

Chapter 2:

Justice reinvestment – a new solution to the problem of Indigenous over-representation in the criminal justice system

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2.1 Introduction

Indigenous imprisonment rates in Australia are unacceptably high. Nationally, Indigenous adults are 13 times more likely to be imprisoned than non-Indigenous people¹ and Indigenous juveniles are 28 times more likely to be placed in juvenile detention than their non-Indigenous counterparts.²

Indigenous over-representation in the criminal justice system is not a new issue. At least since the Royal Commission into Aboriginal Deaths in Custody in 1991 it has been the subject of countless reports, research projects and roundtables.

Some worthy initiatives have come out of these efforts but the bottom line remains: what we are doing is simply not working. If it were working, we would be seeing a reduction in Indigenous imprisonment, rather than the 48 percent increase since 1996.³

When something isn't working, we need to be bold and creative in thinking outside our safe policy parameters for alternative solutions. That is why in this chapter I look to a recent development from the United States, justice reinvestment, as a new approach that may hold the key to unlocking Indigenous Australians from the cycle of crime and escalating imprisonment rates.

Justice reinvestment is a localised criminal justice policy approach that diverts a portion of the funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services in communities where these issues are most acute in order to address the underlying causes of crime in those communities.

Justice reinvestment still retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending.

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- 1 Australian Bureau of Statistics, *Prisoners in Australia 2008*. At [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/\\$File/45170_2008.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/$File/45170_2008.pdf) (viewed 27 May 2009).
 - 2 Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2006–2007*. At <http://www.aihw.gov.au/publications/juv/jjia06-07/jjia06-07.pdf> (viewed 27 May 2009).
 - 3 Australian Bureau of Statistics, *Prisoners in Australia 2006*. At <http://abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02006?OpenDocument> (viewed 24 July 2009).

Justice reinvestment is not just about reforming the criminal justice system but trying to prevent people from getting there in the first place.

Justice reinvestment is a model that has as much in common with economics as social policy. Justice reinvestment asks the question: is imprisonment good value for money? The simple answer is that it is not. We are spending ever increasing amounts on imprisonment while at the same time, prisoners are not being rehabilitated, recidivism rates are high and return to prison rates are creating overcrowded prisons.

As we are in the midst of the global financial crisis, seeing government surpluses being replaced with record deficits and spending on services being slashed, the question of whether imprisonment is good value for money is particularly powerful.

When spending across all areas is threatened we need to be creative about doing more with less. As we have seen from the justice reinvestment experience in the United States, when politicians were faced with the choice between spending on hospitals and schools or prisons, some were willing to look at alternatives to the 'tough on crime' rhetoric in favour of solutions that actively reduce imprisonment spending.

The scarcity of public funds might be just the pragmatic opportunity we need to shift governments away from a law and order, tough on crime mentality. Framing the problem of Indigenous imprisonment as an economic issue might be more strategic than our previous attempts to address it as a human rights or social justice issue.

A crisis of the magnitude that we face in Indigenous imprisonment requires pragmatic as well as principled approaches. Justice reinvestment is a deceptively simple idea, yet it is underpinned by a sound research methodology, community engagement and evaluation. There is much that we can learn from the United States experience and emerging interest in the United Kingdom around justice reinvestment to shape better responses to Indigenous offending.

In this chapter I will introduce these innovative ideas in the context of overseas experience and possible Australian applications. This chapter consists of five sections:

- 2.1 Introduction
- 2.2 Justice reinvestment and the experience of the United States and the United Kingdom
- 2.3 Justice reinvestment in the Australian context
- 2.4 Justice reinvestment and reducing Indigenous imprisonment
- 2.5 Conclusion
- 2.6 Recommendations

2.2 Justice reinvestment and the experience of the United States and the United Kingdom

(a) The context of justice reinvestment

Justice reinvestment is a public policy response to the out of control prison population expansion in the United States from the 1990s. The United States imprisons more people than any other nation in the world.⁴ For instance:

- in 2008 one in every 1,000 adults were incarcerated⁵
- 2.3 million people are imprisoned every year⁶
- African Americans are eight times more likely to be imprisoned than white Americans⁷
- one out of every eight African American males between 20–34 years of age is imprisoned⁸
- if the African American imprisonment rate dropped to the same levels as the rest of the population, the prison population would shrink by two thirds
- despite falling crime rates since 1991, the rate of imprisonment has increased by more than 50% since that time.⁹

These imprisonment rates come with a \$60 billion a year price tag.¹⁰

The explosion of imprisonment rates resulted from a range of increasingly punitive law and order measures but particularly the ‘war on drugs’ and mandatory sentencing.

High imprisonment costs have also coincided with a time of constrained state and federal budgets. Often the tipping point has come when prisons have reached capacity and governments have been faced with large costs to build new prisons. This is where justice reinvestment has been accepted as a bipartisan solution to avoiding the construction of new prisons.

(b) Principles of justice reinvestment

The origins of justice reinvestment mark its difference from the usual criminal justice policy ideas. The concept of justice reinvestment came out of the Open Society Institute, a New York think-tank led by George Soros.

4 International Centre for Penal Studies, *World Prison Brief – Highest to Lowest Rates*. At http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poptotal (viewed 14 April 2009).

5 H West and W Sabol, *Prisoners in 2008*, Bureau of Justice Statistics Bulletin (2008). At <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf> (viewed 14 April 2009).

6 H West and W Sabol, *Prisoners in 2008*, Bureau of Justice Statistics Bulletin (2008). At <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf> (viewed 14 April 2009).

7 D Roberts, ‘The Social and Moral Cost of Mass Incarceration in African American Communities’ (2004) 56 (5) *Stanford Law Review*, p 1272.

8 The Sentencing Project, *Racial Disparity*. At <http://www.sentencingproject.org/IssueAreaHome.aspx?IssueID=3> (viewed 14 April 2009).

9 The Sentencing Project, *New Incarceration Figures: Thirty Three Consecutive Years of Growth*. At http://www.sentencingproject.org/Admin/Documents/publications/inc_newfigures.pdf (viewed 14 April 2009).

10 J Gibbons and N Katzenbach, *Confronting Confinement*, Commission on Safety and Abuse in America’s Prisons (2006), p 13. At http://www.prisoncommission.org/pdfs/Confronting_Confinement.pdf (viewed 14 April 2009).

George Soros is a successful financial speculator and stock investor and is ranked the 29th richest person in the world. He has clear insights into the financial world as well as first hand experience of human rights violations, escaping the Nazis as a young man. Through the Open Society Institute he donates large amounts of money to projects that help create open, fair democracies. With this background it makes sense that justice reinvestment is concerned with both the economics and the social justice of mass imprisonment.

Importantly, justice reinvestment is not just about diversionary or treatment programs, although they may be part of a justice reinvestment strategy. The innovation of justice reinvestment, according to the Commission on English Prisons is that it:

is not about alternatives *within* the criminal justice process, it is about alternatives *outside* of it.¹¹

Justice reinvestment makes us think more broadly and holistically about what really leads to crime and how we can prevent it.

(i) *Million dollar blocks*

Justice reinvestment is based on evidence that a large proportion of offenders come from a relatively small number of disadvantaged communities. Demographic mapping and cost analysis in the United States has identified 'million dollar blocks' where literally millions of dollars are being spent on imprisoning people from certain neighbourhoods. For instance, in one neighbourhood, 'The Hill' in Connecticut, \$20 million was spent in one year to imprison 387 people.¹² The Hill is disproportionately made up of low income, African Americans.

This concentration of offenders logically suggests that there should be a commensurate concentration of services and programs to prevent offending in these communities. This is an important departure from current individually focused correctional policy. Current correctional policies promote individual and group programs but provide little support for community reintegration and community capacity building.

The bottom line is that you can put an individual offender through the best resourced, most effective rehabilitation program, but if they are returning to a community with few opportunities, their chances of staying out of prison are limited.

(ii) *Money talks*

The second assumption of justice reinvestment is that imprisonment cannot be considered a success because it does not make good financial sense.

Despite the growth in spending on imprisonment, recidivism and return to custody rates have increased to the point in the United States where two thirds of prisoners return to custody.¹³ Of those, one third are returned to prison for minor parole violations, including missed appointments, positive drug tests and breaches of curfew.¹⁴

11 Commission on English Prisons Today, *Do Better Do Less: The report of the Commission on English Prisons Today* (2009), p 49. At <http://www.howardleague.org/index.php?id=835> (viewed 23 July 2009).

12 S Tucker and E Cadora, *Ideas for an Open Society: Justice Reinvestment*, Open Society Institute (2003), p 2. At http://www.soros.org/resources/articles_publications/publications/ideas_20040106/ideas_reinvestment.pdf (viewed 14 April 2009).

13 S Tucker and E Cadora, *Ideas for an Open Society: Justice Reinvestment*, Open Society Institute (2003), p 3. At http://www.soros.org/resources/articles_publications/publications/ideas_20040106/ideas_reinvestment.pdf (viewed 14 April 2009).

14 S Tucker and E Cadora, *Ideas for an Open Society: Justice Reinvestment*, Open Society Institute (2003), p 3. At http://www.soros.org/resources/articles_publications/publications/ideas_20040106/ideas_reinvestment.pdf (viewed 14 April 2009).

There is a substantial body of evidence that shows that prison fails to rehabilitate, deter, meet public concerns and make communities safe.¹⁵ Despite a small but vocal prison reform movement (including those who champion human rights), these arguments have largely fallen on deaf ears in the ‘tough on crime’ climate that has predominated in most Western countries for the last 50 years.¹⁶

However, the failure of imprisonment in economic terms seems to be cutting through to a diverse range of policy makers because it is an argument that spans the ideological divide. It holds the promise of prevention, diversion and community justice for those on the left, and for those on the right, it promises balanced budgets. It is telling that in the United States, the home of ‘law and orders’ politics, justice reinvestment has not only been taken up by progressive liberal states like Oregon but also Texas, home state of George W Bush.

In the United Kingdom justice reinvestment is aligned to new economic analysis in the form of ‘Social Return on Investment’ (SROI). The SROI model:

is a process for understanding, measuring and reporting on the social, environmental and economic value created by an intervention and provides a stakeholder-led framework for measuring the long-term change created by public policy.¹⁷

SROI is being used to financially argue for alternatives to imprisonment based on long-term projections of costs and benefits. Text Box 2.1 provides an example based on diversionary programs for women.

Text Box 2.1: Unlocking Value: How we all benefit from investing in alternatives to prison for women offenders

The New Economics Foundation measured the costs and long-term benefits of two diversionary programs for non-violent offending women in Glasgow and Worcester. The SROI study found that:

- For every pound invested into community-based diversions a further £14 of social value was generated to benefit the women, their children, victims and the community over a ten-year period.
- If alternatives to prison were to achieve an additional reduction of just 6% in re-offending, the state would recoup the investment in a single year.
- The long run value of these benefits is in excess of £100 million over a ten-year period.

15 For example: T Matthiesen, *Prison on Trial* (2006) and A Coyle, ‘Community Prisons’ (2006) 64 *Criminal Justice Matters*, pp 32–33.

16 With the exception of Scandinavian countries who have much lower rates of imprisonment and a greater focus on rehabilitation and reintegration for those who are imprisoned based on social democratic principles.

17 New Economics Foundation, *Unlocking Value: How we all benefit from investing in alternatives to prison for women offenders*, 2008. At http://www.neweconomics.org/gen/z_sys_publicationdetail.aspx?pid=270 (viewed 22 July 2009).

As well as providing new evidence on the costs of imprisonment, the NEF analysed the adverse consequences for mothers' imprisonment on their children. It found that imprisoning mothers carries a cost to children and the state of more than £17 million over a ten-year period.¹⁸

(iii) *Community consequences of incarceration*

Researchers have been investigating the impact of incarceration on individuals in terms of rehabilitation, recidivism and deterrence for some time. However, it is only under the umbrella of justice reinvestment that research on the impact of incarceration on community life as a whole is being seriously considered.

One of the assumptions of incarceration is that removing offenders from the community (incapacitation) makes the community a safer, better place. This might be true if we are talking about removing a small number of serious offenders from a community. But if large numbers of offenders are being removed from a single community this disrupts social networks and weakens the community.¹⁹

The impact of incarceration is compounded because the communities with high imprisonment rates are already disadvantaged.²⁰ This makes them more vulnerable to the disruption and drain caused by imprisonment, sustaining the cycle of crime.

Offenders have other roles in the community that are unrelated to criminal behaviour. In reviewing ethnographic research on offenders, Dina Rose and Todd Clear argue that:

Our point is not that offenders be romanticized as 'good citizens' but rather they not be demonized. A view of them as 'merely bad' is a one sided stereotype that ignores the assets they represent to the networks within which they live, but also fails to account for the benefits they contribute to their environments.²¹

Offenders contribute financially; have family and cultural obligations; and other social contributions.²² For instance, large numbers of men being imprisoned reduces the number of male role models in communities and can reduce the income of families and communities. Todd Clear goes as far as to suggest that:

Men who are behind bars are the missing links in the social network of those who remain behind. Since these networks have limited strength to begin with the widespread reality of prison undermines their ability to provide social capital. And neighbourhoods with lots of men behind bars are places with especially low endowments of social capital. Because prison saps the limited economic and interpersonal resources of families with loved ones behind bars both the families and neighbourhoods stay impoverished.²³

18 New Economics Foundation, *Unlocking Value: How we all benefit from investing in alternatives to prison for women offenders*, 2008. At http://www.neweconomics.org/gen/z_sys_publicationdetail.aspx?pid=270 (viewed 22 July 2009).

19 National Institute of Justice, *When Neighbors Go to Jail: Impact on Attitudes About Formal and Informal Social Control*, US Department of Justice, 1999. At <http://www.ncjrs.gov/pdffiles1/fs000243.pdf> (viewed 26 October 2009).

20 National Institute of Justice, *When Neighbors Go to Jail: Impact on Attitudes About Formal and Informal Social Control*, US Department of Justice, 1999. At <http://www.ncjrs.gov/pdffiles1/fs000243.pdf> (viewed 26 October 2009).

