Mental Health and Scotland’s Prison Population

The Scotland Institute
80 Berkeley Street, Glasgow, G3 7DS, United Kingdom
T: 0141 354 1602 | F: 0141 354 1603 | www.scotlandinstitute.com
# Contents

**About the Scotland Institute**.........................................................................................................................4

**1. Summary and Recommendations**..................................................................................................................8

1.1 Summary ........................................................................................................................................................................8

1.2 Recommendations ..............................................................................................................................................................9

  1.2.1 Guidance .................................................................................................................................................................9

  1.2.2 Integration ...............................................................................................................................................................10

  1.2.3 Provision of Mental Health Services .....................................................................................................................11

**2. Introduction**.............................................................................................................................................................12

**3. Context**.......................................................................................................................................................................14

3.1 Overall Prison Population ................................................................................................................................................14

3.2 Mental health ..................................................................................................................................................................14

   3.2.1 Level of Incidence ..................................................................................................................................................14

   3.2.2 Consequences .......................................................................................................................................................15

3.3 Substance abuse and other problems ..........................................................................................................................................16

3.4 Failures of criminal justice ...................................................................................................................................................17

**4. Where the problem lies?**........................................................................................................................................19

4.1 Introduction .....................................................................................................................................................................19

4.2 Sentencing Practices .......................................................................................................................................................20

1.3 Available Resources ....................................................................................................................................................21

**References**....................................................................................................................................................................23
About the Scotland Institute

The Scotland Institute is a progressive and independent think tank set up to deal with the changing face of Scotland. It aims to investigate the implications of devolution while finding innovative solutions to the old problems of social exclusion, and to encourage Scotland’s competitiveness in the global market. Through high-quality comprehensive research and policy making it hopes to put Scotland on a path towards a more competitive, progressive, and optimistic future.

www.scotlandinstitute.com
‘We look to Scotland for all our ideas of civilisation.’

Voltaire
Scotland’s prisons may not be the most grim in the world, but they are not a good place to be either. Not least, if you have serious mental health issues which contributed towards your incarceration. We found considerable evidence which confirms our findings, for example Graham’s 2007 report on Prison Health in Scotland. Putting people with mental illnesses in prison is, in part, further victimising people who are vulnerable and need help on the one hand, and on the other, it is clearly not the way to help rehabilitate these people and prevent reoffending. We argue that where criminal behaviour has been at least in part prompted by mental health issues, the best approach would be to tackle that first, rather than go directly to imprisoning these individuals.

Yet we find that, by some measures, 80% of all prisoners in Scotland have some kind of mental disorder, 80% of women prisoners certainly, and at least 4.5% have very serious and enduring psychiatric problems. By comparison, only 1-1.5% of the general population have serious and enduring mental health problems, and around 25% have some kind of mental problem at any one time. The correlation between incarceration and mental health problems is clear. And even if the direction of the causation cannot always be assumed, it cannot be denied that we are frequently imprisoning people whom we should not.

What can we do about this situation? In our report, we argue that there are some categories of offenders who should not be sent to prison in most circumstances, and instead the justice system should focus on giving them the necessary treatment to enable these individuals to be reintegrated into society over the medium and long term.

Scotland has already made some progress in this direction. Up to 2011, we had the highest rates of incarceration in the European Union. Since then, the Criminal Justice and Licensing (Scotland) Act 2010, which has actively sought to reduce short-term sentences proven to not produce the desired outcomes, has also had a positive effect on the categories of prisoners we have looked at in our report. Often, the misdemeanours prompted by mental health issues and related issues (such as substance abuse) have been the kind which would have received short sentences. And by avoiding sending such people to prison, we can avoid sending vulnerable people in an environment in which they might internalise the idea that they are “criminals”, and we can avoid putting them in close contact with actual, hardened criminals which might lead them to further, even aggravated reoffending.
But more can be done, and we suggest concrete steps. There is currently an ongoing effort to create systematic sentencing guidelines in Scotland, which would create a clear and consistent framework for judges in applying the law across our country. The committee in charge of this is due to start meeting in October, and they are expected to produce proposals for the sentencing framework by early next year. It is with this process that we wish to engage with our report, and we also urge the general public to engage with this issue based on the evidence about mental health, imprisonment and reoffending that we survey in our report. We want them to be clear that where offenders have a history of mental illness which can be addressed before sending them to prison, that should always take priority – especially when it comes to sentencing women, where the evidence shows that imprisonment does not only affect the individual concerned, but also create problems for others around them, such as their children.

