancy; rather than solving a family’s difficulties, it is likely to exacerbate them. Sending parents to prisons for this reason adds pressure on overcrowded prisons, spreading resources and staff attention more thinly among existing inmates.

### Offenders with mental health problems – building on progress

People with mental health problems are especially vulnerable members of the prison population, and overcrowded conditions can intensify harm. Diverting people with mental health problems from prisons into specialized treatment programmes could have a significant impact on reducing overcrowded prison conditions, as well as generating financial savings. A recent impact assessment of the Sentencing and Criminal Justice Components of the *Legal Aid, Sentencing and Punishment of Offenders Bill* estimated an annual reduction in 650–750 prisoners per year and a £20 million savings by diverting

offenders with mental health problems from custody.<sup>64</sup> The diversion and liaison pilots recommended by Lord Bradley are well underway and we very much welcome this progress. Next steps include ensuring community sentences work more appropriately for people with mental health needs, who cannot be diverted altogether.

### People in Possession of Cannabis

A recent Parliamentary answer revealed that the number of people proceeded against at Magistrates Court for possession of cannabis more than doubled between 2006 and 2010 from 12,000 to 25,000.<sup>65</sup> There is a strong case for diverting offenders of this type from the criminal courts.

### Immigration detainees

Following the completion of their custodial sentence, foreign national prisoners who are being considered for deportation often continue to be detained under immigration powers. Although the UK Border Agency's official policy sets out that the decision to detain should be based on the risk of reoffending and the risk of absconding, a recently published report on the management of foreign national prisoners by the Independent Chief Inspector of the UK Border Agency has highlighted that there remains within UKBA "a culture that detention is 'the norm'."<sup>66</sup> Worryingly, many foreign national prisoners who are detained post-sentence continue to be held in the punitive environment of prison, even though they have completed the sentence handed to them by the criminal courts.

Immigration detainees who are held in prison face significant problems. Access to independent immigration advice is often not available. Moreover, unlike those being held in immigration removal centres, detainees in prison are not allowed to use mobile phones, and access to email and the internet is not available. This can make it difficult to keep in touch with family and friends, as well as to contact their legal representative.

Prison detainees are not included in the quarterly statistics on immigration detention published by the Home Office, so it is difficult to gauge how many there are in prison at any one time. However, the report by the Chief Inspector of UKBA highlighted that, in January 2011, just under 50% of the foreign nationals being detained post-sentence – 760 in total – were being held in the prison estate. This is a further example of unnecessary use of prison and helps demonstrate why the overall estate has reached such overcrowded levels.

### Crime Prevention Injunctions

Careful consideration should be given to the possible impact on prison numbers of proposals for Crime Prevention Injunctions (CPI). CPIs are an attempt to tackle anti-social behaviour by imposing prohibitions on behaviour and/or movement. They may also include certain positive requirements aimed at addressing underlying problems linked to the offence. However, CPIs can be imposed simply 'on the balance of probabilities' that an individual was 'engaging, had engaged or was likely to engage' in antisocial behaviour to one or more persons not of the same household, and hearsay evidence is permitted in court.<sup>67</sup>

Whilst there is a need to respond quickly to anti-social behaviour, the ‘balance of probabilities’ standard of guilt could potentially impose a civil order on an individual who did not commit any offence. Similar to an ASBO, if a CPI is breached, it could result in sanctions, including up to 6 months in custody. Breach of a civil order should never result in a prison sentence; this is entirely contradictory to attempts to reserve prison as a place for serious offenders.

On a more positive note, there have been encouraging trends in the use of custody for under 18’s since 2008.<sup>68</sup> This has been achieved through sensible work by the police to divert minor cases from prosecution, and improved relationships between the Courts and the Youth Offending Teams which provide pre sentence reports and supervise community based orders. There is scope for extending the use of some of the approaches which have worked well with the juvenile age group to young adults and even adults to ensure that alternatives to prison are being used wherever appropriate.

## Conclusion

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CJA member organisations working in prisons and communities report that their work has become significantly more challenging due to prison overcrowding and escalating numbers of people in custody. Efforts at rehabilitation across the prison estate and through the gate are being undermined. This is having a negative impact on prisoners, their families and their communities.

Whilst the real driver in prison numbers has been increasingly long sentences and greater numbers of indeterminate sentences, it is still worth asking who we want to lock up and why. We cannot build our way out of this problem; the more prison places available, the more they get filled. Instead it is time to re-evaluate what we can realistically expect prison to achieve and who should be there.

The Justice Secretary is right when he says that “the future prison population will depend on all kinds of things beyond the control of the Government. Eventually it will all depend on whether we have long and protracted youth unemployment, how far the recession has retracted, and how successful we are with our rehabilitation revolution, workplace reform, skills training, education reform and so on.”<sup>69</sup> More questionable is his view that “the prison estate is well placed to meet the demand.”<sup>70</sup> While the system is just about coping, it struggles to meet the challenges of unexpected surges as followed the riots last summer.

Overcrowding, which has all too often become an accepted part of life in prison, extracts a heavy price from prisoners, staff and the community. As the Council of Europe’s Committee for the Prevention of Torture said after their visit to the UK in 2008, overcrowding “is to be deplored....even with an occupancy level of 95% of the total design capacity of a prison estate, it becomes nigh impossible for a prison service to deliver what is required of it, and more particularly, to ensure respect for inmates’ human dignity.”<sup>71</sup>

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This rapid increase in prison numbers over recent months is putting additional pressure on a prison system that has been overcrowded for decades.

Members of the Criminal Justice Alliance – organisations which undertake a wide range of tasks within the justice system – report that the recent increase in overcrowding is making their work more difficult and undermining the rehabilitation of prisoners. The evidence collected in this briefing makes the case that the government needs to take urgent steps to limit the unnecessary use of prison, ensuring it is reserved for serious, persistent and violent offenders for whom no alternative sanction is appropriate.

While the system is just about coping, it struggles to meet the challenges of unexpected surges as followed the riots last summer. The overuse of short prison sentences for non-serious offences contributes significantly to court costs, churn in the system and wasted use of resources. The CJA believes there are several groups of people who could be diverted from custody immediately and altogether.

## **Criminal Justice Alliance**

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