21 D Rose and T Clear, 'Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory' (1998) 36, (3) *Criminology*, p 453.

22 D Rose and T Clear, 'Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory' (1998) 36, (3) *Criminology*, p 451.

23 T Clear, *Imprisoning Communities* (2007), p 9.

In particular, many offenders are also parents. Some of the initial negative consequences of imprisonment on children of prisoner include:

- loss of the attachment bond with the parent
- mental health problems, including depression, withdrawal and anxiety
- physical health problems
- hostile and aggressive behaviours
- poor school performance and truancy.²⁴

Long term the cycle perpetuates, as children of prisoners are five times more likely to be imprisoned.²⁵

On a more theoretical level, researchers are finding that imprisoning a large segment of a community is reducing informal and formal social control. Communities with high imprisonment perceive that formal social control mechanisms (the police and criminal justice systems) are unfair, sending the fatalistic message that they will also be unfairly targeted regardless of their positive actions.²⁶

In turn, informal social control also declines in this environment. Informal social control is strong when there is sufficient community trust and solidarity and has the potential to prevent crime. Informal social control includes things like:

- the ability of parents to control their children and young people
- whether community members are willing and able to offer assistance or intervene if they see someone being attacked, or a house broken into
- whether community members are willing to intervene if they think a child is at risk or being abused.

Building community capacity is therefore key to increasing informal social control and a community's own crime prevention mechanisms.

(c) How is justice reinvestment implemented?

Justice reinvestment has evolved into a coherent strategy with a rigorous methodology and four clear steps.

Step 1: Analysis and mapping

The first step is identifying where the offenders are coming from and then calculating how much is being spent in these areas on imprisonment. This leads to detailed demographic and socio-economic data mapping that shows in a very precise way just how much is being spent on imprisonment for certain communities.

Once the communities are identified the under-spending on health, education, housing and other social services is often in stark contrast to over-spending on imprisonment.

24 S Cox, *Little Children of women in prison are sacred too*, (Paper for the Sisters Inside 'Is Prison Obsolete?' Conference, Darwin, 28 June 2007). At <http://www.sistersinside.com.au/media/conference2007/SusanCoxs.pdf> (viewed 3 March 2009).

25 Shine for Kids (Children of Prisoners Support Group) http://www.shineforkids.org.au/why_we_are_needed/index.htm (viewed 3 March 2009).

26 National Institute of Justice, *When Neighbors Go to Jail: Impact on Attitudes About Formal and Informal Social Control*, US Department of Justice, 1999. At <http://www.ncjrs.gov/pdffiles1/fs000243.pdf> (viewed 26 October 2009).

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A holistic analysis of the criminal justice system is a key feature of the justice reinvestment methodology. Consideration is given to policing, judicial systems, probation and parole, prevention programs, community supervision and diversion options as well as the geographic mapping.

This sort of data and analysis has often been lacking in jurisdictions before justice reinvestment was considered. According to Michael Thompson, Director of the Council of State Governments Justice Center in the United States:

Few, if any states have access to such data when making important budget or policy decisions. What information policy makers do receive pertains to a particular agency and is fairly narrow in scope. Equipped with information focused on one part of the criminal justice system, state officials are for all practical purposes blindfolded, touching just one part of the elephant or fumbling with thousands of jigsaw puzzle pieces. We can no longer afford for policy makers to appropriate billions of taxpayer dollars with no understanding of what impact such spending will have on community safety.²⁷

Step 2: Development of options to generate savings and improve local communities

Once the communities are identified, the next step is looking at ways to save imprisonment costs so funds can be re-spent in the community. This involves looking at why there is such a high rate of imprisonment and particularly, return to custody. In many cases this has involved changes in how technical matters like parole violations or bail matters are dealt with and providing community based alternatives to non-violent offences.

There is a neat flow on effect here. If there is money to reinvest in better alcohol and drug treatment, housing options and general community support services, judges can be more confident about sentencing offenders to community based options.

The options will be different for each community, based on the offender profile and the needs of the community. Given that community involvement is such a key component of justice reinvestment, this step also involves community consultation and engagement around the causes and solutions to crime.

Step 3: Quantify savings and reinvest in high needs communities

Based on the information gathered in the previous two steps, it is possible to project savings based on reductions in imprisonment spending. Savings can then be put towards the services and projects identified by communities.

Step 4: Measure and evaluate impact

Justice reinvestment approaches are evidence based and measure performance outcomes such as the amount of imprisonment money saved; reduction in imprisonment; reduction in recidivism; and indicators of community well being and capacity.

Although there is a four step process for justice reinvestment as described here, it operates differently in each location due to administrative as well as community differences. This part of the chapter will illustrate some of the programs in progress in the United States and to a lesser extent, United Kingdom and Scotland. Detailed case studies from Texas and Kansas will illustrate the process and outcomes of justice reinvestment.

²⁷ Michael Thompson, Statement to the US House of Representatives Appropriates Subcommittee, Hearing on Justice Reinvestment (1 April 2009).

(d) Justice reinvestment in the United States

Administratively in the United States, local counties are responsible for sentencing most offenders but they are usually sent to state prisons to serve their sentence.²⁸ The offenders become a state problem and state cost so there has traditionally been no financial incentive for the counties to look at the local community problems that are contributing to high incarceration levels.

Under some justice reinvestment schemes the cost of imprisoning people is ‘charged back’ to the counties, so if they choose not to imprison people they have the option of using those funds for community based programs and community development activities that target where offenders live.

An example of ‘charge back’ is Oregon. In Oregon money was reinvested in well-resourced restorative justice and community service programs for juvenile offenders. The approach resulted in a 72% drop in juvenile incarceration.²⁹ Strong connections were made with local communities, resulting in increased social cohesion as well as tangible projects like parks and neighbourhood revitalisation.

In other places in the United States, state governments have actively cut corrections budgets and reinvested into targeted community strategies. The case studies of Texas and Kansas provide detailed information on this process later in the chapter.

Justice reinvestment requires technical expertise to start the analysis and mapping process, as well as negotiating options for savings. In the United States, the Council of State Governments Justice Centre undertakes this role. The Justice Centre has become a focal point in promoting and implementing justice reinvestment in the United States.

(i) Council of State Governments Justice Centre

Since the initial research and development work initiated by the Open Society Institute, the Council of State Governments Justice Centre has supported justice reinvestment projects.³⁰ The Justice Centre receives funding from US Department of Justice and philanthropic organisations.

The Justice Centre provides intensive technical assistance (particularly around the data mapping component of the strategy) to a limited number of states that demonstrate a bipartisan interest in justice reinvestment.

The Justice Centre has been crucial in developing the rigorous, evidence based approach to justice reinvestment that has encouraged bipartisan support.

There are currently 11 states formally pursuing justice reinvestment:

- Arizona
- Oregon
- Connecticut
- Kansas
- Michigan
- Nevada
- Pennsylvania

28 A federal criminal justice system also operates in the United States, making up around 6% of the entire prison population.

29 S Tucker and E Cadora, *Ideas for an Open Society: Justice Reinvestment*, Open Society Institute (2003), p 6. At http://www.soros.org/resources/articles_publications/publications/ideas_20040106/ideas_reinvestment.pdf (viewed 14 April 2009).

30 Justice Center, *Justice Reinvestment: A project of the Council of State Governments Justice Center*. At <http://justicereinvestment.org/about> (viewed 16 February).

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- Rhode Island
- Texas
- Vermont
- Wisconsin.

This is a diverse group of states with little in common apart from rising imprisonment rates.

The other common thread is the bipartisan support that is necessary for justice reinvestment. The Justice Centre have a key role to play in bringing often very unlikely politicians together in partnership to tackle imprisonment. Text Box 2.2 provides a selection of quotes from various politicians who have worked with the Justice Centre in support of justice reinvestment.

Text Box 2.2: What US politicians have to say about justice reinvestment

Michigan Governor Jennifer Granholm (Democrat):

It is not good public policy to take all of these taxpayer dollars at a very tough time, and invest it in the prison system when we ought to be investing it in things that are going to transform the economy, like education and diversifying the economy.

Arizona State Senator John Huppenthal (Republican):

Our policy and funding decisions need to be based on good data and the latest research. Unless we have that foundation, I am not confident that we're doing everything we can to fight crime and be efficient with taxpayer dollars.

Kansas State Senator John Vratil (Republican):

If we do not address the problem today, we are effectively deciding to spend hundreds of millions of dollars on future construction and operation of more prisons...Kansas will miss the opportunity to be safer.

US Senator Sam Brownback (Republican):

We've got a broken correctional system. Recidivism rates are too high and create too much financial burden on states without protecting public safety. My state [Kansas] and others are reinventing how we do business by employing justice reinvestment strategies that can put our taxpayers' dollars to better use.

Texas State Representative Jerry Madden (Republican):

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 ten years time we may look back on this as one of the most significant changes we've made.

Ohio State Representative John J. White (Republican):

There's a shift away from the mindset of lock them up and throw away the key. That cannot sustain itself.

California Senate President Don Perata (Democrat):

We are jammed up with this situation right now because we have fallen in love with one of the most undocumented beliefs: that somehow you get safer if you put more people in jail.

Justice reinvestment's political currency seems to be growing under the Obama administration. In April 2009 the House of Representatives Appropriations Subcommittee conducted hearings on justice reinvestment, taking evidence from representatives of the Justice Center and the Texas and Kansas state governments on the implementation of justice reinvestment.

Since the passage of the Second Chance Act in April 2008, prisoner re-entry (including post release support) has been the focus of much discussion federally in the United States. However, as pointed out by Michael Thompson, Director of the Justice Center:

Despite the unprecedented interest in re-entry, state and county elected officials are finding that they don't have the resources to finance, on a large scale, strategies necessary... Indeed, as the states face the grim reality of \$350 billion in budget shortfalls over the next 2.5 years elected officials are scrambling to fund important services and shelving plans to expand promising pilot programs, or worse, scuttling re-entry programs altogether.³¹

In this dire context, there is hope that justice reinvestment will find favour at the state, as well as federal level as a way of getting out of the financial black hole.

Case Study 2.1: Justice reinvestment in Texas

Texas in south of the United States is the largest state in terms of size and population. Texas has a bigger population than Australia, with 24.3 million residents.³² Texas is very ethnically diverse and is now a 'majority minority' state that means that various ethnic minorities now outnumber white Americans.³³

Texas has the second highest imprisonment rate in the United States with 976 people imprisoned per 100,000.³⁴ This rate is even higher for ethnic minorities: while white Americans are represented at 667 per 100,000, Hispanic Americans are 830 per 100,000 and African Americans are an alarming 3,162 per 100,000.³⁵ This makes African Americans almost five times more likely to be imprisoned than their white counterparts in Texas.

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- 31 Michael Thompson, Statement to the US House of Representatives Appropriates Subcommittee, Hearing on Justice Reinvestment (1 April 2009).
- 32 Texas State Government, *Demographics*, <http://www.window.state.tx.us/specialrpt/tif/population.html> (viewed 15 April 2009).
- 33 Texas State Government, *Demographics*, <http://www.window.state.tx.us/specialrpt/tif/population.html> (viewed 15 April 2009).
- 34 International Centre for Penal Studies, *World Prison Brief – Prison Brief for Texas*, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_usastates.php?state=44 (viewed 15 April 2009).
- 35 The Sentencing Project, *State by State*, <http://www.sentencingproject.org/StatsByState.aspx> (viewed 15 April 2009).

Texas is renowned for its 'tough on crime' policies that have led to a 300% increase in the prison population between 1985 to 2005.³⁶ To meet demand \$2.3 billion was spent on construction alone between 1983 to 1997 to house inmates.³⁷ However, building could not keep pace with demand and it was projected that the prison population would increase by another 14,000 people in five years, necessitating the spending of \$523 million just to build new prisons.³⁸

Faced with prison overcrowding and massively increasing costs, policy makers initiated a bipartisan process to pursue justice reinvestment.

Step 1: Analysis and mapping

The Council of State Governments Justice Center provided detailed mapping of the prison population to identify the 'high stakes communities' where offenders come from. They found:

- five counties accounted for more than half of the people imprisoned at a cost of over half a billion dollars
- the four highest prisoner re-entry population counties in Texas account for over \$1 billion a year in imprisonment costs
- ten of Houston's 88 neighbourhoods account for almost \$100 million a year in prison cost
- 50% of former prisoners return to neighbourhoods that account for only 15% of the city's population.³⁹

Of note, the high stakes communities are also disproportionately made up of African Americans and people living below the poverty line. For instance, one of the notorious neighbourhoods, Sunnyside, is 93.8% African American and the median income is less than half the Houston median income.

Analysis of the Texas prison population was also used to identify systemic factors contributing to the projected growth in prison populations. Key issues leading to high imprisonment rates were:

- Between 1997 and 2006 the number of probation revocations leading to prison terms increased by 18% even though the overall number of people on community based supervision orders decreased by 3%.⁴⁰

36 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 2. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

37 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 2. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

38 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 2. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

39 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 3. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

40 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 3. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

- At the same time prisons have been expanding, funding has been cut to community based substance abuse and mental health services, with over 2,000 people on the waiting list for services.⁴¹
- The percentage of people approved for parole was low, even though many offenders met the guidelines for parole based on risk levels and offence severity. If guidelines were followed an extra 2,252 people could have been released in 2005.⁴²

Step 2: Development of options to generate savings and improve local communities

The combination of mapping and systemic analysis provided powerful evidence about where and how to reinvest money. To identify options a rare joint hearing of the Texas Legislature was held to hear evidence on the prison population and gain input from a range of advocates, stakeholders and community members. Based on the research, the Justice Center put forward a range of options including expanding substance use and mental health treatment programs and enhancing the use of parole and diversion programs.

Following this process, in May 2007 the Texas Legislature enacted a raft of new policies and fully funded programs including:

- 800 new beds in a substance abuse treatment residential program for people on probation supervision orders
- 3,000 more places for outpatient substance abuse treatment for people on probation supervision
- 1,400 beds in intermediate sanction facilities to divert probation and parole technical violators from prison
- 300 new beds in halfway houses for people under parole supervision
- 500 new beds for an in-prison treatment unit for people with serious drink driving offences
- 1,500 new beds in an intensive in prison substance abuse treatment program
- 1,200 new places in intensive substance abuse treatment programs in prison.⁴³

Changes were also made to improve the quality of probation and parole services, including capping the maximum caseload of probation and parole workers to ensure adequate supervision and support. Incentives have also been put in place to encourage counties to create more progressive sanctions so probation and parole officers have more community based options to use if offenders breach their supervision conditions.