That is one side of what is required. The other side is actually providing the necessary mental health services to these individuals. The 2010 Act has moved the responsibility for the mental and physical health of prisoners away from the Scottish Prison Service, and has moved it to the NHS Health Boards. But in practice, very few NHS Boards have had much success in picking these issues up and successfully dealing with the challenges raised by mental health in the case of offenders. We need them to pick up the challenge, and start engaging with it seriously. We would ask that the Boards be required to report on an annual basis how they are discharging their duties under the 2010 Act – which at the moment, none of the Boards are doing.

But finally, we must also acknowledge that much of the failure of NHS Scotland in engaging with these issues is down to having limited resources. Despite the requirements of the 2010 Act, there is no clear plan on how to deliver the necessary mental health services to those offenders who need them, especially acknowledging the challenging circumstances of delivering such services to this particular group of people, and there is also no clear understanding of what resources are required to do so. Needless to say, the resources allocated are thus not adequate.

In conclusion, we find that in order to improve our criminal justice system, we need to focus both on our approach to sentencing, and our approach to providing mental health services to those offenders who need them.

Dr Azeem Ibrahim
Executive Chairman
1. Summary and Recommendations

1.1 Summary

Up to 2011 Scotland had the highest rate of incarceration in the European Union\(^1\) despite recorded crime figures steadily falling since the early 1990s. Changes since then have had an important effect. The Criminal Justice and Licensing (Scotland) Act 2010 made a deliberate decision to avoid the use of short prison sentences. Equally, it transferred care for prisoner’s mental and physical health from the Scottish Prison Service to the NHS\(^2\). Recent announcements by Michael Matheson, the Justice Secretary, indicate a desire to continue to reduce reliance on prison as a means of punishment within the criminal justice system\(^3\).

Despite these changes, in May 2015, Scotland’s prison population was 7,632\(^4\) (of whom just over 1,100 were awaiting trial – and most of these will be released without ever being convicted). Of those sentenced, 272 were young males, 5,475 were adult males, 12 were young females and 296 were adult females.

However, Scotland’s prison population is made up overwhelmingly of individuals with mental health problems, learning difficulties and with problems of alcohol or drugs dependency\(^5\). This has been noted as a major problem in most reviews of the wider UK prison system\(^6\) but so far little has happened to avoid the reality of jailing people who need help themselves. As several reports note: “Prison is not the most appropriate environment for people with severe and enduring mental health problems. Their primary need is their mental health and the appropriate place to address this is in a hospital”\(^7\).

---

Obtaining definitive data as to the extent of mental health problems is complex due to how the information is recorded. The 2012 Commission on Women Offenders estimated that 80% of all women in prison in Scotland had mental health problems. A Scottish Prisons Service report estimated that 14% of all prisoners had a history of psychiatric disorder and that around 4.5% of prisoners have a severe and enduring mental health problem. Other data suggests that 80% of all prisoners have two or more mental health disorders – most commonly a combination of a diagnosed illness and substance misuse. For comparison, between 1-1.5% of the wider population have a severe and enduring mental health problem and around 25% have mental health problems at any one time (mostly in the form of depression or anxiety).

In effect, despite the gains from the 2010 Act, Scotland continues to incarcerate the most vulnerable and marginalised in our society. The Act has had positive effects but the full gains are hampered by wider public discourse (especially as mediated by the tabloid press) about criminal justice, attitudes to sentencing among the judiciary and lack of available support for those with mental health needs.

### 1.2 Recommendations

#### 1.2.1 Guidance

The issue of creating systemic sentencing guidelines for Scotland has been under discussion since 2006. The committee reviewing this is due to meet from October this year and make fresh proposals in early 2016. At the moment, the focus is on equity relating to the nature of the crime, the amount of damage and disruption caused and whether the offender already has a criminal record.
The SNP has already acknowledges that short prison sentences simply do not work\textsuperscript{14} and there are welcome indications that this approach will be extended to end all sentences of less than six months\textsuperscript{15}. Equally there is growing recognition that prison is not the solution for particular groups, at the moment this is leading to an acknowledgement that imprisoning women is detrimental to their wider family leading to greater social problems\textsuperscript{16}. This offers an opportunity to rethink the whole approach to sentencing guidelines. As argued in this paper, and in report after report, placing people with mental health problems in jail simply worsens the situation.

