

## Evidence to the Criminal Justice Committee Roundtable on Prisons and Prison Policy – Scottish Centre for Crime and Justice Research

The [Scottish Centre for Crime and Justice Research \(SCCJR\)](#) is a collaboration between the Universities of Glasgow, Edinburgh, Stirling, and Strathclyde. The SCCJR aims to produce research that informs policy and practice and advances our understanding of justice. We welcome the opportunity to make a short evidence submission to the Committee.

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### Prisons and Penal Policy in Context

Issues of prisons and prison policy involve varying degrees of complexity that will likely be explored in the roundtable discussion, but it is crucial to recognise that prisons operate within, and are profoundly influenced by, developments in the wider justice system; and the justice system is in turn influenced by wider social developments and associated policies.

Scotland's high rates of punishment are an outlier: According to the World Prison Brief (2021), Scotland currently has the highest imprisonment rate in Western Europe, at 138 per 100,000 population. We also have the 5<sup>th</sup> highest 'probation rate' (i.e. the proportion of the population subject to community sanctions and measures) ([SPACE II, 2020](#)) and the 6<sup>th</sup> highest 'total correctional population' rate (combining the numbers in prisons and on community sanctions) in all of Europe, at 379 people per 100,000. Five times as many people are subject to penal control in Scotland as in Norway or Finland, more than twice as many as in Ireland, and – perhaps surprisingly – our correctional population rate is 125% that of England and Wales.

These figures may seem paradoxical in a country in which penal policy, for much of the last 120 years has been seeking to reduce the prison population. In an award-winning book<sup>1</sup>, McNeill (2018) has argued that the paradox stems, in part, from a mistaken assumption that diversifying and expanding 'alternatives' to imprisonment would reduce its use. The reality is that, in Scotland (and in many other jurisdictions) such diversification and expansion of 'alternatives' has occurred *at the same time as* growth in prison populations – meaning that mass incarceration and mass supervision have developed hand-in-hand. These challenges notions of Scotland being a progressive, welfare-oriented, rights-respecting nation.

Here, we wish to highlight ten key themes and issues for the Committee's consideration:

1. **Incarceration and inequality:** In terms of its distribution within Scotland, imprisonment rates vary but are closely linked with inequality, poverty, and neighbourhood deprivation ([Matthews, 2019](#); [Scottish Government, 2020](#)). Looking across nations, comparative analyses of penal systems (e.g. [Lappi-Seppälä, 2011](#); Cavadino and Dignan, 2005) also suggest that, in general, nations with higher levels of inequality and lower levels of welfare provision tend to have higher prison populations.
2. **Dis-proportionality of prison as a response to low level offending:** Using custody for crimes that are not serious is short-sighted and costly. In recent years, thousands of people have been

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<sup>1</sup> *Pervasive Punishment: Making sense of mass supervision* recently won the European Society of Criminology's 2021 Book Award.

given short prison sentences for the crime of shoplifting. During the COVID-19 pandemic, numerous people accused of low-level offences have been remanded in custody (see [Justice Analytical Services, 2020-2021](#)). Yet there remains a stark lack of research on judicial decision-making on remand and sentencing and on prosecutorial (COPFS) decision-making on case marking and influencing bail/remand and sentencing.