41 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 3. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

42 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 3. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

43 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 5. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

Step 3: Quantify savings and reinvest in high needs communities

Texas reinvested \$241 million that would otherwise have been spent on the construction of new prisons in treatment programs and improved probation and parole services. \$210.5 million was saved in the 2008–2009 financial year.⁴⁴

Some of the savings were invested into support programs for low-income families in the high stakes communities. For instance, \$4.3 million was allocated to Nurse-Family Partnerships for the 2008–2009 financial year⁴⁵ and a further \$5.8 million the following year. The Nurse Family Partnerships program helps first time, low-income mothers during the first two years of the child's life. The program is designed to 'increase self sufficiency, improve the health and well-being of low income families, and prevent violence'.⁴⁶ The program provided assistance to 2,000 families in high stakes communities in the first year of operation.

Step 4: Measure and evaluate impact

According to statistics released two years after the justice reinvestment strategies were put in place, the Texas prison population has stopped growing for the first time in decades.⁴⁷ The prison population is even projected to decrease slightly in the following year. The Texas Department of Criminal Justice notes:

It has been proven that these types of programs have an impact on recidivism, so these new numbers are no surprise.⁴⁸

Halting the increasing in the prisoner population may seem like a modest achievement but given the astronomical rise in recent years and tough law and order policies in Texas, the justice reinvestment strategies have been described as the biggest shift in Texas criminal justice policies in years.

It is encouraging that there are positive results so early into the implementation of justice reinvestment. This bodes well, given that we can expect to see more results further down the track as early intervention measures and increasing community capacity will likely prevent crime and involvement with the criminal justice system.

44 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 6. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

45 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 6. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

46 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas (2007)*, p 6. At <http://justicereinvestment.org/states/texas/pubmaps-tx> (viewed 16 April 2009).

47 M Ward, 'Drug program gets credit for halting prisoner increase' *Austin-American Statesman*, 20 February 2009. At <http://www.statesman.com/news/content/region/legislature/stories/02/20/0220treatment.html> (viewed 16 April 2009).

48 M Ward, 'Drug program gets credit for halting prisoner increase' *Austin-American Statesman*, 20 February 2009. At <http://www.statesman.com/news/content/region/legislature/stories/02/20/0220treatment.html> (viewed 16 April 2009).

Case Study 2.2: Justice reinvestment in Kansas

Kansas is a mid-Western state in what is considered the ‘heartland’ of America. Compared to Texas it has a much smaller population of nearly 3 million people, many of those living in rural areas. Nonetheless, just like Texas, their prison population was surging out of control. The prison population was projected to increase 22% by 2016 at a cost of \$500 million in construction alone.⁴⁹

Compared to Texas, Kansas is a less punitive state. The rate of imprisonment is lower than the national average. The national average is 756 people per 100,000 while the imprisonment rate for Kansas is 582 people per 100,000. However, bear in mind that an imprisonment rate this high would still rank Kansas in the top five nations, somewhere between Rwanda and Cuba.

Racial disparities also run deep in Kansas. The rate for African American imprisonment is 3,096 per 100,000, compared to 443 per 100,000 for White Americans. This makes African Americans almost seven times more likely to be imprisoned than their white counterparts in Kansas.

Although the budget situation in Kansas was not quite as perilous as Texas, Kansas has a reputation for implementing sound evidence based correctional policies. They decided to try and proactively tackle their growing prison costs through justice reinvestment before they spiralled out of control.

Step 1: Analysis and mapping

The Justice Center provided technical assistance to analyse prison populations in Kansas. Analysis of systemic issues revealed similar issues around parole and probation revocations leading to imprisonment, rather than substantive court imposed prison sentences. For instance:

- In 2006 probation and parole revocations accounted for 65% of prison admissions. This made up 23% of the prison capacity and cost \$53 million annually.⁵⁰
- 90% of these revocations were for conditional violations rather than fresh offences. 32% of revocations were for alcohol and drug use and 58% of people revoked required substance abuse or mental health treatment.⁵¹
- Most people were released from prison without any involvement in rehabilitation programs like substance abuse treatment and vocational education. 72% of people needing vocational education did not access it before release, while half of people needing substance abuse treatment also failed to receive these services before release from prison.⁵²

49 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007), p 2. At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 16 April 2009).

50 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007), p 3. At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 16 April 2009).

51 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007), p 3. At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 16 April 2009).

52 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007), p 3. At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 16 April 2009).

In terms of mapping, most of the focus was on Wichita. Wichita is the largest city in Kansas and a majority of prisoners are from the metropolitan area. Demographic mapping found that in 2004 \$28.9 million was spent imprisoning people from Wichita. Of that amount, \$11.4 million (39%) was spent imprisoning people from a single neighbourhood. In addition, \$8.7 million was also spent on food stamps, unemployment insurance and other welfare measures in that same neighbourhood.⁵³

Step 2: Development of options to generate savings and improve local communities

Like Texas, a bipartisan approach was taken to policy development based on the evidence about high stakes communities and short falls in the justice system. In addition, they also commissioned public opinion surveys to gauge how the public would react to changes in correctional policy.

The public opinion surveys revealed a serious disconnect between the reality and perception of the criminal justice system. Despite a number of laws lengthening sentences for some serious offenders, most Kansans incorrectly believed that offenders were being sentenced to the same amount of time as they were ten years ago.

However, the polls overwhelmingly showed that people supported substance abuse treatment for people in prison but they wrongly assumed that these services were actually being provided. In discussing options to manage offenders, most people supported the use of community based and rehabilitative options over the building of more prisons.⁵⁴

In May 2007 the Kansas Legislature passed a package of criminal justice reforms aimed at reducing prisoner populations including:

- a performance based grant program for local community corrections to design local strategies and programs to reduce revocations by 20%
- 60 day early release credit to prisoners who completed educational, vocational and treatment programs prior to release
- restoration of earned time credits for good behaviour for non violent offenders in prison.⁵⁵

Step 3: Quantify savings and reinvest in high needs communities

The policy measures will save Kansas from having to build an additional 1,292 prison beds over the next ten years, saving \$80.2 million over the next five years. \$4.5 million was reinvested in the community corrections grant program and \$2.4 million was reinvested in substance abuse treatment programs and vocational programs.

As a result of the justice reinvestment approach and mapping, the New Communities Initiative (NCI) was launched to provide neighbourhood reinvestment for the Wichita neighbourhoods identified as having the highest offender and disadvantage concentrations.

The NCI brings together state, county and community leaders to improve public safety, educational opportunities and housing conditions for the disadvantaged neighbourhoods of Central Northeast Wichita. This is a holistic approach that looks to increasing community capacity and therefore preventing crime.

53 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007), p 5. At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 16 April 2009).

54 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007), p 4. At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 16 April 2009).

55 The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Kansas* (2007), p 4. At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 16 April 2009).

In consultation with the neighbourhood communities, five pillars or priority areas were developed for intervention:

- adult education and economic development
- housing for all
- physical, mental and behavioural health
- children and youth
- safe and secure neighbourhoods.⁵⁶

The state and county levels of government, as well as local businesses have provided funding. The initial stages of the NCI have also looked at existing servicing and resources to identify gaps but also ways of working more cooperatively.

In the first year of operation of some of the achievements include:

- establishment of the ‘Strengthening Kids of Incarcerated Parents’ program
- creation of a centralised job placement call centre which assesses and refers callers to the appropriate employment agency
- earmarking portions of the City Liquor Tax Funds to be spent on substance abuse treatment targeted for these neighbourhoods
- expansion of early intervention ‘Healthy Babies’ program
- prioritising resources for schools with the highest concentration of students
- additional summer learning programs for children from the targeted neighbourhoods
- establishment of the Summer Youth Program, employing local adolescents to landscape and revitalise the neighbourhoods.⁵⁷

It is anticipated that the NCI approach will be gradually replicated in other disadvantaged communities in Wichita.

Step 4: Measure and evaluate impact

Although it is still early days in the justice reinvestment implementation, Kansas has already experienced a 7.5% reduction in its prison population from 2004 levels. The parole revocation rate is down 48% and parole absconders are down 70%.⁵⁸ The reconviction rate for parolees also dropped by 35%,⁵⁹ signalling that new measures to improve the quality of parole and probation services, as well as the availability of substance abuse treatment, are reducing crime.

56 New Communities Initiative, *New Communities Initiative*, <http://www.nciwichita.com/> (viewed 20 April 2009).

57 New Communities Initiative, *Summary of Pillar Group Accomplishments*, <http://www.nciwichita.com/NR/rdonlyres/66157E9C-ACD8-4639-B14A-718F80CF5ED2/0/Wichita2007SummaryOfAccomplishmentsEUSJH031708Final.pdf> (viewed 20 April 2009).

58 Roger Werholtz, *Hearing on Justice Reinvestment*, Commerce, Justice Science and Related Agencies Appropriations Subcommittee US House of Representatives (1 April 2009). At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 20 April 2009).

59 Roger Werholtz, *Hearing on Justice Reinvestment*, Commerce, Justice Science and Related Agencies Appropriations Subcommittee US House of Representatives (1 April 2009). At <http://justicereinvestment.org/states/kansas/pubmaps-ks> (viewed 20 April 2009).

(ii) *Justice reinvestment in the United Kingdom and Scotland*

Justice reinvestment is still in its infancy in the United Kingdom but there are signs that it is being considered as a real policy alternative.

Like the United States, the United Kingdom has seen an explosion in imprisonment. Despite a 42% decline in the amount of crime reported since 1995, the prison population has more than doubled since 1992.⁶⁰ The prison population rate is 153 per 100,000. While this is much lower than the United States, it is 60% more than comparable European countries like France, Belgium, Germany, Ireland and Italy.⁶¹

A period of 'criminal justice hyperactivity' can be blamed for this staggering growth. Since 1997 the government has created over 3,000 new criminal offences, almost half attracting a sentence of imprisonment.⁶²

Law and order politics have become so ingrained in the public psyche that it can be easy to forget that imprisonment is a very deliberate policy choice. Rising imprisonment levels are not inevitable, as history from the United Kingdom shows us. During some periods in Britain's history there has been a concerted effort to get people out of prisons – 'decarceration'. These periods of history suggest that perhaps we should see the current growth as 'an aberration from which we should distance ourselves'.⁶³

(iii) *Lessons from history – why growth of imprisonment is not inevitable*

Between 1908 and 1939 England and Wales underwent the world's largest period of decarceration. At the end of the period the prison population had halved and 20 prisons were closed.

This decrease was a result of politicians, notably Winston Churchill, actively trying to prevent people going to prison in the first place. Churchill famously said:

The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of any country. A calm, dispassionate recognition of the rights of the accused and even of the convicted criminal ... and the treatment of crime and the criminal mark and measure the stored up strength of a nation, and are singular proof of the living virtue of all.⁶⁴

Again between 1979 and 1992 UK governments adopted conscious policies to prevent and reduce the length of imprisonment.

This history suggests that changes certainly can be made to reduce imprisonment rates and given the disconnect between crime and imprisonment rates, there is good reason and precedent to look at alternatives.

However, like the United States, the economic sustainability of imprisonment is also being questioned in the wake of the Global Financial Crisis. In June 2008 the House of Commons Justice Committee commenced an inquiry into justice reinvestment. The inquiry is still collecting evidence and will report shortly. A landmark report by the Commission on English Prisons Today has also recently made calls for justice reinvestment to be implemented in the United Kingdom.

60 Commission on English Prisons Today, *Do Better Do Less: The report of the Commission on English Prisons Today* (2009), p 12. At <http://www.howardleague.org/index.php?id=835> (viewed 23 July 2009).

61 Commission on English Prisons Today, *Do Better Do Less: The report of the Commission on English Prisons Today* (2009), p 16. At <http://www.howardleague.org/index.php?id=835> (viewed 23 July 2009).

62 Commission on English Prisons Today, *Do Better Do Less: The report of the Commission on English Prisons Today* (2009), p 14. At <http://www.howardleague.org/index.php?id=835> (viewed 23 July 2009).

63 Commission on English Prisons Today, *Do Better Do Less: The report of the Commission on English Prisons Today* (2009), p 17. At <http://www.howardleague.org/index.php?id=835> (viewed 23 July 2009).

64 W Churchill, House of Commons, 25 July 1910.

(iv) Offender mapping

The most comprehensive research mapping offender concentration comes from Scotland. The Scottish Prison service found that a quarter of their prisoners come from 50 of the 1,222 council wards across the country and half come from the poorest 12% of council wards.⁶⁵ This pattern was particularly pronounced for Glasgow, where 60% of the prisoners come from the poorest neighbourhoods. Conversely, there are 269 affluent wards across the country where no one goes to prison at all.

Location, social disadvantage and imprisonment were conclusively linked in Scotland. This can be seen clearly in a comparison of imprisonment rates. The national imprisonment rate for Scottish men is 237 per 100,000 people, while the imprisonment rate for men in the 27 most disadvantaged wards is 953 per 100,000 and for young men aged up to 23 from these wards the rate is an astonishingly high 3,427 per 100,000.⁶⁶

The International Centre for Prison Studies (ICPS) has led research on justice reinvestment. A pilot project between the ICPS and the Gateshead local council (taking in Gateshead prison) has started the initial research and development phase of a justice reinvestment approach.

(v) ICPS Gateshead pilot project

The ICPS pilot project began in 2005 in partnership with Gateshead Council. Gateshead is a northern England, close to Newcastle. Gateshead has a population of 191,000 people with a mix of rural and urban populations. The unemployment rate for Gateshead is higher than the national average and the borough is ranked the 26th most disadvantaged out of the 354 in England.⁶⁷

True to the justice reinvestment model, the first step was research to analyse and map the prison population. Unfortunately, this proved incredibly difficult as Gateshead prison does not collect data about where prisoners live. This was also compounded by the fact that many prisoners report no fixed place of abode in order to receive an additional grant upon release. Due to the problems with data, a partial picture was put together based on the Probation Services data and court data.