\textbf{Thus the new sentencing guidelines need to be clear that there are groups of individuals who should never be sent to prison.}

\section*{1.2.2 Integration}

One consequence of the 2010 Act was to move responsibility for the mental and physical health of prisoners from the Scottish Prison Service to the NHS Health Board that contains the prison. The intention was that there would be less gaps in service provision as someone was placed in prison and subsequently returned to the community. The reality is that few NHS Boards have been able to address the challenges\textsuperscript{17} and that services remain partial. Scottish Prison Service reports\textsuperscript{18} report that there are examples where this has worked successfully but in many instances there has been no improvement since 2011. Of note, none of the NHS Board annual reports make even passing mention of the challenge of the provision of mental health services in prison.

\textbf{NHS Boards should be required to report on how they are discharging their duties under the 2010 Act. Such reports should be contained both in the wider annual report and in particular audit reviews.}

\begin{flushleft}


\end{flushleft}
There is a need for comprehensive data collection so that the real situation is understood and clear to policy makers

1.2.3 Provision of Mental Health Services

This leads onto the largest problem. Despite the Scottish Government’s clear commitment to the provision of mental health services, the reality is of a service that is stretched and struggling to meet the needs of our communities\textsuperscript{19}. Those in prison present particular problems both in terms of their needs and the organisational implications. As noted above, NHS Boards in Scotland are not reporting how they are meeting the requirements of the 2010 Act. In addition, both prisoners and ex-prisoners present particular problems. They are often abusing alcohol or drugs and they may still be involved in criminal activities. As a result, they are rarely seen within the mainstream Community Mental Health teams and referred to specialist Forensic Mental Health services. The latter are being cut back, removing key specialist services.

The NHS needs to be clear about how it will meet the mental health needs of prisoners and ex-offenders. In particular, there is a need to review the barriers to them being able to access mainstream mental health support and to improve the quality of specialist services.

2. Introduction

Despite falling levels of crime, Scotland’s prison population grew from 6,606 in 2003 to 8,178 in 2011\(^{20}\) and since then has dropped to 7,434 in early 2015\(^{21}\) (of these 1,200 have not been convicted and are awaiting trial). The main reason for the welcome drop in recent years has been the impact of the SNP’s ‘Community Pay Back’ approach to sentencing\(^{22}\) introduced in 2011 which reduced the numbers being sent to prison for short periods drawing on research which showed that community sentences are far more effective than short periods of incarceration in preventing re-offending\(^{23}\). Furthermore, especially for young people, the quicker they are diverted from criminal activity (and the less they are involved with punitive criminal justice) the less likely they are to re-offend\(^{24}\).

Despite these welcome improvements, Scotland’s prisons remain full of people who were themselves in care when they were younger, come from the poorest neighbourhoods in Scotland\(^{25}\), have drug or alcohol\(^{26,27}\) problems and have pre-existing mental health problems\(^{28}\). Estimates of the extent of mental health problems vary but it has been estimated that 14% of the prison population has a history of psychiatric disorder\(^{29}\); that 90% of all prisoners suffer from some form of mental illness\(^{30}\); and, that between 4.5% and 14%\(^{31}\) of the prison population are diagnosed with severe and enduring mental health problems\(^{32}\). Other data suggests that 80% of all prisoners have two or more psychiatric disorders – most

---


\(^{24}\) Ibid.


\(^{31}\) Ibid.

commonly a combination of a diagnosed illness and substance misuse\textsuperscript{33}. Dealing with people with severe mental health problems is time consuming and this leads to a reliance on segregation and control rather than treatment\textsuperscript{34}.