3. **Accommodating a complex and changing prison population:** Prison numbers and dynamics have been affected by more convictions and imprisonment for sexual offences, domestic abuse, and organised crime (Audit Scotland, 2019). More people in prison associated with organised crime emphasises the need for violence prevention (including high value contract violence), preventing staff misconduct and corruption, and raises the challenge of disrupting the running of criminal enterprises from prison ([Cavanagh, Hamilton-Smith and Mackenzie, 2016](#); [SPS, 2020](#)). More broadly, the estimated percentage of the total prison population 'requiring to be accommodated separately' (for reasons like crime type, protection status, gender, age, health) is 58% ([Scottish Prison Service, 2021](#)).
4. **Life imprisonment – time in custody:** More people are serving life sentences in Scotland as a proportion of the national population than in any other country in Europe ([van Zyl Smit and Morrison, 2020](#)). In recent years, the 'punishment part' of a life sentence – minimum time served in prison before release on licence – has risen steadily. In seeking to explain this, criminologists point to punitiveness and to concerns around risk and public protection.
5. **Overcrowding:** Human rights groups and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) ([National Preventive Mechanism, 2021](#)) have expressed significant concern about overcrowding across Scotland's prison estate on several occasions. Overcrowding adversely affects prisoners in a wide variety of ways; it also hampers the rehabilitative efforts of prison staff and other agencies trying to do constructive work with them, for example, related to education or rehabilitation. In broad terms, more overcrowded prisons struggled to provide constructive regimes.
6. **Meaningful work, purposeful activity and employability:** Much more needs to be done to develop employment and training in prisons, collaborating with the third sector, business and civil society to prepare for release ([Piacentini, Weaver and Jardine, 2018](#); [Bailey-Noble, 2020](#)). Purposeful activity hours have reportedly dropped in recent years. Where positive initiatives or projects in this area do exist, there may still be issues like equitable access and provision across the estate, eligibility criteria, and funding. Considering the future, where prisoners may work (in prisons or on temporary release) to help address labour shortages in the UK, they must not be exploited but, arguably, should have workers' rights, proper pay, and pay tax and national insurance ([Crook, 2021](#)).
7. **Disability and head injury in prisons:** Research and independent scrutiny identify a range of issues encountered by people with learning disabilities in Scottish prisons, including sentence planning in custody failing to take proper account of disability, making it hard for affected prisoners to comply and to progress to release ([Gormley, 2021](#); [Equalities and Human Rights Commission, 2017](#)). Capacity for tailored responses to this group is important. A study of women in Scottish prisons found that almost 80% have a history of significant head injury ([McMillan et al., 2021](#)), with domestic abuse victimisation a common cause.
8. **Deaths in custody and post-release:** There are concerns about a small but sharp rise in prison deaths in 2021 amid COVID restrictions, raising questions of access to support and healthcare ([Goodwin, 2021](#)). An example from an English prison illustrates how death prevention implicates inter-connected issues: Following a scathing review of its mental health provision and putrid conditions, HMP Liverpool drastically reduced deaths in custody and self-harm by taking a 'zero suicide approach'. Prisoner numbers were cut by 500 to reduce crowding, leadership issues were addressed and a new governor appointed, and a refurbishment programme started, and staff time was dedicated to regular observations and support of prisoners identified as being at risk ([Pilling, 2021](#)). In historical context, longitudinal data linkage using a national cohort study of Scottish prisoners found post-release deaths are most frequent in the first two weeks after liberation, and mortality rates (post-release) for people who had been imprisoned were higher than for the general population ([Graham et al., 2015](#)). To focus on one issue, in 2016, just over half of the national cohort of drug-related deaths (399, 53%) that year had 'ever been in prison' ([Barnsdale et al., 2018: 24](#)).

A research team led by SCCJR colleague, Professor Sarah Armstrong and others from the University of Glasgow, are currently preparing to publish analysis of 15 years of deaths in custody and the Fatal Accident Inquiries (FAI's) which are completed as a result of these deaths. The findings will be published in Sept/Oct and we understand the team have prepared separate written evidence to the Committee on this issue.

9. **Breach and recall to prison:** Various criminologists have analysed longstanding issues of parole, non-compliance, and recall to prison ([Weaver et al., 2012](#); [Kelly et al., 2020](#)). Drivers of recall include the number and stringency of licence conditions, various systemic and social-structural factors, and a propensity of professionals to use recall due to risk aversion, rather than in pursuit of risk reduction ([Barry, 2021](#); [Weaver et al., 2021](#)). Completion rates of Home Detention Curfews (early release on licence with electronic monitoring) are fairly high ([McIvor and Graham, 2016](#); G4S, 2021).
10. **Lived experience:** There is much more scope and opportunity for the Scottish Prison Service, Scottish Government, and Scottish Parliament to listen to, learn from and act on issues raised by people with lived experiences of imprisonment and reintegration. These citizens remain relatively seldom asked and seldom heard in justice debates, in contrast to victims (notwithstanding the many victims in prisons), justice workers, and their representatives. Few other groups in Scottish society have decisions and policies made about them without consultation. Good practice examples of this include initiatives by Prison Reform Trust like the [Prisoner Policy Network](#), User Voice [Councils and Consultations](#), and mechanisms for co-producing justice and desistance ([Weaver, 2013](#); [Weaver et al., 2019](#)).