Despite the data difficulties, the project was still able to map offender concentration with similar findings to other justice reinvestment projects. Almost a quarter of all the people in prison came from only 2 out of 22 electoral wards, and half lived in only five.⁶⁸ Again, these areas also ranked most highly on indices of deprivation. It was more challenging to estimate the cost of imprisonment given the incomplete data, but it costs around £6 million each year to run Gateshead prison which draws most of its inmates from the local area.⁶⁹

Unlike the United States justice reinvestment projects, this pilot was preliminary and did not have the bipartisan support for real change and reinvestment to take place. Nonetheless, the findings are interesting because they highlight the flexibility of justice reinvestment and how it might be used in a range of jurisdictions. The project

65 R Allen, K Jallab and E Snaith, 'Justice Reinvestment in Gateshead – The story so far' in R Allen and V Stern (eds), *Justice Reinvestment – A New Approach to Crime and Justice* (2007), p 27.

66 R Allen, K Jallab and E Snaith, 'Justice Reinvestment in Gateshead – The story so far' in R Allen and V Stern (eds), *Justice Reinvestment – A New Approach to Crime and Justice* (2007), p 19.

67 R Allen, K Jallab and E Snaith, 'Justice Reinvestment in Gateshead – The story so far' in R Allen and V Stern (eds), *Justice Reinvestment – A New Approach to Crime and Justice* (2007), p 19.

68 R Allen, K Jallab and E Snaith, 'Justice Reinvestment in Gateshead – The story so far' in R Allen and V Stern (eds), *Justice Reinvestment – A New Approach to Crime and Justice* (2007), p 22.

69 R Allen, K Jallab and E Snaith, 'Justice Reinvestment in Gateshead – The story so far' in R Allen and V Stern (eds), *Justice Reinvestment – A New Approach to Crime and Justice* (2007), p 22.

has developed options around greater local involvement in decisions, neighbourhood justice, multi agency cooperation and restructure to community supervision, which are being considered.

(vi) *New connections: social inclusion, localism and penal moderation*

Justice reinvestment is being seen as part of wider movement towards criminal justice reform in the United Kingdom and Scotland, reflecting the different social policy environment of the United Kingdom from the United States.

This is seen in the recent report from the Commission on English Prisons Today. The Commission is an independent panel of review, led by Cherie Booth QC (wife of Tony Blair) and including other respected experts in the area of prison reform. It is the result of two years of research, consultation and visits to investigate good practice in the United States and Europe. This report is a 'road map for long term and fundamental reform'⁷⁰ and is likely to be highly influential in government policy-making circles.

Justice reinvestment has been linked with concepts of social inclusion in the United Kingdom, especially in relation to locational and holistic approaches to tackling social problems. The connection to social inclusion will be discussed further below in relation to Australia. However, it is worth noting that because social inclusion is an established policy framework in the UK, it has been easier for proponents of justice reinvestment to build on this base to gain acceptance of the idea.

Another UK adaptation of justice reinvestment has been connecting it with the emerging policy issue of localism. Localism devolves power away from centralised government and bureaucracies to the community level, through grass roots community engagement and local council structures. Localism:

would focus more on individuals as part of their neighbourhood, see their behaviour as part of a pattern and seek solutions that brought some improvements to both individuals and the community.⁷¹

Localism is being trialled in health and education and is now being considered for criminal justice problems as well.

An inquiry is currently being conducted by the All-Party Parliamentary Group on Local Government in the United Kingdom on justice in communities. The inquiry is looking at the role of local communities in reducing crime and revitalising neighbourhoods, with a special focus on justice reinvestment schemes. The connection with localism might foreshadow how justice reinvestment strategies will be pursued in the UK.

In Scotland, localism and community justice has been taken out of the theoretical and into the practical with a conscious effort to devolve criminal justice to local communities. This approach implies confidence in local communities to generate their own solutions to crime. Kenny MacAskill, Cabinet Secretary for Justice typifies this response:

I've always been convinced that communities in Scotland can differentiate who they want locked up. You can go around every community in Scotland and say what about that group of kids there? And they will say, 'Nah, he just needs a foot up the backside and a job', 'She's just a sad case and needs a cuddle and him, he's evil, lock him up'. Every community can do that. Some folk need more TLC, some need a bit of shouting

70 Commission on English Prisons Today, *Do Better Do Less: The report of the Commission on English Prisons Today* (2009), p 3. At <http://www.howardleague.org/index.php?id=835> (viewed 23 July 2009).

71 V Stern and R Allen, 'Localism and criminal justice – suggestions for a new balance between national and local decision making' in R Allen and V Stern (eds), *Justice Reinvestment – A New Approach to Crime and Justice* (2007), p 48.

at, others need to be detained. It's what a football manager would do. We need to get those ones that need a foot up the backside out doing some hard work, those that need some stability and someone to take and interest in them, someone to pick up the phone to when they are down.⁷²

Localism is put in practice through Community Justice Authorities in Scotland.

(vii) *Community Justice Authorities in Scotland*

Community Justice Authorities (CJAs) are statutory bodies for the strategic planning and monitoring of community justice services. They were created in legislation in 2005 but have been in full operation since 2007. There are eight CJAs across Scotland.

The role of CJAs is to provide community justice services which are responsive to local needs and coordinated in a whole of government, whole of community way. This particularly includes the links between the prisons and community services to ensure that prisoners have good post release support to prevent recidivism.

The larger strategic focus means that each of the CJAs develops a local plan to reduce re-offending. This has the scope to look at the broader systemic causes of crime, including poverty, lack of employment, housing and education in communities. CJAs are only in their infancy but it is hoped that they will take a broader approach to the causes of crime as their role becomes more cemented.

It is too early to evaluate the success of the CJAs but so far the results seem to be promising. In only eight months the number of prisoners serving sentences in prisons close to their homes (and therefore increasing opportunities for post release support and community reintegration) has already increased by 25%.

However, experts caution that progress will be limited if funds are not devolved from the Scottish prison system, consistent with a justice reinvestment model.

Of particular relevance to justice reinvestment, funds are actually given to the local CJAs to manage their own services and initiatives. However, originally there was the expectation that funds would be diverted from the Scottish prison service to the Community Justice Authorities. At this early stage, this has not happened yet because prison numbers are still too high. This suggests the need for a comprehensive justice reinvestment strategy to complement the CJAs.

Finally, the last plank in the justice reinvestment reform platform is penal moderation. Penal moderation asks us to reduce our over reliance on imprisonment through principles of restraint, parsimony and human dignity. Essentially, it calls for prison as a last resort and aligns strongly with human rights standards.

2.3 Justice reinvestment in the Australian context

Australia is not America. We can take comfort knowing that as a whole we imprison less people than the United States or the United Kingdom and spend less on imprisonment.

However, we can take no comfort from our track record on the imprisonment of Indigenous Australians. If we think back to Winston Churchill's famous quote describing the way we treat people who commit crimes as 'one of the most unflinching tests of any country', Australia is most certainly failing the test of fairness towards Indigenous Australians.

72 Commission on English Prisons Today, *Do Better Do Less: The report of the Commission on English Prisons Today* (2009), p 42. At <http://www.howardleague.org/index.php?id=835> (viewed 23 July 2009).

The appalling levels of Indigenous over-representation, the large amount of money being spent on Indigenous imprisonment and the toll that this is taking on individuals and communities all suggest to that we should seriously consider justice reinvestment in Australia.

Over-representation of Indigenous people in the criminal justice system represents one of the most significant gaps between the life outcomes of Indigenous and non Indigenous Australians. The Australian Government has expended substantial funding and political capital in their undertaking to close the gap between Indigenous and non Indigenous Australians, however, they have not yet set targets to close the huge gap that exists in imprisonment rates.

The most recent Productivity Commission *Overcoming Indigenous Disadvantage* report is unequivocal about the how significant this disparity is. Despite some gains in other indicators, Indigenous imprisonment is actually worsening:

- The imprisonment rate increased by 46% for Indigenous women and by 27% for Indigenous men between 2000 and 2008.⁷³
- Indigenous adults were 13 times as likely as non-Indigenous adults to be imprisoned in 2008, compared to 10 times in 2000.⁷⁴
- The Indigenous juvenile detention rate increased by 27% between 2001 and 2007, making Indigenous juveniles 28 times more likely to be detained than non-Indigenous juveniles.⁷⁵

Just as the Australian Government has set ambitious but achievable targets to close the gap in health equality, education and employment, we need to take the same approach to reducing the over-representation of Indigenous children and adults in the criminal justice system. Justice reinvestment is one way to do this.

(a) Imprisonment rates and crime in Australia

The United States ranks number one when it comes to imprisoning people and has a rate of 760 people imprisoned per 100,000. Australia does comparatively well, ranked 104th with 169 people imprisoned per 100,000.⁷⁶

However, if Australia was judged on its imprisonment rate of Indigenous Australians it would be an altogether different picture. The rate of imprisonment for Indigenous adults is 1,769 people per 100,000,⁷⁷ almost two and half times greater than the United States rate. If we look at states like Western Australia, the rate is 2,827 people per 100,000,⁷⁸ almost 4 times greater than the United States rate.

73 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 24 July 2009).

74 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 24 July 2009).

75 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 24 July 2009).

76 International Centre for Penal Studies, *World Prison Brief – Highest to Lowest Rates*, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_poptotal (viewed 14 April 2009).

77 Australian Bureau of Statistics, *Prisoners in Australia 2008* (2008), p 6. At [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/\\$File/45170_2008.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/$File/45170_2008.pdf) (viewed 2 June 2009).

78 Australian Bureau of Statistics, *Prisoners in Australia 2008* (2008) p 6. At [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/\\$File/45170_2008.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/$File/45170_2008.pdf) (viewed 2 June 2009).

Another way to look at these figures is to put them in a different context. In a deliberately provocative analysis Chris Graham writes:

In the first half of 2008, there were 8,411 Indigenous people enrolled in tertiary education. At the same time, there were 6,605 Indigenous people in prison. By comparison, for the same period there were about 696,279 non-Indigenous Australians enrolled in tertiary education, while there were 20,072 non-Indigenous Australians in prison... If you applied the same principle to white Australia- i.e. the number of people in jail is only about 22% lower than the number at university- our total prison population would expand to over 546,000 people. That's a population larger than Newcastle, Australia's seventh largest city.⁷⁹

These levels would not be acceptable for the non-Indigenous population but unfortunately they are part of daily life for many Indigenous communities. With Indigenous people making up only around 2% of the population but 24% of the national adult prison population and close to 50% of the juvenile detention population, it is not surprising that so many families have a family member imprisoned.

There are a range of factors that contribute to Indigenous over-representation that will be discussed below, however, we now have evidence that Indigenous young people receive harsher treatment from the Courts based on national data analysed by the Australian Institute of Criminology. For instance, Indigenous young people in Western Australia are twice as likely to be imprisoned as non-Indigenous young people who are also found guilty of an offence.⁸⁰

The overall imprisonment rate has been increasing substantially in Australia, growing by around 4% each year since 1984.⁸¹ This represents an almost doubling of the overall imprisonment rate during this period. However, part of the reason for the growth in the overall imprisonment rate is the continued overrepresentation of Indigenous Australians.

Crime rates in Australia vary across the different offence categories. However, like the United States and the United Kingdom we have seen some sharp declines in certain crimes. For instance, property crime was at its lowest ever recorded rate in 2007⁸² and robbery has declined by 38% since 2001.⁸³

Again, like the United States and United Kingdom, the increase in imprisonment expenditure has not led to better community safety outcomes. According to Dr Don Weatherburn, Director of the NSW Bureau of Crime Research and Statistics:

We seem to have reached the point where rising imprisonment rates are bringing diminished marginal returns...by 2004 the rising rate of imprisonment in NSW exerted little if any measurable effect on property or violent crime.⁸⁴

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- 79 Chris Graham, 'We jail black men five times more than apartheid South Africa', *Crikey*, 2 July 2009.
- 80 K Richards, *Juveniles' contact with the criminal justice system in Australia*, Australian Institute of Criminology, 2009. At <http://www.aic.gov.au/documents/E/F/0/%7BEF09BB44-FC3D-41BD-81CD-808DE9D0DF99%7Dmr07.pdf> (viewed 28 September 2009).
- 81 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2008*, p 90. At http://www.aic.gov.au/documents/E/4/0/%7BE4031E6F-031D-415C-B544-8CE865A3CA0C%7Dfacts_and_figures_2008.pdf (viewed 24 July 2009).
- 82 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2008*, p 7. At http://www.aic.gov.au/documents/E/4/0/%7BE4031E6F-031D-415C-B544-8CE865A3CA0C%7Dfacts_and_figures_2008.pdf (viewed 22 July 2009).
- 83 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2008*, p 6. At http://www.aic.gov.au/documents/E/4/0/%7BE4031E6F-031D-415C-B544-8CE865A3CA0C%7Dfacts_and_figures_2008.pdf (viewed 24 July 2009).
- 84 D Weatherburn in M Moore, E Tadros, M Knox, 'Choc-a-block: state's jails bursting at the seams', *Sydney Morning Herald*, 7 December 2008.

The growing cost of imprisonment, coupled with the limited impact on crime rates and recidivism again raises the question of whether imprisonment is good value for money in Australia.

(b) The cost of imprisonment in Australia

Expenditure on imprisonment is also steadily rising in Australia. In 2007–08 \$2.6 billion was spent nationally on adult corrective services, rising 5% on average each year.⁸⁵ On average, it costs \$187 per prisoner, per day. This expenditure corresponds to a burden of \$126 per year for every person in Australia.⁸⁶

Indigenous adults make up roughly a quarter of all prisoners nationally. Very crudely, we can estimate that at least one quarter of the entire imprisonment expenditure, (\$650 million) would be spent imprisoning Indigenous adults each year. It could easily be more given the higher costs associated with running prisons in remote areas and for women.

National expenditure on juvenile justice is not reported but some information is available on a state-by-state basis. For instance, in NSW \$103.3 million was spent on juvenile detention in 2007–08.⁸⁷ Approximately 50% of the young people detained in NSW are Indigenous, so we can estimate in NSW alone nearly \$52 million was spent detaining Indigenous young people.

There are clearly huge savings to be made if Indigenous imprisonment can be reduced. According to a very crude analysis of the 2008 ABS Prisoner statistics, if Indigenous Australian were imprisoned at the same rate as non-Indigenous prisoners, there would only be about 390 Indigenous prisoners. This is a 94% reduction in the current rate of Indigenous imprisonment. This would translate into around \$610 million of savings.