3. Context

3.1 Overall Prison Population

As noted in the introduction, up to 2011 Scotland had the highest rate of incarceration in Western Europe\(^{35}\) with 8,718 in jail and this population was originally estimated to reach 9,500 by 2020\(^{36}\). The impact of the 2010 act has prevented this growth and the prison population was 7,434 in January 2015\(^{37}\) and 7,632 in May 2015\(^{38}\). The detailed breakdown of the May figures is:

Table 1: Scottish Prison Population, 22 May 2015

<table>
<thead>
<tr>
<th>Category</th>
<th>Figures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Untried Male Adults</td>
<td>1109</td>
</tr>
<tr>
<td>Untried Female Adults</td>
<td>67</td>
</tr>
<tr>
<td>Untried Male Young Offenders</td>
<td>111</td>
</tr>
<tr>
<td>Untried Female Young Offenders</td>
<td>4</td>
</tr>
<tr>
<td>Sentenced Male Adults</td>
<td>5457</td>
</tr>
<tr>
<td>Sentenced Female Adults</td>
<td>296</td>
</tr>
<tr>
<td>Sentenced Male Young Offenders</td>
<td>272</td>
</tr>
<tr>
<td>Sentenced Female Young Offenders</td>
<td>12</td>
</tr>
<tr>
<td>Recalled Life Prisoners</td>
<td>76</td>
</tr>
<tr>
<td>Convicted Prisoners Awaiting Sentencing</td>
<td>223</td>
</tr>
<tr>
<td>Prisoners Awaiting Deportation</td>
<td>4</td>
</tr>
<tr>
<td>Under 16’s</td>
<td>0</td>
</tr>
<tr>
<td>Civil Prisoners</td>
<td>1</td>
</tr>
<tr>
<td>All Scotland Total in Custody</td>
<td>7632</td>
</tr>
<tr>
<td>Home Detention Curfew (HDC)</td>
<td>287</td>
</tr>
<tr>
<td><strong>Overall Total</strong></td>
<td><strong>7919</strong></td>
</tr>
</tbody>
</table>

3.2 Mental health

3.2.1 Level of Incidence

Estimating the actual incidence of mental health problems in the prison population is complex and is hindered by inadequate data. One particular problem is that the lack of routine monitoring means that prisoners have to self-declare if they

---

have problems and not all will do so for fear of the stigma or that it may affect other aspects of their treatment\(^{39}\). The last major systemic research into prisoners’ mental health was a UK report published in 1997 by the Department of Health\(^{40}\). This is still commonly cited and found that 90% of all prisoners had a mental health problem and that 70% had two or more problems (often mental health and some form of addiction). In effect, mental ill-health is the norm for the UK’s prison population.

A Scottish Prison Survey\(^{41}\) found that 14% of all prisoners had a history of psychiatric disorder (in other words serious and sustained mental health problems) and that 7.3% had a history of self-harm. A report for the Prison’s Inspectorate\(^{42}\) found that 4.5% of all prisoners have severe and enduring mental health problems most commonly schizophrenia and bi-polar affective disorder. The same report notes (but does not quantify) that there are ‘a significant number of prisoners with a personality disorder. The majority of prisoners with mental health problems also have substance misuse issues\(^{43}\).

However, it should be noted that there have been real improvements in some respects. The rate of prison suicides in Scotland has dropped substantially\(^{44}\) mainly due to better monitoring and intervention\(^{45}\). Equally, many of the non-custodial community pay back sentences can include mandatory acceptance of mental health treatment\(^{46}\).

### 3.2.2 Consequences

The 2010 act transferred health provision to the regional NHS board that covers the area where the prison is located\(^{47}\).

There are several related issues. First, and this is consistent across all existing studies, support is fragmentary. Some prisoners are able to access the help they


\(^{43}\) Ibid.


need and even find prison allows them to undertake courses of treatment in relatively stable circumstances\(^\text{48}\). However, there are gaps in provision at almost every level from entry to prison, to movement between prisons to release\(^\text{49}\). Equally, despite responsibility now resting with the NHS there remains a serious shortage of trained mental health professionals who can work with Scotland’s prison population. The Audit Commission noted there is both an overall shortage of mental health staff and significant variances between Health Boards\(^\text{50}\).

