

# The Prison System is in Crisis: Let's not look to Hollywood for the Answer

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When interviewed on *The Andrew Marr Show* (Sunday 19<sup>th</sup> February), the Justice Secretary, Liz Truss, claimed England and Wales should look to *The Shawshank Redemption* when considering any penal reform. In an interview in *The Sun* newspaper, published on the same day, she clarified this stance by suggesting that prisons can be 'places of hope where people decide to do things differently'. In order to do things differently the Justice Secretary wants to decrease the prison population but for the 'right reasons'. These reasons should ensure dangerous and violent offenders remain incarcerated. Furthermore, any reduction in the prison population, by a cap or quota, is to be avoided as such provisions are a 'dangerous attempt at a quick fix'. Accordingly, The Prisons and Courts Bill will be published later this month.

The Bill will make several proposals in an attempt to 'enshrine in law that reforming offenders is a key purpose of prison and the Secretary of State has a responsibility to deliver this'. This approach is admirable, however s.142 Criminal Justice Act 2003 explicitly states that 'any court dealing with an offender in respect of his offence must have regard to the following purpose of sentencing:

142(1):

- (a) The punishment of offenders
- (b) The reduction of crime (including its reduction by deterrence)
- (c) The reform and rehabilitation of offenders
- (d) The protection of the public, and
- (e) The making of reparation by offenders to persons affected by their offences.

It is clear that both reform and rehabilitation have always been available as a justification for sentencing. However, the criminal justice system seemingly ignored the provision. However, the Justice Minister now wants to change prisons from 'places of violence and despair to places of self-improvement and hope where all prisoners are given the chance to lead a better life'. Seemingly the Justice Minister previously failed to recognise s.142 CJA 2003?

As of 17<sup>th</sup> February 2017, the prison population in England and Wales stood at 85,523. If the Justice Minister is serious about prison reform, perhaps an alternative strategy should be proposed. Ministry of Justice figures from April 2014-March 2015 show that within a year, adults who are released from custody have a proven reoffending rate of 44.7%, this

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represents a decrease of 1.1% on the previous twelve months. Of the adults who commit a proven offence, over 40% of them have 11 or more previous convictions. This suggests the criminal justice system is dysfunctional and clearly failing to deter offenders from reoffending.

Arguably, the high rates of offending can be linked to the prison 'crisis'. The term crisis has been widely accepted by academics since the early 1980s and the current system is viewed as being in a state of crisis; but this title represents a bit of a misnomer. The Oxford English Dictionary defines a 'crisis' as "a period of time when a difficult or important decision must be made". It is difficult to imagine that such a critical decision can wait over thirty years. Despite the lack of a clear label, the 'crisis' has seven interlinking factors which culminate in grave problems for the prison system. To start, (1) the high prison population leads to both (2) overcrowding and (3) bad conditions (for both staff and inmates). In turn, this leads to (4) understaffing, (5) staff unrest and (6) poor security. Cavadino and Dignan suggest that these factors symbolise the end product of the crisis; (7) the toxic mix of prisoners which ultimately lead to (8) riots and disorder. To combat these factors, the government published a *White Paper* (Prison Safety and Reform) detailing a £1.3bn investment in new prisons over the next five years and plans to employ an additional 2,100 prison officers. Despite the influx of new officers, it would still leave a deficit of almost 4,500 officers when compared to staffing levels in 2010.

What is clear is that both the *White Paper* and the Justice Minister's plans are looking to improve both the prison service and subsequently lower reoffending rates of those released from prison. However, perhaps a complete culture change is in order to see the success of Truss' reformation ideas. If England and Wales were willing to depart from the custodial model of punishment and adopt the Nordic approach to criminal justice, we may see such a cultural shift. In Scandinavia, imprisonment is used only with the more serious offences, instead utilising community sanctions, such as community payback and suspended sentences, for low and middle tiered offences. If England and Wales were to follow the Nordic lead, we could work to lower the prison population, which could result in better staff morale, and improve prison security, especially if you consider the extra 2,500 staff due to be hired over the next couple of years. This tackles and could resolve two of the key components to the prison crisis.

By departing from the current model and prioritising alternatives to custody, England and Wales could offer a more punitive community sentence for those who do not commit violent or dangerous offences. A House of Commons *Briefing Paper* (published in July 2016) on Prison Population statistics stated that 10% of all those incarcerated have a sentence of 12 months or less. Potentially, this 'short-term' custody sentence could be replaced with one that is served in the community. A Ministry of Justice study (*The Impact of Short Custodial Sentences, Community Orders and Suspended Sentences Orders on Re-Offending*)

suggested that these sentences were frequently associated with higher rates of proven re-offending when compared to both the community order and suspended sentences. Furthermore, the short-term custody option was associated with up to 1 more re-offence per person than both community or suspended sentences. In essence, a tangible benefit can be derived from using an alternative to custody for short-term prisoners.

In 2015, a study by the Centre for Crime and Justice Studies suggested there had been a shift toward the greater use of community sanctions and they have been 'repackaged' in order to ensure the punitive element to the sanction is visible. The study suggested that there had been four trends in the development of alternatives to custody:

1. Community sanctions have become more onerous e.g. curfews were extended from 12 to 16 hours a day.
2. The punishment is visible e.g. the use of high visibility jackets with 'Community Payback' written on the back.
3. The private sector is playing a far greater role with financial incentives to cut re-conviction rates.
4. A greater use of electronic monitoring had been made.

These provisions amplify the punitive element of a community sanction and represent a viable alternative to custody. If the success of any punishment regime is measured by its rate of recidivism, perhaps it's best to support the method with the lower rate of reoffending? By replacing short-term custody with a community sentence for non-dangerous offenders, there would be a tangible reduction in the high population, this could stem the need for new prisons. Furthermore, this reduction in population, improves the conditions for both staff and inmates alike, as prison overcrowding and staff unrest should reduce. Finally, this will dilute the 'toxic mix' of prisoners, all of which are thought to act as the catalyst for disorder inside the prison walls.

By continuing with a commitment to the greater use of community penalties, the prison crisis may subside and there would be no need for flamboyant calls to focus on reform and rehabilitation. Especially when you consider the opportunity to focus on rehabilitation has existed since the inception of the Criminal Justice Act 2003. Furthermore, by showing a continued commitment to consider alternatives to custody, the Justice Minister would not have to look to Hollywood for the answers to the prison crisis.