On the other hand, if imprisonment continues to rise, so too will prison costs. The potential economic and political quagmire is unfolding in NSW due to increasing imprisonment costs.

(i) The economic and political cost of imprisonment in NSW

It is estimated that if the current growth in prisoners continues in NSW, the government will need to build another new jail every two years. This will come at cost of \$170 million extra each year from 2015 just to run the prisons, not including building costs.⁸⁸

And the costs are political as well given current plans to privatise some NSW jails in an effort to increase efficiencies. Plans to privatise Cessnock and Parklea jails have led to strong community and union resistance. The NSW government has backed down on privatising Cessnock jail but plans to privatise Parklea jail remain afoot.

85 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2008*, p 110. At http://www.aic.gov.au/documents/E/4/0/%7BE4031E6F-031D-415C-B544-8CE865A3CA0C%7Dfacts_and_figures_2008.pdf (viewed 22 July 2009).

86 Australian Institute of Criminology, *Australian Crime: Facts and Figures 2008*, p 110. At http://www.aic.gov.au/documents/E/4/0/%7BE4031E6F-031D-415C-B544-8CE865A3CA0C%7Dfacts_and_figures_2008.pdf (viewed 22 July 2009).

87 NSW Department of Juvenile Justice, *Annual Report 2007-2008*. At <http://www.djj.nsw.gov.au/publications.htm> (viewed 23 July 2009).

88 M Moore, E Tadros, M Knox, 'Choc-a-block: state's jails bursting at the seams', *Sydney Morning Herald*, 7 December 2008.

Privatisation of prisons and detention centres in Australia has a problematic history. Of concern, one of the key contenders for the Parklea contract is currently G4S, the same company that was held by the Western Australian Coroner as contributing the death in custody of Mr Ward in Western Australia in 2008.

(c) Recidivism in Australia

Like the United States the increase in imprisonment expenditure has not led to better rehabilitation outcomes, reflected in the high recidivism rates across the criminal justice system.

Imprisonment is not meeting the goal of deterrence either. In fact, a recent study by the Australian Institute of Criminology has found that there are no difference in the recidivism rate of juveniles who are detained and juveniles who are dealt with through community based sanctions.⁸⁹ This provides evidence that detention should be used 'sparingly'⁹⁰ with young people due to the adverse consequences on education and employment opportunities which may do more to prevent recidivism.

Recidivism is difficult to measure but indications are that it is high. Unfortunately, again it is substantially higher for Indigenous Australians. In 2008, 73% of Indigenous prisoners, compared to 49% of non-Indigenous prisoners, had a history of prior adult imprisonment.⁹¹ Additionally:

- The gap in recidivism rates varies across Australia with the highest discrepancy in NT where 76% of all Indigenous prisoners have prior adult imprisonment, compared to 27.3% for non-Indigenous prisoners.⁹²
- Indigenous prisoners are nearly twice as likely to be readmitted to custody as non-Indigenous prisoners.⁹³
- Recidivism rates and progression into the adult criminal justice system are also alarming. In a NSW Bureau of Crime Statistics and Research cohort study of juveniles before the Children's Court for the first time, 90% of the Indigenous children went on to appear before the adult criminal court in the follow up period, compared to 52% of non-Indigenous juveniles in the group.⁹⁴

These recidivism statistics are testament to the fact that prison has not rehabilitated these offenders; instead it seems to have set in motion a revolving door in and out of the prison system.

89 D Weatherburn, S Vignaendra, A McGrath, *The specific deterrent effect of custodial penalties on juvenile offenders*, Australian Institute of Criminology (2009). At <http://www.aic.gov.au/documents/A/3/D/%7BA3DB5DEB-2A53-4272-87CF-CE510D13481B%7Dtbp33.pdf> (viewed 28 September 2009).

90 D Weatherburn, S Vignaendra, A McGrath, *The specific deterrent effect of custodial penalties on juvenile offenders*, Australian Institute of Criminology (2009). At <http://www.aic.gov.au/documents/A/3/D/%7BA3DB5DEB-2A53-4272-87CF-CE510D13481B%7Dtbp33.pdf> (viewed 28 September 2009).

91 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 24 July 2009).

92 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission (2007). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2007> (viewed 24 July 2009).

93 M Willis, *Reintegration of Indigenous prisoners*, Australian Institute of Criminology, Trends and Issues in Criminal Justice no. 364 (2008). At <http://aic.gov.au/publications/current%20series/tandi/361-380/tandi364/view%20paper.aspx> (viewed 22 July 2009).

94 S Chen, T Matrugiolo, D Weatherburn and J Hua, *The transition from juvenile to adult criminal careers*, NSW Bureau of Crime Statistics and Research, Contemporary Issues in Crime and Justice no. 86 (2005). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb86.pdf/\\$file/cjb86.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb86.pdf/$file/cjb86.pdf) (viewed 24 July 2009).

(d) Location of offenders

There is currently no comprehensive, published offender mapping research in Australia. However, demographic research mapping of disadvantage is beginning to emerge that seems to indicate offender and disadvantage concentration similar to the patterns in the United States.

Professor Tony Vinson's 2007 study 'Dropping off the edge: the distribution of disadvantage in Australia',⁹⁵ analyses indicators of disadvantage,⁹⁶ including imprisonment, to map the most disadvantaged areas in Australia.

Professor Vinson found that 3% of Australia's postcodes account for a disproportionate amount of disadvantage. Compared to other areas, the 3% of most disadvantaged post codes has at least twice the rate of unemployment; criminal convictions; imprisonment; child maltreatment; disability support recipients; and psychiatric admissions.⁹⁷

The study did not specifically look at Indigenous status but a very rough analysis of the research shows that there is an over-representation of disadvantaged locations with higher than average Indigenous populations. Given that Indigenous Australians make up 2.3% of the population, many of these areas have far greater than average Indigenous populations.

Table 2.1 shows some of the most disadvantaged locations⁹⁸ and the Indigenous population from the 2006 Census. The locations are not ranked but categorised as either 'most disadvantaged' or 'next most disadvantaged' and listed alphabetically to 'avoid public focus on just a few localities'.⁹⁹ 'M' denotes 'most disadvantaged' and 'NM' is 'next most disadvantaged'. NSW and Victoria are analysed on a postcode basis and the other states are analysed on local government areas.

95 T Vinson, *Dropping off the edge: the distribution of disadvantage in Australia* (2007).

96 **Social distress:** low family income, rental stress, home purchase stress, lone person households. **Health:** low birth weight, childhood injuries, deficient immunisation, disability/sickness support, life expectancy, mental health patients, suicide. **Community Safety:** confirmed child maltreatment, criminal convictions, prison admissions, domestic violence. **Economic:** unskilled workers, unemployment, long-term unemployment, dependency ratio, low mean taxable income, computer use/access to internet. **Education:** non attendance at pre school, incomplete education, early school leaving, post school qualifications. **Community engagement:** membership of local groups, membership of groups that tackle local problems, local volunteering, help from neighbours when needed, feel safe after dark, trust people, attendance at local community events, feel valued by society.

97 T Vinson, *Dropping off the edge: the distribution of disadvantage in Australia* (2007).

98 Excluding NT because the data was not available and the ACT and Tasmania due to no areas identified with significant Indigenous population.

99 T Vinson, *Dropping off the edge: the distribution of disadvantage in Australia* (2007), p 31.

State	Categorisation of disadvantage	Location	Indigenous % of Population
NSW	M	Western Plains – area between Bourke and Cobar	34.2%
	M	Boggabilla	55.8%
	M	Brewarrina	58.2%
	M	Lightening Ridge	21.3%
	M	Menindee	27.9%
	M	Tingha	25%
	M	Wilcannia	54%
QLD	M	Burke	25%
	M	Murgon	9.1%
	M	Mount Morgan	12.5%
	NM	Aurukun	91.5%
	NM	Carpentaria	37.9%
	NM	Doomadgee	92.7%
	NM	Mornington	90%
	NM	Torres	69.8%
SA	M	Ceduna	24.1%
	M	Coober Pedy	14%
	NM	Port Augusta	16.6%
WA	M	Dundas	12.1%
	M	Halls Creek	79.1%
	M	Menzies	62.5%

State	Categorisation of disadvantage	Location	Indigenous % of Population
	M	Ngaanyatjarraku	87.3%
	M	Sandstone	20.2%
	M	Upper Gascoyne	55.4%
	NM	Laverton	39.3%
	NM	Murchison	30%
Vic	M	Nowa Nowa, Lake Tyers	6.9%
	M	Nyah West	4.5%

This research is only a starting point and does not solely concentrate on offending but it does indicate there is clearly a basis for properly focused and designed research.

(i) *Centre for Aboriginal Economic Policy Research*

The Centre for Aboriginal and Economic Policy Research has recently completed an analysis of the disadvantaged regions, comparing Indigenous and non Indigenous populations. This analysis is based on Australian Bureau of Statistics Data and uses the Socio-Economic Indexes for Areas (SEIFA) as a basis for comparison.

This research primarily looks at advantage/ disadvantage in terms of 'an individual's potential and actual access to economic resources'.¹⁰⁰ It does not consider imprisonment or rates of crime, although it does note that the omission of these indicators are a limitation of the study.¹⁰¹

The population is broken down into 531 areas. The analysis shows that the most disadvantaged Indigenous communities tend to be in remote areas, where as the most advantaged Indigenous areas tend to be in city locations. Table 2.2 lists the top 20 and bottom 20 areas.

100 N Biddle, *Ranking Regions: Revisiting an Index of Relative Indigenous Socioeconomic Outcomes*, Centre for Aboriginal Economic Policy Research Working Paper No. 50/2009 (2009), p 4. At <http://www.anu.edu.au/caepr/Publications/WP/2009WP50.php> (viewed 24 July 2009).

101 N Biddle, *Ranking Regions: Revisiting an Index of Relative Indigenous Socioeconomic Outcomes*, Centre for Aboriginal Economic Policy Research Working Paper No. 50/2009 (2009), p 23. At <http://www.anu.edu.au/caepr/Publications/WP/2009WP50.php> (viewed 24 July 2009).

Top 20 Indigenous Areas	Bottom 20 Indigenous Areas
1. Woollahra/ Waverley (NSW)	531. Ampilatwatja and homelands (NT)
2. Lower North Sydney (NSW)	530. Ramingining and homelands (NT)
3. Eastern Suburbs (NSW)	529. Thamarrurr (NT)
4. Northern Beaches (NSW)	528. Urapuntja Homelands (NT)
5. Baulkham Hills (NSW)	527. Milingimbi and Homelands (NT)
6. Hornsby-Kuring-gai (NSW)	526. Alice Springs Town Camps (NT)
7. Melbourne/ Port Phillip (VIC)	525. Kintore (Walungurra) and Homelands (NT)
8. Whitehorse (VIC)	524. Angurugu (NT)
9. Hobart (TA)	523. Tanami (NT)
10. Yarra (VIC)	522. Lajamanu (NT)
11. South Canberra/ Weston/ Woden (ACT)	521. Tennant Creek Town Camps (NT)
12. Brisbane City Inner North (QLD)	520. Katherine Town Camps (NT)
13. Hunters Hill/ Ryde (NSW)	519. Balgo (WA)
14. Blue Mountains (NSW)	518. Tennant Creek (NT)
15. Maroondah (WA)	517. Sandover (NT)
16. Brisbane City Inner South West (QLD)	516. Elliot District (NR)
17. Kingston (VIC)	515. Umbakumba and homelands (NT)
18. Monash (VIC)	514. Mindibungu (WA)
19. Unley/ Burnside/ Mitcham (SA)	513. Alpurruurlam (NT)
20. Wollondilly (NSW)	512. Palumpa (Nganmariyanga) (NT)

¹⁰² CAEPR research reproduced in C Graham, 'The Great Divide' *National Indigenous Times*, 15 October 2009, p 17.

There are also some urban communities, for example Blacktown/ Bidwill (rank 425); Blacktown/ Blackett/ Emerton (rank 428); and Campbelltown/ Airds (rank 434) that face comparable levels of disadvantage as remote areas. However, in these areas similar levels of disadvantage are faced by Indigenous and non-Indigenous residents.

(ii) *Data from government departments on Indigenous offender concentration*

To find out where Indigenous offenders come from, I sought data from all state and territory corrections and juvenile justice departments. I requested data showing the breakdown of all Indigenous prisoners and juvenile detainees (sentenced and on remand) by the postcode of place of usual address.

A collation of this data can be found at Appendix 2. Appendix 2 provides the top 10 locations with the highest numbers of Indigenous offenders, including the exact numbers of prisoners for adult imprisonment and juvenile detention, based on the data provided by the departments.

Table 2.3 shows the top 5 locations with the highest numbers of Indigenous adult prisoners in NSW, Queensland, Western Australia, South Australia and the Northern Territory. The other jurisdictions have substantially smaller Indigenous populations but data can be found for them in Appendix 2. There is some variance in the way location is recorded by different jurisdictions, with some able to provide postcodes, with others providing Local Government Areas or Australian Bureau of Statistics Subdivisions. Because of this it is not possible to make comparisons across jurisdictions.

It is crucial to stress that this is only very preliminary and is designed to provide a quick snap shot rather than detailed analysis of the data over time. It is recommended that more comprehensive demographic mapping, in conjunction with other measures such as the Socio-Economic Indexes for Area (SEIFA) Index of Relative Socio-Economic Disadvantage and analysis of court data, take place to achieve more accurate results.