### 3.3 Substance abuse and other problems

Mental health problems are not the only way in which the prison population differs from wider society. Of women in prison, 50\% stated they had been drunk at the time of their offence, 28\% believed that alcohol use hindered their ability to retain a job and 53\% were drug users before conviction\(^\text{51}\). For men, 43\% had been drunk at the time of their offence (this was even higher for younger men at 65\%) and 79\% had previous history of drug use\(^\text{52}\). Self-medication, via drink or drugs, is a common response to mental health problems if there is no access to proper support.

Many young people in prison had previously been in care: around 30\% of young women and 34\% of young men. In addition, 11\% of young women and 22\% of young men reported basic literacy problems and 25\% of young men had no formal qualifications\(^\text{53}\). Learning difficulties as well as mental health problems are common among the prison population\(^\text{54}\).

More generally, Scotland’s prison population is drawn substantially from the poorest areas\(^\text{55}\). The impact of this is quite stark: “One in nine men from our most deprived communities will spend time in prison while they are 23\(^\text{56}\).” However, social deprivation is ‘neither a sufficient nor a necessary precondition

---


56 Ibid., p. 20
for imprisonment’. The implications of this are explored in the next section. More importantly, while there is a correlation between overall deprivation and the likelihood of imprisonment there is no direct causal relationship\(^{57}\). More direct reasons for entry into the criminal justice system include mental health problems, learning disabilities and/or addiction.

## 3.4 Failures of criminal justice

While at one level the SNP’s approach to penal policy has seen a welcome departure from the norms established by the Conservatives, New Labour\(^{58}\) and subsequent Westminster Governments, it is not beyond criticism. The decision to end the use of short term custodial sentences has been matched by recent decisions to effectively end early release schemes for those with longer term sentences\(^{59}\).

This has three problems. First is cost, as it is often calculated it takes £42,500\(^{60}\) per year per prisoner. Second, ending early release also means losing an important incentive to manage behaviour when in prison, and this can include action to address substance abuse and involvement with mental health professionals. Finally it means that on release, it is not possible to make continued treatment a condition, leading to the danger that individuals simply drift away from any structured support they may need.

Our criminal justice system remains heavily influenced by the mindset of the UK’s tabloid press and over 30 years of Conservative and New Labour Home Secretaries making the assertion, supported by no evidence\(^{61}\), that prison works. At the core of this is a belief that the decision to commit a crime is a considered

\(^{57}\) Ibid.


trade off between a desire for the expected rewards and the risk of being caught (and presumably the severity of punishment that follows). For some, this is perhaps true, and may explain the type of behaviour found at senior levels in the UK’s Financial Services sector, but for many who are caught up in the criminal justice system it fails to reflect the reality of their lives.

Addiction, mental health and learning difficulties as well as early involvement in criminality are all better explanatory reasons for why individuals commit crimes. Prison in turn, fractures ties with wider social networks (including between parents and children), reduces the chance of finding long term employment, adds to existing mental health problems and increases the chance of being homeless on release. In turn, it is highly likely people will re-offend as a result of these issues. To some extent, the prison system is expected to deal with a series of social problems\(^2\) at a time when its budget is under increasing strain\(^3\).

However, we continue to lock up people who are in need of mental health assistance, and, especially for those with severe and enduring mental health problems, they often should be in hospital not jail. The 2010 Act, and related changes, has stopped the seemingly inexorable trend to increasing Scotland’s prison population but the system remains too orientated towards punishment.

---


4. Where the problem lies?

4.1 Introduction

Overall the SNP’s approach to criminal justice has been a mix of evidence based progressive policies and what can only be described as typical UK policies. On the positive side, the 2010 Act openly acknowledged that short term sentences are a disaster for all involved. Such sentences break apart the social ties of offenders and embed them into the criminal justice system. The community pay back orders have been more effective and it is welcome that the SNP has accepted the case to extend the approach and try to end all sentences of less than six months64. In this respect, it is depressing that the Labour Party saw fit to campaign against this approach, in 2013, on the promise to “stand by our judge’s right to impose prison sentences. SNP plans to abolish 6 month sentences means 65% of knife criminals will not be sentenced to prison65”.

Equally in the Scottish Government’s favour has been an acknowledgement of the linkage between children being in care and then becoming caught up in the criminal justice system. More recently, attention is being paid to the particular problems caused by placing women in prison66 and, specifically, a retreat from an earlier plan to build a larger prison in Inverclyde for women67. Equally the broader question of how to deflect young people from the criminal justice system is under serious consideration68.