## Reducing the Prison Population

There are three ways to reduce prison populations:

1. Send fewer people to prison.
2. Send people to prison for shorter times.
3. Release people earlier.

Option 1 has been attempted in Scotland for many decades. Despite legislation being passed in 2016 promoting the use of Community Payback Orders (CPO) as a default sanction, rather than imprisonment, Audit Scotland state that they have found little evidence of a shift away from custody. Measures like the introduction of CPOs, the presumption against short prison sentences, use of electronic monitoring and curfews, and attempts to modernise the prison estate have not yet produced a significant reduction in the prison population.

Efforts to displace ineffective and damaging short sentences with community-based measures are appropriate, but they will have to be much more carefully targeted and much better well-resourced than in the past if the careless penal expansion discussed above is to be avoided. More generally, maximising diversion at all stages of the criminal justice system -- as has been done with some success in youth justice -- as well as addressing inequality and the social harms it produces will be required (for a range of potential diversion and decarceration strategies and restorative solutions spanning Options 1-3, see McNeill, 2018; [Kirkwood, 2018](#); Graham, [2020a](#); [2020b](#); [Nascimento, 2021](#)).

But, crucially, even if Option 1 were to be pursued more comprehensively and successfully with respect to short sentences, its impact on the overall prison population will be limited if Options 2 and 3 are not also addressed.

## The Remand Population

Remand is a longstanding issue that has been further exacerbated during the pandemic. In June 2021, remand made up over 26% of the total prison population, with remand in the young person's estate and women's estate higher still, at 52% and 32.3% respectively ([Scottish Prison Service, 2021](#)). There are concerns about the anguish and uncertainty that remand creates; it entails

prolonged waiting in extremely difficult conditions and while facing uncertainty. The prospect of waiting for up to two years or longer for trial raises critical questions of access to justice, human rights, proportionality, procedural fairness, wellbeing, and the impact on complainers/victims, staff, and families.

The Justice Committee (2018) report into the use of remand in Scotland found that 28% of those remanded via solemn proceedings in Sheriff Courts, and 57% of those remanded in summary proceedings, did not go on to receive a custodial sentence. 70% of women who were remanded did not receive a custodial sentence. Evidently, this begs the question of why remand was considered necessary and appropriate in the first place.

Bail Supervision provides an opportunity to support and monitor those who would otherwise be remanded while awaiting trial or sentence. However, it is not widely or consistently used. The report by Community Justice Scotland (2021, p. 45) stated: 'Overall, however, the provision of support is inconsistent across Scotland. For example, there is no universal bail supervision and support intervention, and much of what is delivered is specific to certain criteria or target groups.' Therefore, there is scope to better understand the processes leading up to people being remanded, with the potential to inform reductions in the use of remand, including by increasing availability of Bail Supervision as an alternative to remand across the country.

## Prison Conditions and Regimes

The COVID-19 Pandemic has contributed to a considerable worsening of the circumstances in prisons, which were already challenging for prisoners and prison staff in many institutions. Prison financial and operational pressures before and during the pandemic have been associated with high staff absence and sickness rates, the legacy of PFI schemes and private prison costs, overcrowding and paying for 'renting' extra capacity in private prisons (Audit Scotland, 2019; BBC, 2020).

As already noted, COVID-related delays in court proceedings have led to many prisoners being held on remand beyond the normal maximum statutory time limits, which were suspended by coronavirus emergency legislation. Third sector organisations and defence lawyers have reported that some prisoners are pleading guilty to offences they did not commit, in order to avoid extended remand in custody (Fair Trials, 2021; Moir, 2021).

New research on lockdown conditions reveals prisoner experiences of spending long periods (up to 23 hours a day) in cells, unable to participate in health and fitness, work, or education opportunities (Armstrong and Pickering, 2020). A Scottish prisoner described lockdown in a cell – eating, sleeping, toileting in the same confined space – as 'very cage like', and another described it as 'very hard', 'lonely', 'boring' and 'tense' (in Maycock, 2021: 8). This is likely to have a significant impact on mental and physical health.