State/ Territory	Rank	Location	Description
NSW ¹⁰³	1	Inner Sydney – ABS Statistical Subdivision	Inner suburbs of Sydney including Redfern, Darlington, Waterloo, Marrickville, Leichhardt to Botany
	2	Blacktown – ABS Statistical Subdivision	Blacktown and surrounding western suburbs
	3	Central Macquarie – ABS Statistical Subdivision	Area around Dubbo
	4	Hastings – ABS Statistical Subdivision	Mid north coast including Kempsey and Taree

103 Snap shot data from 30 June 2008.

State/ Territory	Rank	Location	Description
NSW (continued)	5	Newcastle – ABS Statistical Subdivision	Newcastle
QLD ¹⁰⁴	1	Cairns – Local Government Area	
	2	Brisbane – Local Government Area	
	3	Townsville – Local Government Area	
	4	Mount Isa – Local Government Area	
	5	Tablelands – Local Government Area	
SA ¹⁰⁵	1	5700	Port Augusta
	2	5724	Marla, Mintabie
	3	5690	Ceduna
	4	5608	Whyalla
	5	5113	Elizabeth, Davoren Park
WA ¹⁰⁶	1	Broome – Local Government Area	Including Broome, Bidyadnaga Community, One Mile Community, Kennedy Hill Community, Djarindjin
	2	Halls Creek – Local Government Area	Including Balgo Hills Community, Billiluna Community, Halls Creek, Mulan Community, Turkey Creek

104 Data from 1 July 2007 – 30 June 2009.

105 Data from 1 July 2007 – 30 June 2009.

106 Snap shot data 30 May 2009.

State/ Territory	Rank	Location	Description
WA (continued)	3	Swan – Local Government Area	Including Swan View, Midvale, Lockridge, Beechboro
	4	Derby – West Kimberley Local Government Area	Including Derby, Bayulu, Bungardi, Junjuwa, Looma Community, Mowanjum Community
	5	Stirling – Local Government Area	Including Balga, Nollamara, Mirrabooka
NT ¹⁰⁷	1	Alice Springs (Urban)	
	2	Darwin (Urban)	
	3	Tennant Creek	
	4	Alice Springs (Rural)	
	5	Katherine (Urban)	

Due to the smaller overall numbers of juveniles in detention it is harder to get a clear picture for all jurisdictions but the top 5 data for NSW is included due to greater numbers. Data for the other jurisdictions can be found in Appendix 2.

Rank	Location (post code)	Description
1	2770	Mt Druitt
2	2830	Dubbo
3	2440	Kempsey
4	2840	Bourke
5	2650	Wagga Wagga

107 Data from 2007–2008.

Contrary to popular perception, a majority of Indigenous Australians live in major cities (31%) or regional areas (45%) and not remote areas (24%).¹⁰⁸ This is also reflected in Indigenous imprisonment, with urban and regional locations making up the bulk of high imprisonment locations.

Urban locations seem to have high Indigenous prisoner populations, for example the inner city suburbs of Sydney and the western suburbs of Sydney like Blacktown and Mt Druitt. Urban Indigenous communities get less specific Indigenous funding, however, levels of disadvantage are still very high. Justice reinvestment which has had success in community wide strategies for urban communities and could be an effective way of targeting resources to communities that are often forgotten about in policy development and funding.

Regional towns also have very high prisoner populations; in particular, regional towns like Port Augusta, Cairns, Dubbo, Kempsey and Broome. Again, these areas can often be under resourced and provide fewer diversionary options for offenders. These towns also act as hubs, fed by the more remote communities. For instance, the suburb of Broome has the highest number of Indigenous prisoners of any suburb in Western Australia, however, part of this can be attributed to the transient population of people coming in and out from more remote locations. This means that there needs to be a balance between services in the centre as well as the remote communities.

The communities with high Indigenous prisoner concentrations do not come as a surprise. They are the same communities that have been identified as disadvantaged for some time now. There are also some connections to the measures of disadvantage identified by Professor Vinson. However, this just reinforces that we have been failing these communities for a long time and it is now time for a new holistic approach like justice reinvestment to try and tackle these entrenched issues.

Based on this data I think we can tentatively suggest that any of these locations would be ideal for justice reinvestment pilot projects. The next part of the chapter goes on to put forward some ideas about making justice reinvestment work for Indigenous Australians.

2.4 Justice reinvestment and reducing Indigenous imprisonment in Australia

Justice reinvestment has not been expressly targeted at specific cultural groups but the experience thus far in the United States is that its interventions are predominantly aimed at African-American communities.

Justice reinvestment provides a framework for what we have been trying to achieve in reducing Indigenous over-representation for some time. Imagine if:

- the huge amount spent on Indigenous imprisonment could be spent in way that prevents crime and increases community functioning
- there was increased accountability and scrutiny about how tax payer funds on corrections are spent
- communities were involved in identifying the causes and solutions to crime
- there was a shift away from the mindset that imprisonment is the only option – instead it becomes the last resort.

¹⁰⁸ Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander 2006*. At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4705.0Main+Features12006?OpenDocument> (viewed 11 August 2009).

This might sound like pie in the sky wishful thinking but having seen the great promise in the United States, justice reinvestment seems a way of making this a reality. The justice reinvestment framework is even stronger when we take on board the United Kingdom concepts of localism and penal moderation. Combine that with what we know about engaging Indigenous communities in partnerships and community development and we might just have a real life solution to the problem.

There are some strong synergies between the current best practice in managing Indigenous offending and justice reinvestment. Below are some examples of the benefits of using justice reinvestment with Indigenous offenders and their communities.

(a) Community building through crime prevention not more prisons

Justice reinvestment acknowledges what Indigenous communities have known for a long time – taking people out of communities through imprisonment weakens the entire community.

Indigenous offenders have valuable roles to play in their communities. Many are parents and also have a wide range of social, cultural and family obligations. When you take these people out of communities you are often placing an additional burden on already stretched family members. And given that family and community connections are so strong in Indigenous communities, be they in urban, regional or remote areas, these impacts ripple throughout the community. We are not only punishing the offender but also all those that are connected with them.

This can have some unintended consequences. Research that I conducted in 2004 on the situation of Indigenous women exiting prison vividly demonstrated that the impact of imprisonment of Indigenous men on the community is a contributing factor to under-reporting of violence in communities.¹⁰⁹ It is important that victims of family violence come forward for their own safety but also to ensure that something is done with the offender to stop the violence and abuse. Crime prevention is not about avoiding dealing with unacceptable behaviour such as family violence and abuse. It is about more effectively dealing with it at a community level and preventing it from emerging in the first place. It strengthens communities to take charge of problems so they do not perpetuate.

We frequently hear stories of Indigenous offenders who have returned from a stint in prison far worse than when they went in. This perpetuates the cycle of crime and imprisonments, further weakening the community as individuals are very likely to return to custody.

Justice reinvestment uses community wide crime prevention strategies to try and minimise imprisonment but also build the community up. We have long seen that Indigenous engagement and partnership in programs leads to more effective implementation. It also leads to other outcomes, like increased community confidence and improved governance. This becomes mutually reinforcing; crime prevention decreases imprisonment; and community engagement strengthens the community so the preconditions for crime are reduced.

¹⁰⁹ See *Social Justice Report 2004* for further details.

Engaging at a community level will also make very obvious the current shortfalls in resources that impact on offending. For instance, any community crime audit of Indigenous communities is likely to find levels of overcrowding, poor education, undiagnosed/ untreated trauma, medical issues, lack of recreational activities and problems with alcohol and substance abuse. Justice reinvestment will argue for resources at the front end (primary prevention) rather than the back of the system (imprisonment).

The Northern Territory Government is planning a new jail. This could arguably be a case study in what **not** to do if you want to reduce imprisonment, with critics advocating for community development and prevention programs instead of investment in a new jail. Unfortunately, we are seeing this same scenario being repeated across the country with plans for a \$150 million prison in the Western Kimberley in Western Australia and estimates that NSW will need to build a new prison every two years if projected growth occurs.

(i) *A missed opportunity for change in the Northern Territory*

It is projected that the Northern Territory will have the highest imprisonment rate in world in four years time. Indigenous prisoners make up 83% of the prison population and the Indigenous prisoner population has jumped 23% in just one year.

The Northern Territory's jails are overflowing. The Northern Territory government has announced that it will build a new 1,000 bed jail at cost of \$320 million in construction. The new prison will be the biggest ever infrastructure investment in the Northern Territory.

While some see a new jail as a necessity to combat chronic overcrowding, others are wondering why the Northern Territory government is not looking at this crisis as an opportunity to try something new. According to John Lawrence of the Criminal Lawyers Association in the Northern Territory:

Spending \$320 million on a new gaol is the road to nowhere basically. It's just same, same. That money, or a proportion of that money, should be invested in what is really causing crime, namely addressing education, health, housing, employment.¹¹⁰

Like the United States, there are clear policy and law decisions that have led to the explosion in imprisonment in the Northern Territory. Glen Dooley, senior lawyer at the North Australian Aboriginal Justice Agency (NAAJA) argues that a toughening of the Bail Act, a parole board that frequently declines applications and extra police presence as a result of the Northern Territory Intervention¹¹¹ have all contributed to increasing imprisonment of Indigenous offenders.

Traffic matters are a key component in the large number of Indigenous people in jail, with Glen Dooley stating that there are 400 to 450 Indigenous offenders serving short sentences for traffic offences.¹¹² In most other jurisdictions in Australia it is almost unheard of that these sorts of offences would attract a custodial sentence. Instead these types of offences would be subject to community-based orders.

110 J Lawrence in M McLaughlin, 'Indigenous incarceration rate jumps', *7.30 Report*, 6 July 2009.

111 G Dooley in P Toohy, 'One-way traffic into obsolete, overcrowded jails', *The Australian*, 28 March 2009.

112 G Dooley in P Toohy, 'One-way traffic into obsolete, overcrowded jails', *The Australian*, 28 March 2009.

The Northern Territory has a poor record on providing community-based orders. In other Australian jurisdictions there are two people on community-based orders for every one person in gaol. In the Northern Territory the ratio is one to one.¹¹³

The situation is just as bad when it comes to treatment programs in prison and post release services. Only 10% of prisoners were offered alcohol treatment programs and only 24 people underwent sex offender treatment.¹¹⁴ It is likely that this will continue, with Professor Chris Cunneen stating that:

If you lock 1,000 people up in a prison, it's large jail, it's much harder to run rehabilitative programs in a large prison like that. There's usually a much greater concentration on management of prisoners rather than on programs and rehabilitation.¹¹⁵

Similarly, the lack of pre release programs is negatively impacting on prisoners' chances of getting parole. Glen Dooley describes the situation as:

...a farcical catch-22. My clients say they are knocked back for parole because they didn't do courses that didn't exist.¹¹⁶

And this also has worrying implications for the community safety. Glen Dooley recalls a case where a client was convicted of:

...a very nasty rape...He was 17 at the time. The judge slotted him for 10 years. He was given a non-parole of six years but he was never given parole. He was released... after serving the full 10 years. I sense he is an articulate person who is seeking some understanding of what he did. They just let him out. There's no one looking after him, no one keeping an eye on him. Because he wasn't paroled with all sorts of conditions, such as keeping off the piss, he can do whatever he likes. Let's hope he kicks goals, but it really worries me.¹¹⁷

The issues in the Northern Territory share similarities with a number of the states in the United States that have implemented justice reinvestment. Places like Texas and Kansas were confronted with overcrowded prisons, a need to build more prisons and a large financial and social burden. These problems were a result of poor legislative and policy choices and chronically disadvantaged communities. However, these states responded by changing laws to reduce imprisonment, supporting parole, improving treatment programs and implementing community development strategies.

The Northern Territory would be wise to learn from the experience of justice reinvestment in the United States before they are faced with having to build another new jail which will inevitably fill up with more Indigenous prisoners.

The case of the Northern Territory shows a number of opportunities for justice reinvestment strategies to reduce imprisonment and strengthen Indigenous communities. It seems clear from this case study that people in the community, legal and non-government sectors implicitly understand the fundamental principles of justice reinvestment and there is a broad support for prevention over detention. Further more, the community audits that have already occurred as part of the Northern Territory Intervention may also provide relevant data that could suggest possible justice reinvestment pilot sites.

113 M McLaughlin, 'Indigenous incarceration rate jumps', *7.30 Report*, 6 July 2009.

114 ABC News, 'NT has 'one of the highest' jail rates', *ABC News Online*, 23 June 2009. At <http://www.abc.net.au/news/stories/2009/06/23/2605796.htm> (viewed 27 July 2009).

115 C Cunneen in M McLaughlin, 'Indigenous incarceration rate jumps', *7.30 Report*, 6 July 2009.

116 G Dooley in P Toohey, 'One-way traffic into obsolete, overcrowded jails', *The Australian*, 28 March 2009.

117 G Dooley in P Toohey, 'One-way traffic into obsolete, overcrowded jails', *The Australian*, 28 March 2009.

Further, it would be interesting if in the spirit of engagement and partnership, if Indigenous communities were actually asked whether they wanted a new goal for \$320 million or whether they wanted their share of that money to be spent of community development and treatment.

(b) Making the multi-level structural causes of crime the target of intervention

One of the stumbling blocks for correctional programs is that despite a stated commitment to culturally appropriate practice they still fail to miss a fundamental problem, programs are pitched at the individual level rather than looking at individuals in their social and cultural context. Without involving family and community members, correctional programs with Indigenous offenders will continue to be limited in their success.

The corrections system is supposedly trying to rehabilitate the individual without consideration of their community circumstances. Again, you can have the best individual intervention program in the world but unless you are addressing the community circumstances that brought a person to prison, any positive gains will be short lived.

The recent National Indigenous Drug and Alcohol Committee (NIDAC) report is the latest in a long list of reports since the Royal Commission into Aboriginal Deaths in Custody to suggest a multi level explanation for the continued Indigenous over-representation in the criminal justice system. Text Box 2.3 provides a summary of these findings.

Text Box 2.3: Why are Indigenous people over-represented in the criminal justice system?

Socio-economic factors

These include 'a long history of social disadvantage, cultural displacement, trauma and grief, and poor health and living conditions'.¹¹⁸ Data from the 2002 National Aboriginal and Torres Strait Islander Social Survey shows that respondents were more likely to have been imprisoned if:

- they had not completed year 12
- were unemployed
- living in poverty
- living in overcrowded dwellings
- were a member or had a family member who as from Stolen Generations
- lived in a remote area
- abused alcohol or drugs.¹¹⁹

118 National Indigenous Drug and Alcohol Committee, *Bridges and barriers: Addressing Indigenous incarceration and health*, Australian National Council on Drugs (2009) p 6. At <http://www.nidac.org.au/> (viewed 22 July 2009).

119 National Indigenous Drug and Alcohol Committee, *Bridges and barriers: Addressing Indigenous incarceration and health*, Australian National Council on Drugs (2009), p 6. At <http://www.nidac.org.au/> (viewed 22 July 2009).