On the other hand, despite falling levels of crime69, the rate of imprisonment has more or less remained static since 2012. Scottish government policy is far more enlightened than that in the rest of the UK but remains influenced by

---


scaremongering tabloid headlines\textsuperscript{70} and political opponents making the regular charge of ‘being soft on crime’. This mindset is particularly problematic in the case of mental health. As we have noted in this report, mental health problems, before being sentenced are the norm, so in reality the only way to address the issue is to rethink how Scotland handles almost all the prison population. This raises significant problems, not least, as the Howard League noted during the recent controversy about giving prisoners the votes, accepting popular prejudice is too often the easy answer\textsuperscript{71}.

4.2 Sentencing Practices

The importance of consistency in sentencing within the Scottish Criminal justice has been under discussion since 2006\textsuperscript{72} and the 2010 Criminal Justice and Licensing (Scotland) Act contained a requirement to reform the old Sentencing Commission to take this work forward. The Scottish Government has recently announced this will commence work in October 2015. This is a critical gap that has particular importance for the issue of mental health and sentencing. In so far as there is a structured approach in Scotland it is based around the nature of the crime and some note being taken of the impact on the victims.

Some recent proposals are designed to take some account of the circumstances of the offender, especially if they are female or have parenting responsibilities\textsuperscript{73}. However, the fundamental goal of sentencing guidelines is that “offenders committing similar offences are punished with similar penalties by different sentencers, whether those sentencers sit in the same court or different courts\textsuperscript{74}”. This approach fundamentally undermines attempts to take account of the impact of the criminal justice system on the offender.

Of course the standard view of the British press and of Whitehall Home Secretaries is that this is of no account. If someone has committed a crime they must be punished regardless of the longer term consequences. But as the Scottish Government is starting to acknowledgement that imprisonment punishes more


\textsuperscript{74} The Sentencing Commission for Scotland 2006. The Scope to Improve Consistency in Sentencing Edinburgh: The Scottish Government., p. 9
than the offender in terms of women and families, and that children brought up in care are more likely to become caught up in crime, there is a need for some boldness in terms of mental health.

At the least, as noted several times in this report and others, those with a diagnosis of severe and enduring mental health problems[^75] should quite simply not be in jail. Their primary need is for structured treatment and support. More generally, the Scottish Government is slowly coming to the view that prison is not the best solution to ensuring that crime falls in the longer term[^76]. This approach needs to be extended to those with mental health problems. Quite often the reason they committed a crime in the first place is the lack of effective mental health provision, prison simply makes this worse and the lack of support on release sets up a cycle of self-medication (often involving drink and drugs), intermittent work and housing arrangements and a return to prison.

### 4.3 Available Resources

The shift of wider health care services from the Scottish Prison Service to the NHS was an important feature of the 2010 legislation. The underlying logic was this would remove one administrative barrier between services inside and outside of prison and improve access to scarce resources. Although there is evidence that NHS Boards are aware of the implications, and undertook some early planning, there is no publicly available documentation as to the impact. Prison provision is not being reported as part of annual reports[^77] indicating it is not seen as a key service.

More importantly, the key part of mental health provision that deals with offenders, Forensic mental health, is being significantly reduced as the NHS copes with funding shortfalls. This matters as the most people in need of psychological services are seen as part of the Community Mental Health structure. However, ex-offenders are often not accepted as they are either still involved with criminal activity, self-medicating with drink or drugs or show other behavioural difficulties. In turn, this leaves a vulnerable group having to negotiate a fragmented care system.

At the moment, no-one is really taking the issue of mental health, imprisonment and the wider criminal justice system seriously. The underlying problem is widely acknowledged and report after report points to the reality that most people in Scotland’s jails are in need of mental health services (and that this predates their offending). However, because it is so widespread, it is politically harder to acknowledge than the problems of women going to jail or the impact on children if their parents are imprisoned. While it is a particular problem of mental health provision, it is also indicative of a wider failing in terms of criminal justice policy.
References


Matheson, M. 2015. My vision of how Scotland can change the way the world treats female offenders. Sunday Herald, 21 May, p.31.


