

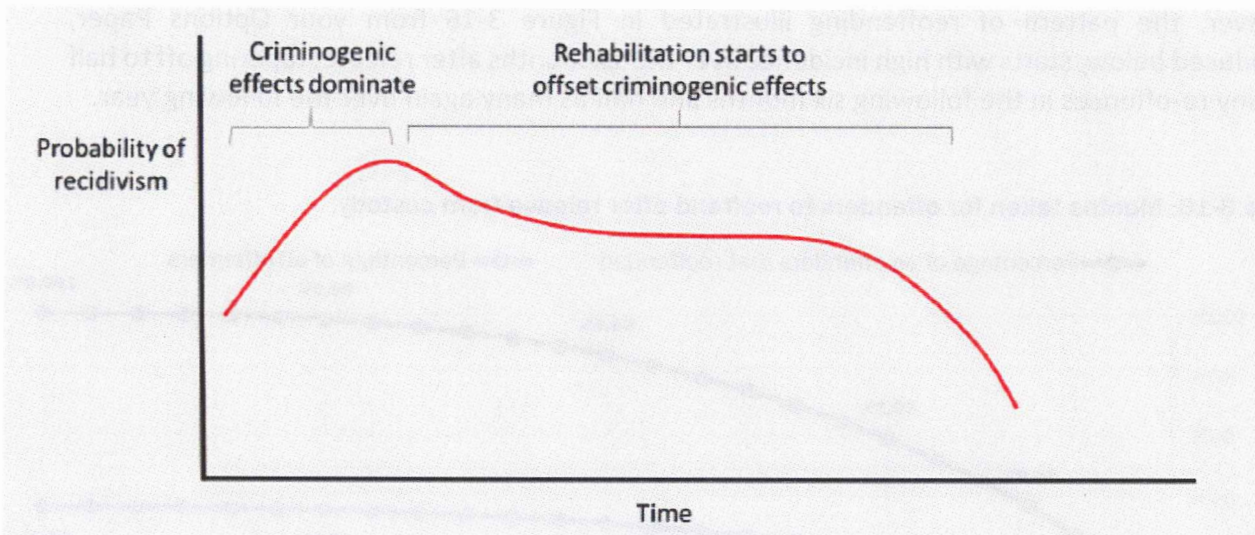
Thank you for providing the opportunity to provide input into the review of community-based sentencing orders, imprisonment and parole.

The *Penalties and Sentences Act 1992* (the PSA) outlines five purposes for which sentences may be imposed. (Any of the five are optional, due to “or” in Section 9(1) of the PSA.)

One of these optional purposes is “to punish an offender to an extent or in a way that is just in all the circumstances”. The bulk of sentences of imprisonment in Queensland may fall at this fundamental hurdle, integrating injustice into the foundations of our criminal justice system.

The Queensland Government Statistician’s Office points out that over 84% of prisoners released from prison have been in prison for less than twelve months¹.

The Queensland Productivity Commission draft report of its Inquiry into Imprisonment and Recidivism (the QPC report) includes that “research suggests that during the first year of a prison term the criminogenic effects of prison override any benefits arising from rehabilitation or from deterring the prisoner from offending again”. The report illustrates this in the following manner².



This situation means that over 84% of prisoners exiting Queensland’s prisons have been subject mainly to criminogenic influences, with little or no remediation to offset those influences. The QPC illustration correlates the exposure to an increased probability of a prisoner reoffending compared to when that prisoner enters custody.

Limitation of liberty is the intended function of imprisonment. Damaging people in an environment of coercion and leaving them more disposed to offend is not. That impact and outcome fail the “just punishment” purpose in the PSA.

It is also not just for the Judiciary, executive agencies and legislators collectively responsible for this injustice to fail to account to society and to the impacted prisoners themselves for how it contributes to 21% of released prisoners reoffending within six months of release from custody.

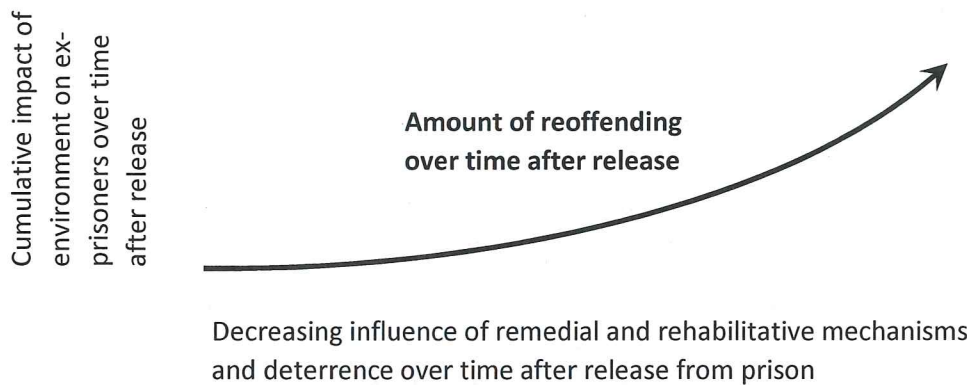
All spheres of Government contribute, but Queensland Corrective Services (QCS) has particular responsibility. The *Corrective Services Act 2006* (the CSA) states at 3(1) “The purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders”.

¹ “Two-thirds (65.2%) of all releases during 2017–18 had a stay of under six months, with 15.6% of those released having stayed in custody for 12 months or longer.” (Justice Report, Queensland, 2017-18, Section 4.2.4)

² The QPC cites Source: Adapted from Mears, D, Cochran, J, Bales, W & Bhati, A 2016, ‘Recidivism and time served in prison’, *Journal of Criminal Law and Criminology*, vol. 106, no. 1, pp. 81–122.