Alcohol and other drug misuse

It is estimated that:

- Alcohol is a factor in up to 90% of all Indigenous contact with the criminal justice system.¹²⁰
- 87% of all Indigenous intimate partner homicides are alcohol related.¹²¹
- 68% of all Indigenous adults tested positive to drugs and 63.8% reported drinking alcohol prior to arrest and being placed in police custody. This jumps to 81% of Indigenous police detainees reporting alcohol abuse in the Northern Territory¹²²
- Almost 90% of Indigenous juvenile police detainees tested positive for drugs, compared to 40% of non-Indigenous juvenile detainees.¹²³

Barriers to diversion

Programs like the Illicit Drug Diversion Initiative (IDDI) often exclude people with alcohol as the primary drug of choice and history of violence. This disproportionately limits the participation of a large number of Indigenous offenders who fit this profile.

There is also a requirement to admit the offence and some Indigenous people receive legal counsel not to admit guilt or are reluctant to disclose to police. There is also evidence that diversionary programs are less available in rural and remote areas.

For Indigenous juveniles, evidence shows that they are more likely to be arrested than given a caution. National data is unavailable for juvenile diversion rates but in NSW for instance, Indigenous juveniles are diverted only 44% of the time, compared to 76% of the time for non-Indigenous juveniles.¹²⁴ The low rate of diversion means that they tend to acquire a more extensive criminal record at an earlier age. This increases their risk of detention when they appear before court.¹²⁵

120 National Indigenous Drug and Alcohol Committee, *Bridges and barriers: Addressing Indigenous incarceration and health*, Australian National Council on Drugs (2009), p 6. At <http://www.nidac.org.au/> (viewed 22 July 2009).

121 J Dearden and J Payne, *Alcohol and Homicide in Australia*, Australia Institute of Criminology, Trends and Issues in Crime and Justice no. 372 (2009). At <http://www.aic.gov.au/en/publications/current%20series/tandi/361-380/tandi372.aspx> (viewed 24 July 2009).

122 National Indigenous Drug and Alcohol Committee, *Bridges and barriers: Addressing Indigenous incarceration and health*, Australian National Council on Drugs (2009), p 5. At <http://www.nidac.org.au/> (viewed 22 July 2009).

123 National Indigenous Drug and Alcohol Committee, *Bridges and barriers: Addressing Indigenous incarceration and health*, Australian National Council on Drugs (2009), p 5. At <http://www.nidac.org.au/> (viewed 22 July 2009).

124 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 24 July 2009).

125 National Indigenous Drug and Alcohol Committee, *Bridges and barriers: Addressing Indigenous incarceration and health*, Australian National Council on Drugs (2009), p 7. At <http://www.nidac.org.au/> (viewed 22 July 2009).

Cognitive disabilities and mental health problems

The NIDAC report found that in particular Foetal Alcohol Spectrum Disorders (FASD) and acquired brain injury contribute the over-representation of Indigenous people in the criminal justice system. Although the number of people with FASD or acquired brain injury in contact with the criminal justice system is unknown, indications are that there is a higher incidence in the Indigenous community. These conditions result in ‘social and behavioural problems that may increase their propensity to come in contact with the criminal justice system’.¹²⁶

Similarly, our previous research on Indigenous young people with cognitive disabilities and/ or mental health issues suggests that these young people are often at higher risk of involvement with the criminal justice system.¹²⁷

Over-representation is a product of disadvantage and requires that disadvantage be tackled at a community wide level. Justice reinvestment would look holistically at all of the causes of crime articulated by NIDAC in developing a strategy to address Indigenous imprisonment.

(c) Providing funding for culturally secure programs

As well as addressing the structural causes of crime, justice reinvestment can provide a secure line of funding for culturally secure treatment, rehabilitation and diversion programs. This can include things like Indigenous healing programs, mentoring, residential programs, bush camps and men’s and women’s groups.¹²⁸

Currently these types of community initiated and owned programs often receive short term, ad hoc funding and face uncertain futures. On the other hand, largely cognitive behavioural psychological programs, funded by government departments are much better resourced, even though they are often less suitable for Indigenous offender needs.

Justice reinvestment offers the opportunity to support culturally secure programs and build an evidence base around them so that they can compete with the research claims of Western psychological programs that are often put in place for Indigenous offenders.

(d) Identification and removal of policy and legal factors in Indigenous imprisonment

Justice reinvestment also analyses the policy and legal factors that lead to imprisonment. For instance, in Texas and Kansas, they found low levels of parole and early releases, as well as parole revocations for technical matters, were leading to a great deal of imprisonment and extra expenditure. Policy reform and legislative change in these states reduced imprisonment accordingly.

126 National Indigenous Drug and Alcohol Committee, *Bridges and barriers: Addressing Indigenous incarceration and health*, Australian National Council on Drugs (2009), p 7. At <http://www.nidac.org.au/> (viewed 22 July 2009).

127 Australian Human Rights Commission, *Preventing crime and promoting rights for Indigenous young people with cognitive disabilities and mental health issues* (2008). At http://www.humanrights.gov.au/social_justice/publications/preventing_crime/index.html (viewed 24 July 2009).

128 For good practice examples see *Social Justice Report 2007* and *Social Justice Report 2008*.

This is also relevant for Indigenous Australians. A study looking at violent offenders across Australia found that 50% of Indigenous offenders served their entire prison sentence, compared to only 39% of non-Indigenous offenders.¹²⁹ One suggestion for this disparity is that Indigenous offenders are less likely to be able to meet parole conditions due to poor access to support services and accommodation.¹³⁰ Just as justice reinvestment led to better resourced and more innovative parole and community corrections services in Texas and Kansas, justice reinvestment could be the impetus for improving Indigenous community justice services.

Indigenous Australians are also more likely to be imprisoned for public order offences. In a study of defendants before the Magistrates Court in NSW Indigenous defendants made up 21.9% of public order offences (for instance offensive conduct, offensive language, assault police and resist arrest).¹³¹ Public order offences have long been seen as a process of Indigenous criminalisation and reflecting poor policing practices. Justice reinvestment provides another argument for critically looking at these laws with an eye to reducing Indigenous imprisonment and expenditure.

High remand rates for Indigenous Australians are also forcing prison rates and expenditure up. Bail laws across the country have been tightened, but none more so than NSW. The *NSW Bail Act* has specific impacts on Indigenous young people.

(i) *NSW Bail laws and Indigenous young people*

Between 2007 and 2008 the number of juveniles held of remand in NSW rose by 32%, from an average of 181 to 239 young people on remand each day. This has led to a 29% increase in remand costs, from \$36.7 million per year up to \$47.2 million.¹³² The length of time that young people are spending on remand is also increasing considerably.

A recent study by the NSW Bureau of Crime Statistics and Research (BOCSAR) has found that the growth in remand has been a result of changes to the *NSW Bail Act* and increased policing. Significantly, the increased rate of remand has done nothing to reduce the rate of crime.¹³³

In 2007 the NSW government amended the *Bail Act 1978* to restrict the number of applications for bail that can be made to the court. Amendment 22a prevents a defendant from making an additional application for bail unless they can show new facts or circumstances, or because they were not represented by a legal practitioner at the first application.¹³⁴

129 M Willis, *Reintegration of Indigenous prisoners: key findings*, Australian Institute of Criminology Trends and Issues in Crime and Justice no. 364 (2008). At <http://www.aic.gov.au/documents/F/2/8/%7BF2879E5D-AD11-436F-97CB-ED7AB17D7B0F%7Dtandi364.pdf> (viewed 24 July 2009).

130 M Willis, *Reintegration of Indigenous prisoners: key findings*, Australian Institute of Criminology Trends and Issues in Crime and Justice no. 364 (2008). At <http://www.aic.gov.au/documents/F/2/8/%7BF2879E5D-AD11-436F-97CB-ED7AB17D7B0F%7Dtandi364.pdf> (viewed 24 July 2009).

131 L Behrendt, C Cunneen and T Libesman (eds), *Indigenous Legal Relations in Australia* (2009), p 141.

132 S Vignarendra, S Moffatt, D Weatherburn and E Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no.128 (2009). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/\\$file/CJB128.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/$file/CJB128.pdf) (viewed 27 July 2009).

133 S Vignarendra, S Moffatt, D Weatherburn and E Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no.128 (2009). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/\\$file/CJB128.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/$file/CJB128.pdf) (viewed 27 July 2009).

134 *NSW Bail Act 1978*.

The BOCSAR report did not specifically consider the impact on Indigenous young people, however, given that they routinely make up around half of the juvenile detention population, it is likely to be significant. In fact, those working in field suspect that Indigenous young people are even more disadvantaged by the recent changes. It seems from the BOCSAR research that police have deliberately stepped up enforcement of bail conditions. Young people are more vulnerable because courts impose a number of ‘welfare’ conditions. These include things like curfews, non-association orders, reside as directed, and must be in company of a parent. If the police find that these conditions have been breached the young person can then be taken into custody.

BOCSAR found that 66% of the young people were remanded for not complying with conditions of bail while only 34% of young people who breached their bail committed a further offence.

Lawyers from the NSW Aboriginal Legal Service believe that Indigenous young people are more at risk of being breached because they usually have these ‘welfare’ types of conditions imposed. This is partly because Indigenous people have more significant welfare needs and the court often decides that they need extra monitoring. However, this can be setting young people up for failure and not adequately recognising the different lifestyles that Indigenous young people lead.

For instance, Caleb Franklin, senior lawyer from the NSW Aboriginal Legal Service gives this example:

If you are from Bourke or Brewarrina and it is a 40 degree day and you live in a tin shed with no air conditioning – you are not going to be home between 6pm and 9am – you’ll be down at the river. Especially if home isn’t such a great place to be because of violence.¹³⁵

According to Nell Skinner, another senior lawyer at the NSW Aboriginal Legal Service, Indigenous young people are ‘sitting ducks for increased policing’.¹³⁶ They are much more visible because of their use of public space and often come from communities where over-policing has a longstanding history. For instance, in Brewarrina there are 12 police officers for only 300 people.¹³⁷

Section 22a has also contributed to the increase of young people on remand, with the BOCSAR report showing a clear correlation between the introduction of the restrictions to further bail applications and the dramatic increase in remand numbers.¹³⁸ The other implication of section 22a is that young people are spending longer periods of time in custody on remand.

The flow on effect of the increased use of remand is the overcrowding of juvenile detention centres, with the Department of Juvenile Justice ‘struggling under the sheer weight of numbers’.¹³⁹

Young people are not being housed in appropriate accommodation. Because all of the other centres are full, the Department of Juvenile Justice has taken over the old women’s gaol in Emu Plains. However, this facility has cells with no ensuite and no access to drinking water so detainees are reliant on staff to let them out for these

135 C Franklin, Communication with the Social Justice Commissioner’s Office, 24 July 2009.

136 N Skinner, Communication with the Social Justice Commissioner’s Office, 27 July 2009.

137 N Skinner, Communication with the Social Justice Commissioner’s Office, 27 July 2009.

138 S Vignarendra, S Moffatt, D Weatherburn and E Heller, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin no.128 (2009). At [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/\\$file/CJB128.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB128.pdf/$file/CJB128.pdf) (viewed 27 July 2009).

139 C Franklin, Communication with the Social Justice Commissioner’s Office, 24 July 2009.

amenities. Similarly, access to education and programs is also severely limited due to overcrowding.¹⁴⁰

These conditions are clearly not in the best interests of the children. Remand has a disruptive effect on a young person's family relationships, education, work and community connections.¹⁴¹ This is bad enough but when we are subjecting young people to overcrowding where their basic needs and rehabilitative goals have no way of being met, we are disadvantaging these young people further.

Bail legislation and young people has become a politically controversial topic. The release of the BOCSAR report was delayed because the NSW government classified the BOCSAR report as Cabinet-in-confidence. This is the first time the government has ever done this¹⁴² and reflects the sensitivities and divisions around this issue.

The Minister for Juvenile Justice has recently announced a review of the juvenile justice system, for this first time in 16 years.¹⁴³ It is hoped that the NSW Government takes this opportunity to look at bail in the context of reducing imprisonment and the best interests of the child.

Although more research is needed to provide concrete evidence on the impact of bail laws on Indigenous young people in NSW, the example above shows an obvious point of legislative and policy reform that would decrease Indigenous imprisonment.

Another worrying development is the introduction of further conditions for mandatory sentencing in Western Australia.¹⁴⁴ Adults who assault and cause bodily harm to police officers, ambulance officers, transit guards, court security officers or prison officers face a minimum of six months' imprisonment, while juveniles aged between 16–18 will now go to detention for no more than three months. Given the Australian experience of mandatory sentencing in the Northern Territory and Western Australia in the past,¹⁴⁵ it is highly likely that this legislation will impact heavily on Indigenous Australians. While it is unacceptable for police officers or any other public security officers to be assaulted as they go about their work, there is concern given that Police and Indigenous relations are not always cooperative and tensions can escalate quickly into violence.

These issues highlight just a few of the legislative and policy blocks that funnel an unacceptable amount of Indigenous people through to prison and juvenile detention. A justice reinvestment approach could systematically highlight a variety of these issues for Indigenous Australians and suggest appropriate reforms.

(e) Assistance for victims of crime

We know that Indigenous Australians are also over-represented as victims of crime, particularly violent crimes, including family violence:

- According to the National Aboriginal and Torres Strait Islander Social Survey, Indigenous adults have double the rate of victimisation for violent crime than non-Indigenous adults.¹⁴⁶

140 C Franklin, Communication with the Social Justice Commissioner's Office, 24 July 2009.

141 C Franklin, Communication with the Social Justice Commissioner's Office, 24 July 2009.

142 A Horin, 'Juvenile Justice report declared a state secret', *Sydney Morning Herald*, 25 June 2009.

143 Minister for Juvenile Justice, Youth, Volunteering and Minister assisting the Premier on Veterans Affairs, 'Government to Review NSW Juvenile Justice System' (Media Release 20 July 2009). At http://www.djj.nsw.gov.au/pdf_html/media/090720%20JJ%20Review%20FINAL.pdf (viewed 28 July 2009).