Families are profoundly affected by imprisonment and policy decisions made by authorities (Barkas et al., 2021). With a human rights obligation to support family contact during the pandemic, the Scottish Prison Service introduced provision of mobile phones and virtual visits. While these initiatives are welcome, they can only try to ameliorate the suffering that separation entails; pandemic restrictions have intensified that suffering and distress for those on both sides of prison walls (Maycock and Dickson, 2021; Morrison and Graham, 2021). Some prisoners told researchers they were advised to phone the Samaritans helpline instead of looking for support within the prison, but struggled to afford to do so (Schinkel, 2020). Former Cabinet Secretary Humza Yousaf and the Prison Service (2020) provided numbers of calls to Samaritans using these restricted mobiles, with over 5,200 calls in a few months in mid-2020.

## Prisons, Rehabilitation and Reintegration

Prisons are, by their nature, not the best setting for the learning and development that rehabilitation requires. Many criminologists concur that, for people who have been involved in persistent offending, the process of 'desistance' from crime (ceasing *and* refraining from offending) involves and requires physical and psychological maturation, the development of normative social ties (for example involving family or work), a change in a person's identity (i.e. away from a criminalised identity and towards a more positive one), and the alteration of habits and routines. Imprisonment, however, tends

to slow maturation, to sever social ties, to stigmatise and reinforce a criminalised identity, and to entrench institutional routines. In other words, prisons are as likely to 'dehabilitate' as to rehabilitate, diminishing life chances rather than enhancing people's capacity to live well (McNeill and Schinkel, 2016).

Ending or reducing the suffering that imprisonment entails, and addressing its debilitating, incapacitating effects, also depends on enabling progression towards release. Yet the failure to provide timely access to rehabilitative programmes both before and especially during the pandemic will also impact on progression for long-term prisoners. The Parole Board for Scotland is required to assess the risks that prisoners might pose, if released, and to consider whether they have engaged in prisons with opportunities that might reduce such risks. But if those opportunities are not being provided (for example, via rehabilitative programmes), then prisoners are effectively denied progression. Lengthening the time prisoners will spend in prisons adds to their suffering and that of their families; it is also a waste of public resources.

By way of analogy, imagine the public outcry if Scotland pursued an education policy which kept our young people in school until they achieved certain exam results, but failed to run any classes to support their learning.

Even if prisons were not overcrowded, and even if they were able to provide meaningful and timely opportunities for people in prison to pursue their development and prepare for release, the transition from prison to community is an extremely challenging one for many people; and the pandemic has exacerbated these challenges (Armstrong and Pickering, 2020). Released prisoners are forced to contend not only with the enduring ill-effects of imprisonment on them (e.g. institutionalisation, ill-health, etc.), but also with adverse impacts on their relationships with family and friends, with legal (and illegal) discrimination against them in the labour market, with problems accessing public services, with unmet basic, material needs (for example, for housing and a decent level of income), and with disorientation that arises from returning to a world that has moved on in their absence (e.g. in relation to digital technologies) (Rubio Arnal, 2021). Given all of these pressures, it is not surprising that many report disappointment that their efforts to transform themselves and lead productive lives are met with a brick wall of social exclusion (Nugent and Schinkel, 2016).

## **Women and Imprisonment**

Considerable attention has been given to the prison estate for women over recent years by the Scottish Government, Parliament, and Prison Service. Many reports have made detailed recommendations on how best to reduce the number of women in custody (latterly, the Commission on Women Offenders, 2012) with the current development of HMP Cornton Vale and plans in place for SPS Community Custody Units. However, to date, attempts to reduce the number of women in prison have had limited impact. The European Committee for the Prevention of Torture has raised concerns about uses of segregation, access to activities for women held in male prisoners, and treatment and support for mental distress.

## **Conclusion**

Given all these issues, we consider Cabinet Secretary Keith Brown's (2021) remark, "I don't think we should be afraid of radical solutions", to be highly salient. The need to make more substantive progress in prisons and penal policy is longstanding and is now more urgent than ever. The future vision for and delivery of criminal justice needs to be radically different. We hope this submission is useful to the Committee and would be happy to elaborate on any of these issues in writing and or in person. References for works cited are available on request.

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Noted added: Professor Fergus McNeill, University of Glasgow, provided oral evidence to the Committee on Wednesday 15<sup>th</sup> September 2021.