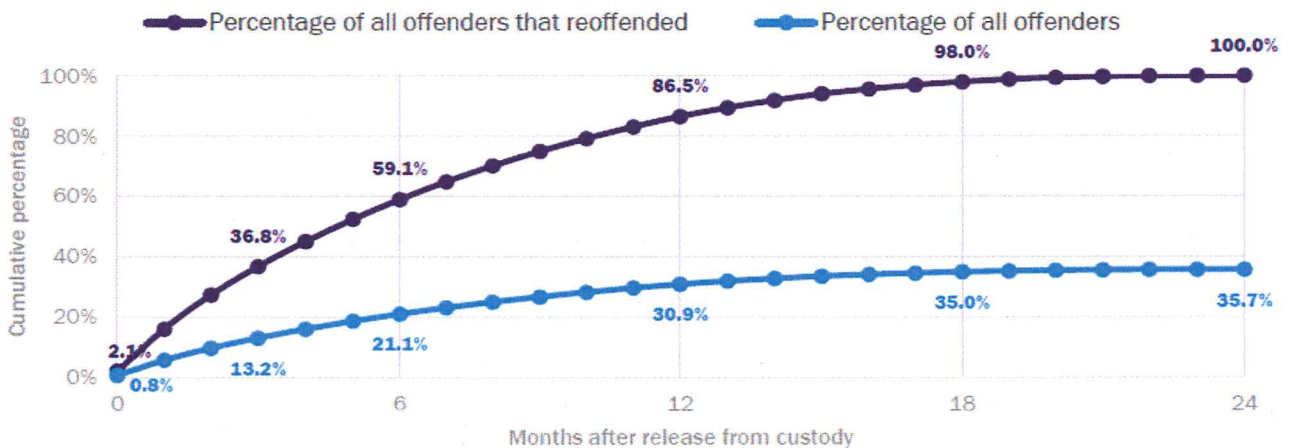
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Corrective services fulfilling their purposes of community safety and crime prevention, we can reasonably expect a reoffending-after-release curve of the following sort, for offenders who are predisposed to reoffend.



However, the pattern of reoffending illustrated in Figure 3-16 from your Options Paper, reproduced below, starts with high incidence over the six months after release, tapering off to half as many re-offences in the following six months and half as many again over the following year.

Figure 3-16: Months taken for offenders to reoffend after release from custody.



Source: QGS0, Queensland Treasury – Courts Database, extracted September 2018

One logical explanation for this result is that the heightened probability of reoffending present when 84% of released prisoners are released reduces over time to pre-imprisonment levels as the adverse impacts of imprisonment wear off and any residual deterrence effect takes precedence.

Another factor contributing to this reoffending pattern may be that prisoners upon release have compromised employment, accommodation and social support networks that, in tandem with the impacts of prison’s criminogenic impacts, make them more prone to reoffending until those impacts recede and the essential networks are re-established.

Just as criminogenic imprisonment is unjust, imprisonment that has criminogenic impacts on a released prisoner’s situation that contribute to subsequent reoffending is also unjust.

In this context, Queensland Corrective Services’ (QCS) programs to assure employment, accommodation and social support for exiting prisoners not only progress government policies of safer communities and crime prevention. Those programs may fundamentally determine whether

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or not imprisonment fails in its purpose “to punish an offender to an extent or in a way that is just in all the circumstances”. Where they and punishment fail in this fundamental way, confidence in the criminal justice system is at risk, if not misplaced.

The situation I have outlined cannot be resolved solely in the criminal justice system. Neither will it be resolved by piecemeal, marginal initiatives addressing one of more contributing factors.

Rather, solutions will require a large-scale, generational shift of resources and effort from some parts of Government to others, particularly from law enforcement and corrections to a range of human services areas, for example, via a deliberate five-year or ten-year transitional program.

Alongside that transition, human services areas need to integrate and elevate their performance, to avoid the resources transitioning from criminal justice being absorbed and wasted on business-as-usual arrangements that are already failing people in contact with criminal justice.

I propose that until those solutions are established and operating, we are morally bound to stop exposing offenders to damaging and therefore unjust imprisonment.

Any imprisonment intended to punish an offender should be designed and implemented in a manner that ensures that the remedial and rehabilitative aspects of imprisonment outweigh the criminogenic impacts of that imprisonment, so a prisoner emerges better and not worse from that imprisonment. Where such a net positive impact cannot be guaranteed, sentencing should adopt the precautionary principle of “doing no harm” and forgo imprisonment for its punitive purpose, securing retribution through mechanisms other than imprisonment.

This proposed approach elevates the importance of work to identify and establish those other, alternative mechanisms.

Gender-based criminalisation

Your Options Paper appropriately draws attention to the disproportionate representation of Indigenous people among prisoners. However, it does not look into any wider gender patterns in imprisonment.

The *Crime Report, Queensland 2017-18* published by the Queensland Government Statistician identifies that males committed roughly around 75% of adult offences and females committed around one quarter - a ratio of around three-to-one.

However, the Justice Report, Queensland, 2017-18 identifies that in 2018 over 90% of adults in custody in Queensland were male and 9.5% of prisoners were female, a ratio of over nine-to-one.

This discrepancy does not appear explicable by a higher proportion of male offending related to sexual and other assault and domestic violence.

The significance of this issue is that the criminogenic impact of prison on the 84% of prisoners who exit prison after serving up to one year is being experienced mainly by males and is contributing to increased reoffending by males. That is, not only are such sentences unjust, but they are also discriminatory in their collective impact. I contend that this too needs immediate action.

Thank you again for the opportunity to raise these issues with your review.

Regards