144 Mandatory sentencing laws passed 21 September 2009 see *Criminal Code Amendment Bill 2008*.

145 See *Social Justice Report 2007*.

146 Australian Institute of Criminology, *Indigenous Victims of Crime* (2004). At <http://www.aic.gov.au/en/publications/current%20series/cfi/61-80/cfi079.aspx> (viewed 10 September 2009).

- Indigenous Australians are almost 34 times more likely to be hospitalised for family violence related injuries.¹⁴⁷
- Indigenous young people are three times more likely to be reported to police as victims of family violence or sexual assault than non Indigenous young people.¹⁴⁸

It would be a mistake to think that justice reinvestment is all about assisting the offender. In fact, one of the strengths of justice reinvestment is the ability to divert funding to culturally appropriate victim support services. Previous Social Justice Reports have outlined some excellent but precariously funded healing and victim services. These are the sorts of programs that could benefit from additional funding as a result of justice reinvestment strategies.

While ensuring the safety of victims is paramount, what we continually hear from Indigenous victims of crime is that because the perpetrators are often known to them and part of their family and community, it is in everyone's interest for the perpetrators to return to communities rehabilitated, ensuring long term safety.

For instance, it is clearly not in the interests of the victim or community safety if an Indigenous sex offender is released without receiving any sort of treatment program. Justice reinvestment could promote the funding of effective culturally secure treatment programs that reduce the risk of further offending.

Again, these options are not about being soft on crime, they are about being smart about crime and safety. It ensures crime is dealt with appropriately and in a manner that focuses on rehabilitation and prevention of further offending. This helps to prevent crime in the future while attending to the needs of victims through diversion of funding to victims support and healing services.

(f) Compatible with existing Indigenous community justice mechanisms

Indigenous communities already have some of the mechanisms in place to make community involvement in justice reinvestment work. Local Indigenous community justice groups are running in many parts of Australia giving Elders and other important people a role in the justice system either through formal mechanisms like the Indigenous court models or broader planning and support.

These groups, where they are established by the community, or sanctioned by the community, would be an ideal point of first contact in engaging communities about how justice reinvestment could be implemented. Working with Indigenous community justice groups would ensure partnership and local knowledge to tailor justice reinvestment strategies to individual community needs.

(g) Connection with government policy priorities

Justice reinvestment is a timely strategy, not only because Australian state and federal budgets are under unprecedented pressure to rein in spending but also because of the strong connections to current government social policy priorities.

147 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 10 September 2009).

148 NSW Department of Aboriginal Affairs, *Two Ways Together Report Indicators* (2007). At http://www.daa.nsw.gov.au/publications/2ways_indicators_pdf/Chapter_Eight_240408.pdf (viewed 10 September 2009).

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(i) Social Inclusion

The most notable synergy is with the current social inclusion policy push. Social inclusion and social exclusion have been significant social policy drivers in the UK and Europe since 1980s. The election of the Rudd government has seen it receive serious attention at the federal level in Australia. A number of new structures reflect the status of social inclusion as a guiding policy principle in the Australian government:

- the establishment of the Australian Social Inclusion Board to provide independent advice to the government
- the Deputy Prime Minister, Julia Gillard, has portfolio responsibility for Social Inclusion, assisted by Senator Ursula Stephens
- the Social Inclusion Unit sits in the Department of Prime Minister and Cabinet, with the Prime Minister making a number of public undertakings towards social inclusion.

The recent Australian Public Service Social Inclusion Policy Design and Delivery Toolkit describes social inclusion as:

Being socially included means that people have the resources (skills and assets, including good health), opportunities and capabilities they need to:

- Learn and participate in education and training;
- Work and participate in employment, unpaid or voluntary work including family and carer responsibilities;
- Engage connect with people, use local services and participate in local, cultural, civic and recreational activities; and
- Have a voice influence decisions that affect them.¹⁴⁹

Academics and policy makers all over the world have wrestled with the definition of social exclusion although the UK Social Exclusion Unit provides a widely accepted definition as:

Social exclusion is about more than income poverty. Social exclusion happens when people or places suffer from a series of problems such as unemployment, discrimination, poor skills, low incomes, poor housing, high crime, ill health and family breakdown. When such problems combine they can create a vicious cycle. Social exclusion can happen as a result of problems that face one person in their life. But it can also start from birth. Being born into poverty or to parents with low skills still has a major influence on future life chances.¹⁵⁰

The Australian Government has also tried to articulate its approach to social inclusion through a set of 'Aspirational Principles'¹⁵¹ and 'Principles of Approach'¹⁵² but also spelling out that:

- To be socially included, people must be given the opportunity to:
- secure a job
 - access services

149 Australian Government, *Australian Public Service Social Inclusion Policy Design and Delivery Toolkit*. At <http://www.socialinclusion.gov.au/Documents/SIToolKit.pdf> (viewed 28 September 2009).

150 Social Exclusion Unit, *Definitions of Social Exclusion* (1999). At www.socialinclusion.gov.uk/page.asp?id=213 (viewed 28 July 2009).

151 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

152 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

- connect with family, friends, work, personal interests and local community
- deal with personal crisis
- have their voice heard.¹⁵³

The Australian government has signaled its commitment to a number of social inclusion priorities:

- closing the gap for Indigenous Australians
- addressing the needs of jobless families
- delivering effective support to children most at risk of long term disadvantage
- focusing on particular locations, neighbourhoods and communities to ensure programs and services are getting to the right places
- homelessness
- employment for people with a disability or mental illness.¹⁵⁴

What is interesting is just how closely a number of these principles and priorities align with justice reinvestment. In particular, there is a significant coalescence between the stated principles of ‘early intervention and prevention’;¹⁵⁵ ‘using evidence and integrated data to inform policy’;¹⁵⁶ and using locational approaches.¹⁵⁷

The emphasis on giving communities a voice in decisions that effect them is also a particular challenge facing Indigenous communities. But again, there is a strong connection between the community engagement focus of justice reinvestment and the goals of social inclusion.

In effect, justice reinvestment could become a very powerful tool for ensuring that Indigenous Australians are socially included. It meets the concerns of policy makers ‘mindful of the costs and benefits and evidence of returns for investment’,¹⁵⁸ the need for holistic early intervention and evidence based policy.

This confluence of agendas could be a turning point for Indigenous imprisonment in Australia if the Australian Government takes its commitments to social inclusion seriously.

(ii) COAG Closing the Gap targets

The COAG Closing the Gap commitments made in December 2007 and throughout 2008 have shaped the spirit in which Indigenous policy is being conducted in Australia at the moment. Although it is a serious omission that no formal targets were set at that point to close the gap in imprisonment rates, the emphasis on health, education and employment all speak to a vision of strong Indigenous communities.

153 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

154 Australian Government, *Social Inclusion Priorities*. At <http://www.socialinclusion.gov.au/Priorities/Pages/default.aspx> (viewed 28 July 2009).

155 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

156 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

157 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

158 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

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The problem is, however, that you will not be able to meet these targets if you continue to have such a high proportion of the Indigenous population caught up in the criminal justice system because imprisonment compounds individual and community disadvantage. Over time we would hope that the Closing the Gap targets will lead to an improvement in life chances and therefore a reduction in imprisonment but this could take a generation at the very least. For this reason, specific justice targets are needed now.

I welcome the recent announcement from the Standing Committee of Attorneys General (SCAG) stating that:

Ministers will develop 'Justice *Closing the Gap* targets' with a view to including such targets in future COAG reform packages.¹⁵⁹

This is an excellent opportunity to develop integrated targets and reforms. Targets should be informed by the principles of justice reinvestment, ensuring that special consideration is given to areas with high concentrations of Indigenous prisoners, as well as the legal and policy factors that increase Indigenous imprisonment.

A commitment at the COAG level would ensure cooperation across all levels of government and across all departments. This could radically reshape how we deal with Indigenous over-representation in this country.

Currently, more than any other portfolio, the justice needs of Indigenous Australians are siloed. There is poor interagency collaboration between the 'front end' (prevention and support services before offending) and 'back end' (corrections and juvenile justice) departments dealing with Indigenous over-representation. Indigenous over-representation is not only the responsibility of corrections and justice departments but also requires substantial input in terms of health, housing, education, employment and child protection to name just a few.

Targeted justice reinvestment strategies have the potential to cut imprisonment quite quickly given the experience of the United States. Reduced imprisonment could in turn lead to better achievement across all the Closing the Gap targets. There is a potential for a mutually reinforcing relationship between the Closing the Gap targets and justice reinvestment.

(iii) *National Indigenous Law and Justice Framework 2009–2015*

The draft National Indigenous Law and Justice Framework 2009–2015, developed by the Standing Committee of Attorney-Generals (SCAG) is designed to be a 'blueprint for action to reduce Indigenous disadvantage in law and justice'.¹⁶⁰ The draft has been endorsed by all Ministers at the August SCAG meeting and is expected to be finalised by 30 September 2009.¹⁶¹

Although not designed to be prescriptive it does set out five inter-related goals:

- improve all Australian justice systems so that they comprehensively deliver on the justice needs of Aboriginal peoples and Torres Strait Islanders in a fair and equitable manner

159 Standing Committee of Attorneys General, *Communiqué August 2009*. At <http://www.scag.gov.au/> (viewed 10 September 2009).

160 Standing Committee of Attorney-General Working Group on Indigenous Justice, *Draft National Law and Justice Framework 2009–2015*, (2008). At http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_DraftNationalIndigenousLawandJusticeFramework (viewed 28 July 2009).

161 Standing Committee of Attorneys General, *Communiqué August 2009*, At <http://www.scag.gov.au/> (viewed 10 September 2009).

- reduce over-representation of Aboriginal and Torres Strait Islander offenders, defendants and victims in the criminal justice system
- ensure that Aboriginal and Torres Strait Islanders feel safe and are safe within their communities
- improve justice outcomes for Aboriginal peoples and Torres Strait Islanders by reducing the level of alcohol and substance abuse within Indigenous communities
- strengthen Indigenous communities, with whole of government and other partners, so that improvements in law and justice and safety can be sustained in the long term.¹⁶²

Further, the Framework notes that:

Reducing over-representation of Aboriginal peoples and Torres Strait Islanders in the criminal justice system will have a positive effect on Indigenous communities and families especially in the long term, as it is a precursor to improvements in the areas of housing, education and employment.¹⁶³

These goals connect with justice reinvestment strategies and the framework could be a vehicle for driving the justice reinvestment agenda across jurisdictions given the right advocacy and support. Although the framework is very clear about the non prescriptive nature, there is an implementation and monitoring capacity built in. The framework has an emphasis on identifying:

a particular priority area of the Framework for national analysis and discussion. This would have the effect of showcasing good practice and engaging with stakeholders on the practical applications and areas for improvement, and could take the form of a conference or forum. Where relevant, this forum could be undertaken in concert with the National Justice Chief Executive Officers (NJCEOs) which is a group formed under SCAG.¹⁶⁴

Justice reinvestment would be an excellent priority area for the SCAG working group to take up, leading to pilot projects in appropriate areas.

2.5 Conclusion

Albert Einstein famously defined insanity as ‘continuing to do the same things and expecting a different result’. This is exactly the sort of madness that we see in the Indigenous interactions with the criminal justice system. We need to try something fundamentally different to solve this problem.

I believe that justice reinvestment might just be the approach we are looking for. It has a strong methodology and evidence base. It has succeeded in some of the toughest, most unlikely places in the United States. If the people of Texas, notorious for their ‘lock ‘em up and throw away the key’ mentality can achieve good results, I am hopeful that Australia can also take up the challenge.

162 Standing Committee of Attorney-General Working Group on Indigenous Justice, *Draft National Law and Justice Framework 2009–2015*, (2008). At http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_DraftNationalIndigenousLawandJusticeFramework (viewed 28 July 2009).

163 Standing Committee of Attorney-General Working Group on Indigenous Justice, *Draft National Law and Justice Framework 2009–2015*, (2008). At http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_DraftNationalIndigenousLawandJusticeFramework (viewed 28 July 2009).

164 Standing Committee of Attorney-General Working Group on Indigenous Justice, *Draft National Law and Justice Framework 2009–2015*, (2008). At http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_DraftNationalIndigenousLawandJusticeFramework (viewed 28 July 2009).

Part of the reason justice reinvestment has appealed in the USA is because it saves money, or at least reins in out of control corrections spending. It is a way of talking about imprisonment as value for money and shifting the discourse to economics and away from punitive emotions. These ideas add another perspective to the 'law and order auction' that goes on in Australian politics each election cycle. It is time to challenge our politicians to imprison less for the good of our Indigenous communities as well as the bottom line.

Justice reinvestment is a pragmatic solution to the problem of Indigenous imprisonment but it is based on some sound principles that meld with Indigenous perspectives and approaches.

It takes the role of community seriously, recognising the damage for the individual and community each time a person is imprisoned.

It recognises that there are 'high stakes' communities where it is imperative that preventative resources and systemic change is put in place to address imprisonment.

Most importantly, it provides a real role for the community to have a say in what is causing offending in their communities and what needs to be done to fix it. All of these principles would guide a partnership approach to addressing Indigenous imprisonment.

Successful public policy is often a product of the times. At the moment there are budgetary restrictions looming on the horizon but there are also some government commitments to address issues of social inclusion and closing the gap for Indigenous Australians. Justice reinvestment connects with both of these government policy priorities and could add much to the attempts to achieve Indigenous equality.

It is time that Indigenous over-representation in criminal justice system was treated as the urgent human rights issue that it is. I have set out a possible way of tackling this problem based on international experience and consideration of the situation in Australia. It is time that governments took a new approach to this old problem.

Recommendations

- 2.1 That the Australian Government, through COAG, set criminal justice targets that are integrated into the Closing the Gap agenda.
- 2.2 That the Standing Committee of Attorneys General Working Party identify justice reinvestment as a priority issue under the National Indigenous Law and Justice Framework, with the aim of conducting pilot projects in targeted communities in the short term.
- 2.3 That the Australian Social Inclusion Board, supported by the Social Inclusion Unit, add justice reinvestment as a key strategy in the social inclusion agenda.
- 2.4 That all state and territory governments consider justice reinvestment in tandem with their plans to build new prisons. That a percentage of funding that is targeted to prison beds be diverted to trial communities where there are high rates of Indigenous offenders.